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SUPREME COURT OF VIRGINIA
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IN THE

Supreme Court of Virginia

AT RICHMOND

Record No. 730546

CALVIN DAN FIELDS

V.

COMMONWEALTH OF VIRGINIA

APPENDIX

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1 VIRGINIA: IN THE CIRCUIT COURT OF CULPEPER COUNTY

2

3 COMMONWEALTH OF VIRGINIA,
Plaintiff

4

5

6 v.

7

8 CALVIN D. FIELDS,
Defendant

9

10

11 APPEARANCES:

12 Mr. J. L. Jeffries, III
Commonwealth Attorney
Culpeper, Virginia
13 Attorney for Commonwealth

Mr. T. C. Lea
115 South West Street
Culpeper, Virginia
Attorney for Defendant

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1 December 18, 1972

2 Court convened at 10:00 A.M.

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4 COURT: Is the Grand Jury ready to report?

5 A Yes sir.

6 COURT: Just have your seats please. Commonwealth

7 v. Calvin D. Fields, a true bill found on two indictments.

8 Does the Grand Jury have anything it wishes to report of its

9 own motion?

10 A No sir.

11 COURT: All right, the Court wishes to thank you

12 for your attendance today. You are excused. Commonwealth

13 v. Calvin D. Fields.....is he represented by an attorney?

14 A Mr. Lea, I believe, sir.

15 JEFFRIES: If it please the Court, Mr. Lea is Court

16 appointed on one not two of them.....

17 COURT: Well, there's no reason why he couldn't be

18 appointed on both is there?

19 JEFFRIES: No sir, but I wanted to make sure he

20 was appointed on both.

21 COURT: All right.

22 JEFFRIES: Didn't want him to do all the work and....

23 COURT: Commonwealth v. Calvin Dan Fields. Do you

24 have any money with which to employ your own lawyer? All right,

25 who represented this man in county court?

A Mr. Lea.

COURT: Mr. Lea? See if you can find Mr. Lea for me.....Mr. Lea, this is Calvin Dan Fields, there are two indictments against him. You represented him in the county court, is there any reason why you should not be assigned here?

LEA: No sir.

COURT: The Court will assign you as his attorney on both indictments and set the arraignment for December 28, if that's agreeable with you, at 9:30. You can have somebody else in your office take care of the arraignment for you.....

LEA: I know what he wants to do, we've already decided on it.

COURT: All right.....if you can't be here on the 28th at 9:30, have somebody from your office.....I'll set his arraignment for December 28. All right.

(Court is adjourned.)

December 28, 1972

Court Convened at 10:00 a.m.

COURT: Commonwealth v. Calvin Fields. Let the record show that the Grand Jury returned the indictment on the 18th of December, 1972, and Mr. Fields is present together with his assigned counsel. The case was set for arraignment this date. Let me see, I believe there are two indictments, both the same. . .

LEA: Yes sir.

COURT: Is that correct, Mr. Lea? Mr. Lea, are you ready for the accused to be arraigned?

LEA: Yes sir.

COURT: All right, arraign the accused please.

CLERK: Calvin Dan Fields, the Grand Jurors empanelled, sworn and charged in and for this County, have found the following indictment against you. Indictment Number 1, in the Circuit Court of the County of Culpeper, in its December term, 1972. The Grand Jurors for the Commonwealth of Virginia in and for the County of Culpeper now attendng the said Court, upon their oath present that Calvin Dan Fields on or about the 29th day of July, 1972, and in the said County, did unlawfully and feloniously forge the endorsement to and did utter as a true check the lawfully issued check of Geest Funeral Home, Inc. The checks in the amount of $96.47, made payable to

1 Melvin A. Carter and signed Harold Geest and drawn on the
2 Second National Bank in Culpeper, Virginia, and dated July
3 29, 1972, and did forge and endorse and name of Melvin A.
4 Carter to same, knowing the same to be forged, with the intent
5 to defraud to the prejudice of another's rights, in violation
6 of Section 18.1-96 of the Code of Virginia, against the peace
7 and dignity of the Commonwealth. Are you guilty or not guilty?
8 A Guilty.
9 COURT: All right arraign him on indictment number
10 2 please.
11 CLERK: Indictment Number 2. In the Circuit Court of
12 the County of Culpeper, in its December term, 1972. The Grand
13 Jurors for the Commonwealth of Virginia in and for the County
14 of Culpeper now attending the said Court, upon their oath present
15 that Calvin Dan Fields on or about the 20th day of October, 1972,
16 and in the said County, did unlawfully and feloniously, break
17 and enter in the nighttime a certain store house, to wit, Geest
18 Funeral Home, Inc., with the intent to commit larceny, and did
19 then and there take, steal and carry away one item of personal
20 property, to wit, a negotiable check drawn on the Second National
21 Bank of Culpeper, Virginia, payable to Loving Supply Company,
22 in the amount of $51.20, and dated October 20, 1972, and signed
23 H. C. Geest, in violation of Section 18.1-89 of the Code of
24 Virginia, against the peace and dignity of the Commonwealth.
25 Are you guilty or not guilty?

