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SUPREME COURT OF VIRGINIA
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In The

SUPREME COURT OF VIRGINIA

Record No. 730282

Wilbert Washington, Jr. — Appellant

v.

Commonwealth of Virginia — Appellee

Appendix

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INDICTMENT

November 13, 1972

The Grand Jury charges that:

On or about the 11th day of August, 1972, in the County of Stafford, Wilbert Washington, Jr., forged with intent to defraud a check of the following words and figures: Virginia National Bank, Quantico, Virginia August 4, 1972 Pay to the order of Marty Brooks $110.00 One Hundred Ten and no/100----------Dollars /s/ Bob Vincent.

Va. Code Section 18.1-96

ORDER

January 22, 1972

This day came again the Attorney for the Commonwealth, and Wilbert Washington, Jr., who stands indicted for a felony, to-wit: Forgery, appeared according to the condition of his recognizance, and came also Kevin Jones, his attorney, heretofore appointed.

Whereupon the accused was arraigned and after private consultation with and being advised by Kevin Jones, his counsel, pleaded not guilty to the indictment, which plea was tendered by the accused in person. And thereupon, after having been first advised by his attorney and by the Court of his right to trial by jury, the accused knowingly and voluntarily waived trial by a jury and with the concurrence of the Attorney for the Commonwealth and of the Court, here entered of record, the Court proceeded to hear and determine the case without the intervention of a jury, as provided by law, and having heard the evidence and argument of counsel, doth find the accused guilty of Forgery as charged in the indictment.

And it being demanded of the defendant 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 the Court that the defendant is hereby sentenced to confinement in the penitentiary of this Commonwealth for the term of three years, of which term the Court doth suspend the execution of one year upon the conditions that he keep the peace and be of good behavior for five years, and that the Commonwealth of Virginia do recover against the defendant its costs by it about its prosecution in this behalf expended.

And it is further ordered that as soon as possible after the entry of this order the defendant be removed and safely conveyed according to law from the jail of this Court to the said penitentiary, therein to be kept, confined and treated in the manner provided by law.

The Court orders that the prisoner be allowed credit for the time spent in jail awaiting trial.

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

and capably represented the defendant.

And the prisoner is remanded to jail to await transfer to the penitentiary.

John A. Jamison, Judge

NOTICE OF APPEAL

AND

ASSIGNMENTS OF ERROR

The defendant, Wilbert Washington, Jr., hereby gives Notice of Appeal from the judgment of the Court rendered herein on January 22, 1973, and assigns the following as error as required by Rule of Court 5:6:

1 - The Court committed prejudicial error in admitting in evidence incriminating statements, oral and thereafter reduced to writing and signed by the defendant, elicited by R. N. Southworth, Officer, Virginia State Police.

2 - The Court commited prejudicial error in admitting in evidence the check alleged to have been forged by the defendant.

The transcript of the trial of the herein case, prepared by Frances K. Garland, Court Reporter, will be filed hereafter in the Clerk's Office of the

Circuit Court of Stafford County.

WILBERT WASHINGTON, JR.

By_____
Of Counsel

I certify that a copy of the foregoing Notice of Appeal and Assignments of Error has been delivered to Daniel M. Chichester, Commonwealth's Attorney, Counsel of Record for the Commonwealth of Virginia, this 20th day of February, 1973.

_____
Kevin S.Jones

WHITTICAR, WHITTICAR & SOKOL
918 Princess Anne Street
P. O. Box 593
Fredericksburg, Virginia 22401

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MARTHA ANN BROYLES, a witness, being called for examination by the Commonwealth, first being duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. CHICHESTER:

Q Tell the Court your name.

A Martha Ann Broyles.

Q What is your occupation?

A Secretary.

Q By whom are you employed?

A Earl's Food Market.

Q And in what county is Earl's Food Market located in?

A Stafford County.

Q How long have you been so employed?

A Eleven years.

Q Were you so employed on August 11th, 1972?

A Yes.

Q Drawing your attention to that date, I ask you whether or not you received the particular document that I show you?

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A Yes.

Q And how would you describe that document?

A You mean the check?

Q Um, hum.

A One hundred ten dollar check, Bob Vincent Auto Sales.

Q Who is it pay to the order of?

A Marty Brooks.

Q Who is it signed by?

A Marty Brooks.

Q Who is it signed by allegedly?

A Bob Vincent.

Q All right, now, having received that check, what did you do with it?

A It was sent through the bank.

Q And did there come a time when it was returned to you?

A Yes, it was returned "Account Closed."

Q Um, hum, and is it normal business practice for you when you get a check of that nature to send it to the bank?

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A Yes, um, hum.

Q And what happened when it came back to you?

A The check was returned "Account Closed."

Q All right, did there come a time when the check was released?

A From us?

Q Um, hum.

A Yes.

Q By whom would it be released?

A This check here?

Q Um, hum.

A Myself.

Q Do you have a certain place in the store that you keep checks of that nature?

A Yes.

Q Who is the assistant manager at Earl's Food Market?

A Wayne Broyles.

Q Now, would he have released that check?

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A He released this check, yes.

Q Okay.

MR. CHICHESTER: That's all I have of this witness.

THE COURT: Any questions.

MR. JONES: No questions, Your Honor.

THE COURT: All right, you may step down.

WITNESS STOOD ASIDE.

MR. CHICHESTER: Call Wayne Broyles.

DAVID WAYNE BROYLES, a witness, being called for examination by the Commonwealth, first being duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. CHICHESTER:

Q Tell the Court your name.

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A David Wayne Broyles.

Q By whom are you employed?

A Earl's Super Market.

Q How long have you been so employed?

A Ten years.

Q And in what capacity?

A Assistant manager.

Q All right, in your capacity as assistant manager, I ask you whether or not you can identify this document?

A Yes, I can.

Q All right, describe it to the Court.

A This is a check that was returned back from the bank that we deal at as "Account Closed."

Q And would you describe it for the record, that particular check.

A The deals I have had with the check I gave it to Mr. Southworth.

MR. CHICHESTER: For the record, Your Honor, I would like to designate this particular check as Commonwealth's 2.

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THE COURT: All right, sir.

MR. CHICHESTER: And check two would be described as a check written on Bob Vincent Auto Sales, Inc., P. O. Box 121, Woodbridge, Virginia, dated August 4, 1972. It's payable to the order of Marty Brooks. It's for the amount of one hundred ten dollars, and it's signed by Bob Vincent.

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* * * * * * * * * * *

Q Now, designating this check as Commonwealth's 2, can you tell the Court what you did with it.

A I was instructed to give it to Trooper Southworth.

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Q Do you know when you gave it to him?

A No.

Q All right, and you are certain that this is the same check?

A Yes, sir. I didn't have but one so I know that's the one.

Q All right, sir.

MR. CHICHESTER: That's all I have of this witness.

THE COURT: Wait just a minute. (directed to the witness) Do you have any questions?

MR. JONES: Yes, Your Honor.

THE COURT: Have a seat. (directed to the witness)

CROSS EXAMINATION

BY MR. JONES:

Q You said that you don't know when you gave this check to Trooper Southworth?

A No, sir. I was on vacation at the time it came up.

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* * * * * * * * *

RICHARD SOUTHWORTH, a witness, being called for examination by the Commonwealth, first being duly sworn, testified as follows:

DIRECT EXAMINATION

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BY MR. CHICHESTER:

Q Tell the Court your name.

A Richard Southworth.

Q By whom are you employed?

A Virginia State Police.

Q How long have you been so employed?

A Since March, 1966.

Q Were you so employed on August 11th, 1972?

A I was.

Q Now, drawing your attention to that date, or in a vicinity, I ask you whether or not you had occasion to investigate this particular charge that is being tried?

A I did.

Q Now, in that investigation did you have occasion to come into possession of this particular document?

A I did.

Q Now, this document has been called exhibit 2, and I want you to tell the Court whether or not you can identify it.

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A I can.

Q How can you identify that document?

A By the writing on it and it also has my initials on it.

Q When did you receive that document?

A On August the 22nd.

Q What year?

A '72.

Q And from whom did you receive it?

A David Wayne Broyles at Earl's Food Market.

Q Where is Earl's Food Market located?

A On 218 in Stafford County.

Q All right, now, having received that particular check, what then did you do in your investigation?

A I mailed this check to the F. B. I. laboratory in Washington, D. C.

Q And how did you mail it?

A By registered mail.

Q Do you have any receipt for having mailed it?

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A I do. The receipt which I received from the post office when I mailed it -- the document.

Q And to whom did you mail the check?

A The F. B. I. laboratory in Washington, D. C. This is the return receipt which I received by mail.

MR. CHICHESTER: If Your Honor please, we would like to introduce these as exhibits 4 and 4-A. They are coming a little out of sequence, but there is a method for that.

MR. JONES: Your Honor, there is no way under the sun of tying those particular receipts to anything in particular which Mr. Southworth may have mailed to the F. B. I.

THE COURT: Well, there may be later. I think possibly at this point they are a little premature since the check itself has not been introduced, so I have to sustain your objection at this time.

MR. CHICHESTER: Let me have those back.

BY MR. CHICHESTER: (continuing)

Q Now, what further did you do in the investigation of this matter?