A Not guilty.

LEA: Not guilty on that charge.

COURT: All right, on the indictment you plead not guilty on, do you want a jury trial?

LEA: No sir.

COURT: All right, Mr. Fields, your attorney has indicated that you desire to waive trial by jury on indictment number 2 and submit all questions of law and fact to the Court, is that what you want to do?

A Yes sir.

COURT: You understand that you are entitled to have a jury try the case if you want one?

A Yes sir.

COURT: Mr. Lea, you've been over this with him?

LEA: Yes sir.

COURT: Have you not? It is agreeable with you to waive trial by jury?

LEA: Yes sir.

COURT: The Commonwealth Attorney concurs in the waiver?

JEFFRIES: Yes sir.

COURT: All right, the Court will concur in the waiver. How about setting this case for January 2nd, gentlemen? Will that give you time?

LEA: No sir.

COURT: This man is in jail.....Will that give you time, Mr. Lea?

LEA: No sir, I have a very difficult case coming up on the 9th and...

COURT: You have also one on the 10th. How about this case on the 10th, Thurston v. Campbell, are you working on that?

LEA: No sir, that's not mine.

COURT: I was under the impression it was.

LEA: No sir.

COURT: You have the case here, is that correct, on the 9th.

LEA: Yes sir.

COURT: All right, sir. We have right much for January 30th already, but I reckon we can set this case then, or February 1st. Which would suit you best, Mr....

LEA: I think either one will be all right. I do have something here on the 30th.

COURT: All right, sir, we'll set this case for the 30th for you. We'll also have the presentation of a prima facie case in the other felony case set for the same day. We'll try to start at 9:30, if we can gentlemen on February ... on January 30th in reference to this case. Now, Mr. Fields, I'm setting your case for January 30th without a jury. You cooperate with Mr. Lea, so he can have your witnesses present and

1 you can have everybody here that you need to properly defend
2 this case. Do you understand?
3 A Yes sir.
4 COURT: All right.....plea of guilty to indictment
5 number 1 and not guilty to indictment number 2.
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7 (Court is adjourned.)
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1 January 30, 1973

2 Court convened at 10:00 A.M.

3

4 COURT: Commonwealth v. Calvin Dan Fields. Let the
5 record show that Mr. Fields is present together with his
6 assigned counsel, Mr. Lea...I'm getting my record straight...
7 and there are two indictments, both returned by the Grand Jury
8 on the 18th of December, 1972. The accused was arraigned on 28
9 December, 1972, entered a plea of guilty as to both charges...
10 LEA: No sir.
11 COURT: Is that right?
12 LEA: No sir.
13 COURT: I beg your pardon, entered a plea of guilty
14 to indictment number 1, and not guilty to indictment number 2.
15 LEA: That's correct, yes sir.
16 COURT: And on his plea of not guilty, waived trial by
17 jury. The matter was set for hearing this date. That's the
18 record is it not?
19 LEA: Yes sir.
20 COURT: All right. All right, are you ready to pro-
21 ceed, Mr. Jeffries?
22 JEFFRIES: Yes sir.
23 COURT: Are you ready to proceed, Mr. Lea?
24 LEA: Ye s sir.
25 COURT: All right, there are no motions, no changes of

plea or anything of that nature?

LEA: No sir.

COURT: All right, proceed, gentlemen.

JEFFRIES: May it please the Court, first...we will proceed first on the charge of forgery. I don't have by number which indictment that is...

COURT: Indictment number 1.

JEFFRIES: Number 1.....I'd like to call Mr. Payne, please.

JERRY PAYNE, having been duly sworn, testified as follows:

DIRECT EXAMINATION

BY: Mr. Jeffries

Q This is the one, Your Honor, that the defendant has entered a plea of guilty on. Mr. Payne, did you have occasion to investigate a case of forgery of a check of Mr. Geest, dated July 29, 1972?

A Yes sir, I did.