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direct - Southworth

A Well, on October the 1st, at 10:00 a.m., I went to the home of Wilbert Washington, Jr., the defendant, and interviewed them in my police vehicle -- interviewed him rather at the time. I advised Mr. Washington that I was investigating for a case of forgery, and that he had the right to remain silent and not make any statement to me whatsoever; anything he said would be used against him in Court. I further advised him that he had the right to the presence of an attorney and if he could not afford one, one would be appointed for him by the Court. Mr. Washington indicated that he understood these rights, and further indicated that he would waive these rights and make a statement.

Q Now, did he make a statement to you?

A At that time he made an oral statement to me on the basis of which I placed him under arrest for forgery. He was then brought to the Stafford County Sheriff's Department where he was again advised of his rights, and he then made an oral statement which was then reduced to writing by me and signed by him.

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direct - Southworth

Q Now, you gave him his rights twice, is that correct?

A That is correct.

Q The second time that you gave him his rights was it the same ones that you just outlined to the Court?

A Identical.

Q And how far apart in time were they given?

A Approximately -- It was less than an hour. I went to his home at 10:00 a.m.. and I started taking the written statement at 10:40a.m.

Q And did he give you a statement?

A He did.

Q Who wrote out the statement?

A I did.

Q Did he sign it?

A He did.

Q Did you coerce him in anyway?

A I did not.

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A Did you threaten him in anyway?

A I did not.

Q Did you promise him anything?

A I did not.

Q Did you make any indication that it would be better for him if he made a statement?

A None whatsoever.

Q All right. do you have the statement that he made?

A Yes, I do.

Q I show you this document and ask you whether or not you can identify it?

A I do. It has my initials and signature on it.

Q When was this statement given?

A On October the 1st, 1972, 10:40 a.m.

Q All right, by whom is it signed?

A Wilbert Washington, Jr.

Q Now, would you recognize Wilbert Washington, Jr., again if you saw him?

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A I would.

Q Is he in the Courtroom?

A He is.

Q Would you point him out to the Court.

A (witness pointing)

MR. CHICHESTER: I would like for the record to show that he pointed out the defendant.

Q Is he the gentleman that signed this statement?

A He is.

Q By whom is it witnessed?

A Myself.

NOTE: At this point the Commonwealth's Attorney is now handing paperwriting to counsel for defendant.

MR. CHICHESTER: If Your Honor please, the trooper has testified that he gave the Miranda rights to the defendant. He has testified that the defendant indicated that he understood these rights. He has testified that he didn't promise him anything, coerce him in anyway.

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He has identified this statement as the one that the defendant gave to him and based on that I would like to introduce this statement into evidence.

MR. JONES: Object, Your Honor, until such time as I can cross examine the trooper with respect to the background of this statement and also a witness of my own. I hope that the Court will not rule on the admissibility of this document until then.

THE COURT: I think that's reasonable. I will admit it subject to your cross examination and --

MR. JONES: Possible objection.

THE COURT: -- possible objection. All right. Just leave it over on counsel table. (directed to the Sheriff) Just a minute. You can examine him on the admissibility of the confession.

MR. JONES: I would just as soon do it now.

THE COURT: All right, direct your cross examination now.

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CROSS EXAMINATION

BY MR. JONES:

Q Mr. Southworth, when you placed the defendant under arrest, he was seated in your squad car, wasn't he?

A He was.

Q Were the doors shut?

A Yes, sir.

Q State again please what precisely were the rights that you gave him.

A I advised him that he had the right to remain silent and not make any statement to me whatsoever, but that anything he said would be used against him in Court. He also had the right to the presence of an attorney. If he could not afford one, one would be appointed for him.

Q Is that all you said?

A Yes, sir. I then asked him if he understood them.

Q Did you pause after giving each of these rights to see if they were sinking in or did you just wait until you just read the whole thing off?

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A I don't think I asked him anything in between each one, but I took them one at a time.

Q Did you read them from a card or speak them from memory?

A From memory.

Q So it's possible you could have left one or more out.

A No, sir.

Q How can you be so sure?

A I know them.

Q Can anyone corroborate your giving these rights?

A I think so. John Washington was in the car at the same time.

Q At any time while the defendant was in your custody did you offer to let him use a telephone?

A After we got to the Sheriff's Department. There was some other people there. There was a child there in the yard, and he asked to get his shoes before we left, and let the child go get his shoes, and it was some other

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1 people there that were advised where he was going, some
2 friends or relatives.
3 Q Did you ever offer to get counsel for
4 him?
5 A I advised him of his rights, but he
6 didn't question it.
7 Q But you didn't offer it. Do you suppose
8 that the defendant was pretty scared?
9 MR. CHICHESTER: I object to that, Your
10 Honor. I don't think the trooper is in any position to know
11 the mind of the defendant.
12 MR. JONES: He observed his demeanor.
13 THE COURT: You can ask the symptoms of
14 anything the Court might construe. He can't make that
15 observation himself. I will sustain the objection to the
16 question.
17
18 BY MR. JONES: (continuing)
19
20 Q You stated that you made no promises to
21 the defendant prior to eliciting a statement?
22
23

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cross - Southworth

A That is correct.

Q Did you not tell him that things would be easier for him if he would go ahead and talk?

A I did not.

Q You did not?

A I did not.

Q How long was it from the time you arrested him until the time that this alleged statement was signed?

A The time that it was actually signed? It's on the statement. I don't have it here. I went to his house at 10:00. We begun writing the statement at 10:40. It took us, I don't remember, maybe fifteen minutes, maybe twenty minutes.

Q Do you know how old the defendant is?

A Not exactly. I have his arrest record here which would have his birthdate on it, but I know he is over eighteen.

Q How do you know, referring to your direct examination, how do you know that this man understood his rights?

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A He said so.

Q Did you ask him?

A I did.

Q All you know is that he said he did?

A That is correct.

MR. JONES: Your Honor, I have nothing further on this point by this witness. At this point I would like to call the defendant, Wilbert Washington, to testify only as to this background material which will give the Court some basis for making a decision on the admissibility of this statement. Mr. Washington is not waiving his right not to testify against himself in his own behalf as to the merits of this case, and he will, of course-- would, of course, be subject to cross examination on this same sole point; that is the grounds on which the Court will be considering the admissibility of this document.

THE COURT: Do you have any objection to that rather unusual procedure? I am under the impression that if the defendant takes the stand for any purpose, he takes it for any purpose. If the Commonwealth's Attorney wants to agree to that, I will do it.

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MR. CHICHESTER: I don't wish to waive any rights to --

THE COURT: If he takes the stand for any purpose, he takes it for all purposes. You don't have any other witness?

MR. JONES: No, I don't.

THE COURT: All right, sir, you have no further questions? Do you have any further questions of Mr. Southworth?

MR. JONES: Are you overruling my motion?

THE COURT: I have overruled your motion.

MR. CHICHESTER: We would like to admit the statement now.

THE COURT: All right, will be admitted as Commonwealth's Exhibit --

MR. CHICHESTER: Two, I believe.

THE COURT: No, one. The check and receipt has yet to be received.

MR. JONES: Note my objection, Your Honor, please.

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THE COURT: All right, exception is noted.

DIRECT EXAMINATION CONTINUED

BY MR. CHICHESTER:

Q Now, it's your testimony that you forwarded this check to the F. B. I.?

A That is correct.

Q I beleive you testified it was on August 22nd.

A Yes, sir. I received it on August the 22nd.

Q What date did you mail it to the F. B. I.?

A It was the 24th.

Q The 24th. All right, did there come a time when you received it back from the F. B. I.?

A I did.

Q Do you know when that was?

A (witness now reviewing personal notes) It was shortly after September the 12th. I don't recall the exact date. Within about two days after that date.

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Q Where has it been since you received it back?

A In my possession.

Q From the time that you received it from Mr. Broyles to the time that you mailed it to the F. B. I. was it in your exclusive possession?

A It was.

Q I believe you testified that this was the -- Go ahead and testify as to what that is.

A This is a receipt which I received from the post office at the time that I placed the check in the mail in Falmouth and this is the return receipt which I received.

Q I note the name Marty Brooks -- pay to the order of Marty Brooks. In the course of your investigation did you try to find whether or not there was such a person as Marty Brooks?

A I did.

Q What were the results of that aspect of your investigation?

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direct - Southworth

A I located one individual by the name of Marty Brooks, however, I was unable to connect him in anyway with the case.

Q All right, now, in the course of your investigation was there anything else that you obtained from the defendant, Mr. Washington?

A I did. At the time of his arrest I obtained a handwritten sample from Mr. Washington.

Q And do you have that with you?

A I do.

Q I show you this document and ask you to tell the Court what it is.

A It's a handwritten sample which he wrote at the time that he was arrested.

Q Did he write this voluntarily?

A He did.

Q Did you coerce him in anyway?

A No.

Q Did you promise him anything if he would?

A No, sir.

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Q Did you tell him it would be better for him if he did?

A No, sir.

Q Now, do you know the date on which he gave you this handwritten sample?

A It was October the 1st.

Q And did he sign this?

A He did.

Q And did he sign it in your presence?

A He did.

Q And what did you do with this handwriting sample?

A I mailed it off to the F. B. I. laboratory in Washington.

Q Do you have evidence that you mailed it?

A Yes, sir, the receipt from it. I mailed this on October the 2nd. Here is the return receipt dated October the 3rd. This is a letter I received from the F. B. I.

Q Now, did there come a time when you got this back?

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A It did.

Q Do you know when you got it back?

A (witness now reviewing personal notes) Within a couple of days after October the 19th.

Q All right, has it been in your exclusive possession since that date?

A It has.

MR. CHICHESTER: Let me have Commonwealth's One. (directed to the Court)

Q Trooper Southworth, I note in this statement that has been introduced, "Sam gave me a check and asked me to fill it out and I did. This was still at Ida Jean's."

MR. JONES: Your Honor, I object to this on my same objection.

THE COURT: Well, you can object. It's overruled. It's an exhibit and it's part of the evidence in the case so he can read from it.

BY MR. CHICHESTER: (continuing)

Q "We then went on to Earl's Food Market."

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Now, with reference to, "This was still at Ida Jean's," do you know what is referred to as Ida Jean's?

A The home of Ida Jean Diggs.

Q Do you know where that is located?

A Yes, sir, it's located on Route 702 in Stafford County.

Q Do you have any other evidence in this case, Trooper?

A I do not.

MR. CHICHESTER: All right, that's all I have.

THE COURT: All right.

CROSS EXAMINATION

BY MR. JONES:

Q Trooper, in that statement which has been introduced in evidence the prosecutor just read a reference to a man named Sam. Did you hear that?

A Yes.

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cross - Southworth

Q Do you know who this person is?

A Berry Samuels.

Q Did you arrest him?

A I did.

Q What was he charged with?

A Aiding and abetting in this case and some other cases.

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* * * * * * * * * *

JAMES E. LYLE, a witness, being called for examination by the Commonwealth, first being duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. CHICHESTER:

MR. CHICHESTER: If Your Honor, for the purposes of my examination of Mr. Lyle I would like to have the handwritten sample that Trooper Southworth has testified to to be designated as exhibit 3 and the receipts that he

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testified to as pertaining to the mailing of that handwritten sample as exhibits 5 and 5-A just for the purposes of my examination of Mr. Lyle.

THE COURT: Are you going to introduce the check or not?

MR. CHICHESTER: Yes, sir.

THE COURT: Well, Mr. Jones has objected to the introduction of this receipt until the check is introduced and I think that is a good objection and I have sustained his objection.

MR. CHICHESTER: I am going to introduce the check in a moment. I hope to.

THE COURT: All right, I will withhold all those exhibits until you do.

MR. CHICHESTER: I just wanted them designated for the time being.

THE COURT: All right.

DIRECT EXAMINATION

BY MR. CHICHESTER:

Q What is your name?

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direct - Lyle

A James E. Lyle.

Q What is your occupation?

A A special agent with the Federal Bureau of Investigation.

Q Where is your office of assignment?

A In Washington, D. C., in the F. B. I. laboratory.

Q What are your duties in that laboratory?

A I am examiner of documents. This involves a screening of documents or disposition with documents of a known or established origin, usually involving the comparison of handwritings, handprinting inks, photographic process --

MR. JONES: I think we get the idea.

THE COURT: Does defense counsel stipulate him being an expert?

MR. JONES: Yes, sir.

THE COURT: All right, go ahead.

BY MR. CHICHESTER: (continuing)

Q Now, did there come a time when you received these two items?

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A Yes, I did.

Q Now, this has been designated by the Court as exhibit 2. Can you identify that?

A Yes, exhibit 2 is check number 2785 on the account of Bob Vincent Auto Sales, Inc., on the Virginia National Bank --

THE COURT: Just a minute. Let the record show that the Commonwealth's Attorney has identified it as exhibit 2, but is not yet admitted as exhibit 2.

A It bears my tag, Q2, and payable to Bob Vincent, and in the amount of one hundred ten dollars.

Q When did you receive that?

A I received it by letter on August 25th, 1972.

Q From whom?

A From Trooper Southworth, Virginia State Police.

Q And the second item?

A The second item bears my tag mark, Q1. It's two pages of ruled paper bearing handwriting which was

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identified to me in letter as being that of Wilbert Washington, Jr.

Q And by whom was it identified?

A It was identified by letter from Trooper Southworth. I received it on the 3rd of August, 1972.

Q And having -- Did there come a time now when you forwarded these back to Trooper Southworth?

A Yes, I did.

Q And in whose possession were they during the time that -- from the time you received them to the time that you sent them away?

A They were under my direct personal control or under my supervisory control.

MR. CHICHESTER: Your Honor, please, I would like to introduce these two documents into evidence, exhibits 2 and 3, as well as the mailing receipts that were forwarded or evidence of there having been mailed as testified to by Trooper Southworth.

MR. JONES: I object to the admission of the check, Your Honor. I don't think he has established an

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adequate chain of possession. We are going back now to the day when this check was allegedly passed. We have one witness who said that she had that check in her possession but we don't know where she got it. I am referring to Martha Ann Broyles. It is anybody's guess where that check lay between the time it was allegedly passed and between the time that she got it.

MR. CHICHESTER: If Your Honor please, here is a situation where a store which gets many many checks, received this particular check, as testified to by Martha Ann Broyles. Now, she did the very thing that every retail store would do when they get a check. They send it to the bank to be cashed. Although it came back "Account Closed," they kept it there. Then we had testimony from the assistant manager and both of them identified this check as being the one --

MR. JONES: Wait. That part of it --

MR. CHICHESTER: If I might finish! Now, at that time the assistant manager gave it to Trooper Southworth, who identified the check as being the one. He

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says, and he has sent it registered mail, and he has receipts here to support that. He says he sent it to the F. B. I. laboratory, and the F. B. I. laboratory says they sent them back to him, and Trooper Southworth came into Court with it today.

THE COURT: The Court is satisfied that the whereabouts of the check has been covered sufficiently to allow its introduction over the objection of defense counsel, and will be marked as exhibit 2 in this trial, and the names on the ruled statement alleged to have been written by Marty Brooks, Bob Vincent --

MR. CHICHESTER: If Your Honor please, I think Trooper Southworth testified that those writings were made by Wilbert Washington.

THE COURT: All right. Also admitted over objection of counsel for defendant and marked as Commonwealth's Exhibit --

MR. CHICHESTER: Three, Your Honor.

THE COURT: -- three. All right, proceed.

MR. JONES: Note my exception.

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NOTE: The check referred to is now being marked and filed by the Court as Commonwealth's Exhibit 2; and the handwritings are now being marked and filed by the Court as Commonwealth's Exhibit 3.

THE COURT: Lets try to move along.

MR. CHICHESTER: Yes, sir. It won't take long.

BY MR. CHICHESTER: (continuing)

Q Now, sir, I hand you Commonwealth's Exhibit 2 and 3, and ask you whether or not you received these exhibits for comparison?

A Yes, I did for comparisons of the writings thereon.

Q Did you compare them?

A Yes, I did.

Q And have you reached a conclusion as to the results of these comparisons?

A Yes, I have.

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direct - Lyle

MR. CHICHESTER: If Your Honor please, the agent has prepared charts to explain to you his conclusions if you would like for him to explain what he has found out about these writings by mention of charts.

THE COURT: That's up to you, Mr. Chichester.

BY MR. CHICHESTER: (continuing)

Q Do you have charts of these particular exhibits?

A Yes, I have five times photographic enlargements of portions of these exhibits.

Q Would you present these charts and identify them.

THE COURT: Just have him stand back over against the rail there.

Q Now, I show you this chart and ask you whether or not you can identify it?

A Yes, sir, that's a five times photographic enlargement of the front only of exhibit number 2.

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MR. CHICHESTER: If Your Honor please, I would like to introduce this based on the foundation of the F. B. I. agent and I would like it known as exhibit 2-A.

THE COURT: All right, sir, at the proper time.

BY MR. CHICHESTER: (continuing)

Q Now, I ask you whether or not you can identify this chart?

A Yes,sir, that is a five times photographic enlargement of the portion of exhibit 3.

MR. CHICHESTER: I would like this to be known as exhibit 3-A.

THE COURT: At the proper time, subject to Mr. Jones' objection.

BY MR. CHICHESTER: (continuing)

Q All right, using those exhibits, would you explain to the Court your conclusions in this matter.

A Yes, I would. Is there some place I could put these so you can see them better?

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THE COURT: No, I think you can see them all right there.

A In examining and comparing handwritings it is necessary to look for those unique personal or handwriting characteristics which separate the writings from one individual from the writings of another. The handwriting is the result of personal, mental and individual development, and since development of no two people are exactly alike, these differences, as applied here, reflect themselves in the small handwriting or characteristics. In making identification involving handwriting it is important to keep in mind that it is not the presence of any single handwriting characteristic but rather the combination of all of the same characteristics in the same combination and the action of any significant handwriting differences.

In comparing the writings on exhibit 2 with the writings on exhibit 3, looking for either handwriting characteristics in common or handwriting differences, I noted that many letters have exactly the same formation. First of all, I noted in the upper case M or the capital M in the name Marty Brooks on exhibit 2, the letter has a large

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1 initial stroke as all the capital letters on exhibit 2. The
2 capital M, B, the letters again in the word Bob Vincent,
3 these long initial strokes I also found in the same course
4 bulging letters in exhibit number 3. In the capital letter
5 M I noted that it was long and angular and slanted to the
6 right and the absenee of any curving. I found the same
7 characteristics in the capital letter M in exhibit number
8 3.
9
10 The small letter R in the name
11 Marty, repeated again in the word Brooks, in the word
12 hundred, in the word dollars, first in the word Marty and
13 Brooks, the small letter R is of a small rounded curling
14 portion on the upper left shoulder. The right slope is
15 excavated and is leaning to the right and is very pointed.
16 Some writing results vary slightly as is the usual in any
17 handwriting characteristic. Small variances will always be
18 there. I found the same combination in exhibit number 3. I
19 found in the word dollars that the small letter R is angular
20 and slopes, no shoulders as in the words Marty and Brooks.
21 I found the same formation in the word dollars on exhibit
22
23

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number 3, showing that the range of variance was the same and the writer of exhibit number 2 and the writer of exhibit number 3.

I found in the capital letter B on exhibit number 2 the upper portion was narrow and elongated and pointed to the right. I found the same formation in the capital letter B in exhibit number 3. On the letters having staffs or high upward strokes, such as the letter B, the letter H, the letter L, and the letter B on exhibit number 2, I found they were tall and squeezed shut, a single line. At times the small letter T and small letter D sometimes varying slightly in width and becoming a little wider. I found the same letter squeezed in B, T, L, and others, with the same variance into the small letter D where it then became wider.

I found that the initial letter O in the word one in exhibit number 2 is prepared exactly backwards from the fashion that most persons prepare it. That is, it begins and swirls around to the right concluding at the top of the letter and connecting with the letter N.

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I found the same formation on the letter O on exhibit number 3. I found the same initial stroke. I found the small letter N is very narrow, very angular, and very pointed on the right side in the same fashion that the N's are formed on exhibit number 3. I found numerous characteristics, both common on exhibit number 2 and 3 which led me to conclude that the writings on the face of this check, exhibit number 2, and the writings on exhibit number 3 were prepared by the same writer.

Q Now, I want to ask you one other question, whether or not these to items known as exhibits 2-A and 3-A are true and faithful photographic enlargements of exhibits 2 and 3 respectively?

A Yes, they are true and faithful five times photographic enlargements.

Q And have you examined these charts for their accuracy?

A Yes, I have.

MR. CHICHESTER: That's all I have of this witness.

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THE COURT: Cross examine.

CROSS EXAMINATION

BY MR. JONES:

Q Mr. Lyle, you stated small variances are always present in anyone's handwriting.

A That is correct. No person writes exactly the same way any two times.

Q All the time?

A Exactly.

Q Now, are you the only one who examined these documents that are involved?

A I am the only one that examined the writing on them, that is correct.

Q So, it's your opinion?

A That is correct.

Q Experts do disagree.

A That is correct. They do.

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cross - Lyle

Q No handwriting sample, analysis I should say, is absolutely certain to be correct, is it?

A It is certain to the limits of the individual handwriting.

Q I mean it's not like a fingerprint.

A Well, in my opinion it is, yes. In the hands of a competent and expert and well trained examiner.

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ROBERT VINCENT, a witness, being called for examination by the Commonwealth, first being duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. CHICHESTER:

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Q Tell the Court your name.

THE COURT: The exhibits will be so marked.

NOTE: The check referred to is now being marked and filed by the Court as Commonwealth's Exhibit 2-A. The handwriting sample referred to is now being marked and filed by the Court as Commonwealth's Exhibit 3-A.

BY MR. CHICHESTER: (continuing)

Q Again, tell the Court your name.

A Robert Vincent.

Q Where do you live.

A Woodbridge.

Q By whom are you employed?

A Vincent Auto Sales.

Q Now, I show you this, Commonwealth's Exhibit 2, a check, and ask you whether or not you recognize that?

A Yes, sir.

Q And what is it?

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direct - Vincent

A It's an old check of mine from another account.

Q Will you speak up please so that the Court can hear you.

A It's an old check from a closed account.

Q Do you know when that account was closed?

A Around March.

Q Is there a date on that check?

A August 4th, '72.

Q Are you certain that the account was closed prior to that date?

A Yes, sir.

Q Now, did you give that check to anyone to cash it?

A No, sir.

Q Did you give it to anyone for any purpose?

A No, sir.

Q Is that your signature on the bottom?

A No, sir.

Q Did you authorize anyone to sign that check for you?

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A No, sir.

Q Do you know a Marty Brooks?

A No, sir.

Q Do you know the defendant, Wilbert Washington, here?

A Yes, sir.

Q Do you know whether or not he has ever been on your lot?

A Yes, sir.

Q He has?

A Sometimes.

Q Do you know whether he has been on the lot prior to --

MR. JONES: Your Honor, this is irrelevant. I don't know what it has to do with the charge.

THE COURT: Well, it may be some way to connect it.

MR. CHICHESTER: The relevancy is the opportunity to get the check, Your Honor.

THE COURT: Objection overruled.

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direct - Vincent

BY MR. CHICHESTER: (continuing)

Q The question is: Do you know whether or not he was ever around your lot in and around the date on that check?

A Yes, sir.

Q Do you know the date that he was there?

A He has been at this new location several times. As far as after August the 4th. I don't remember, but before that from January, April, '72, right up to maybe July, you know, the end of July, something like that. I don't know the exact date, but he has been on the new lot too.

Q Do you know whether or not any checks like the one that you have in your hand was on the lot -- on the new lot that you have described during the time that he was coming there?

A You mean any other checks like this one here?

Q Yes.

A Yes, sir, I had a whole book of them.

Q They were there?

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A Yes, sir.

Q All right, sir, and did you authorize the defendant to sign that check?

A No, sir.

Q Did you authorize him to have the check?

A No, sir.

MR. CHICHESTER: I believe that's all I have of this witness.

CROSS EXAMINATION

BY MR. JONES:

Q Mr. Vincent, what kind of operation did you say you ran?

A Used car lot.

Q Used car lot?

A Yes, sir.

Q You were talking about an old one and a new one.

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A I had a different location for about two years about five miles south of the new lot and I moved locations. So while I called the old the new, I dissolved the old corporation and formed a new corporation so actually it's a new business.

Q You stated that you have seen Mr. Washington on your new lot.

A Yes, sir.

Q Of course, this check was allegedly passed before that time.

A One day, I don't remember the date, but he came on it with some trash truck people.--

Q That's all right. Just wait until I ask the question.

MR. CHICHESTER: He ought to be able to finish his answer before you ask another question.

A One day he came in there with some trash truck people. They inquired about some cars and one of the gentlemen introduced him to me. At that time I didn't know of him or had seen them before.

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Q Well, I assume that a lot of people come on your lot, is that right?

A Yes, sir.

Q How many -- You sell a lot of cars?

A I average about thirty-four a month.

Q So you see a lot of people on your lot at all times.

A Yes, sir.

Q Does the name Berry Samuels ring a bell?

MR. CHICHESTER: I object to any name of Berry Samules or any reference to that.

THE COURT: I don't know what his purpose is. Go ahead.

Q Is he an employee of yours?

A Yes, sir.

Q How long has he been employed by you?

A Since the day I went in business, about three years.

Q Was he employed by you during August of this past year?

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cross - Vincent

A Yes, sir.

Q Have you ever authorized -- Does this Berry Samuels have access to your checks?

A Yes, sir.

Q He does?

A Excuse me. What checks?

Q Checks generally.

A My checks now, no, sir.

Q Did he have?

A No, sir.

Q Did he then?

A Not these new ones.

Q I am talking about these old checks.

A You mean the ones that were stolen. They were in a storage room loaded up with old stuff.

Q So he had access to them.

A Yes, sir.

Q Did you authorize him to carry your checks around?

A No, sir.

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cross - Vincent

Q Did you authorize him to sign your checks?

A No, sir.

Q Did you authorize him to sign them for you as an employee?

A No, sir. He used to sign at Woodbridge Parts if I sent him for something. He might have scribbled his name on it.

Q Did you ever authorize him to sign any checks, either your personal checks or business checks?

A No, sir, no checks at all.

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THE COURT: I have listened very carefully to the evidence and have examined the exhibits. Now, have your client stand. And it is the conclusion of the Court that the evidence does show beyond a reasonable doubt that the accused is guilty as charged in the indictment of forgery

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on August the 11th, 1972. Are there any motions now?

MR. JONES: Yes, Your Honor. If the Court feels that it can handle sentencing of this case without a pre-sentence report, the defendant would have no objection. I just want to make several comments by way of mitigation, not intended in any way to excuse the defendant's conduct, but merely in mitigation. First of all, we have a very young man, eighteen years old --

THE COURT: First let me ask you: Are you asking the Court for a pre-sentence report?

MR. JONES: No, Your Honor.

THE COURT: All right, go ahead.

MR. JONES: -- a young man approximately eighteen years old. He has no prior record that I know of, except possibly one minor motor vehicle violation. I think that the Commonwealth's testimony precisely, I am referring to that statement, indicates that this young man, at worse, played a very passive role in this action. Reading from the or referring to that statement, the defendant said that some gentleman, whom we have identified as Berry Samuels -- I

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shutter at the word gentleman -- approached the defendant and requested him to fill out a check. I think that the testimony indicates that the defendant played a very passive role; that he was in effect a dupe in this crime. We are not excusing his actions. I am just merely mentioning this in passing, and I think it should be brought to the Court's attention, and I know from checking the record in the County Clerk's Office that this individual, Berry Samuels, was -- this charge was nol-prossed, and I hope that the Court will take all these mitigating circumstances into consideration in this case.

* * * * * * * * * * * * *