Q Will you tell the Court just what your investigation disclosed?

A Yes sir, the check was cashed at the A&P Store in Culpeper, the Saturday....the check was taken from Geest's Funeral Home on Friday night or Saturday morning. I talked with

1 Calvin about this on December 5, when Calvin admitted that he
2 cashed the check, that he did not steal it. He was in the area
3 when the check was taken and the person that took this check
4 ...they met after he came out of the Funeral Home and went back
5 in town. At the poolroom down on Main Street he gave Calvin
6 the check - they met the next morning at the A&P at the shopping
7 center and Calvin cashed it, come out and they divided the money.
8 Q In talking with Calvin what did you state to Calvin
9 before you began questioning him, if anything?
10 A I advised Calvin of his rights and asked him if he
11 understood them and explained and he answered that he did.
12 COURT: You gave him the Miranda warning?
13 A Yes sir.
14 COURT: All right.
15 Q Now, did you get a statement from Calvin?
16 A Yes sir, I did.
17 Q Do you have a copy of that statement?
18 A Yes sir.
19 Q You have the original of it?
20 A Yes sir.
21 COURT: Where is the check, Mr. Payne?
22 A I have the check sir.
23 COURT: That should be introduced into evidence, Mr.
24 Jeffries.
25 Q Yes sir. Have you seen that statement?

LEA: Yes sir, but I'd like to look at it again.

Q I'd like to introduce the check as Commonwealth's exhibit number 1.

COURT: Yes....do you have any objections, Mr. Lea?

LEA: No sir.

COURT: It will be received as Commonwealth's exhibit number 1.

The check was marked and received into evidence as Commonwealth's exhibit number 1.

COURT: Now how about the statement, Mr. Lea, do you have any objection to it?

LEA: No sir.

COURT: All right, it will be received as exhibit number 2.

The statement was marked and received into evidence as Commonwealth's exhibit number 2.

COURT: All right, you may cross examine.

CROSS EXAMINATION

BY: Mr. Lea

Q Officer Payne, when you confronted Mr. Fields with

1 the facts that you have stated here, did he readily admit that
2 this is what took place?
3 A Yes sir, he did.
4 Q Did he fully cooperate with you in your investiga-
5 tion except as to the name of the other party?
6 A Yes sir.
7 Q He would not reveal that to you?
8 A No sir, he would not.
9 Q I believe....
10 COURT: Who is Melvin A. Carter, Mr. Payne?
11 A He is the man that the check was made payable to.
12 COURT: Does such an individual exist?
13 A Yes sir.
14 JEFFRIES: May it please the Court, the forgery here
15 is the endorsement of the check itself.
16 COURT: I understand.
17 JEFFRIES: You spoke to Mr. Carter?
18 A Yes sir.
19 JEFFRIES: Did Mr. Carter ever receive this check?
20 A No sir.
21 Q Mr. Fields has been in custody since you arrested
22 him on this charge?
23 A Mr. Fields was in custody before I arrested him
24 on this charge.
25 COURT: Where did this check come from, did you get this

from the A&P?

A Yes sir, I picked it up there.

COURT: They actually gave Mr. Fields $96.47 for this check?

A Yes sir.

COURT: Or that money in groceries, is that correct?

A No sir, they gave it to him in cash.

COURT: Gave it to him in cash.

A Yes sir.

COURT: All right,....

LEA: I have no further questions.

COURT: Step down, sir. All right, on his plea of guilty and the evidence before the Court, I find him guilty as charged on indictment number 1. Are you ready to proceed on indictment number 2?

JEFFRIES: Yes sir.

COURT: All right. Proceed on indictment number 2.

JEFFRIES: Is Mr. Geest here?

COURT: The building was broken into on that particular night, but he doesn't know who did it, what other evidence do you have in that regard, Mr. Jeffries?

JEFFRIES: May it please the Court this is the larceny of another check...a date...several months difference. Mr. Geest had left the check on his desk the night before and the following morning the check was gone. The place was broken into.

Mr. Geest knows it was there and Mr. Geest knows the following day it was not there and that his place was...

COURT: Broken into...

JEFFRIES: It wasn't broken into, it was never locked, as I understand it, but it was closed.

COURT: All right, well, that's broken into....the door is closed....what evidence do you have that this man had any possession of that check?

JEFFRIES: I would call Mr. Jasper please...

COURT: Well, let's proceed with his testimony while we wait...

OFFICER JASPER, having been duly sworn, testified as follows:

DIRECT EXAMINATION

BY: Mr. Jeffries

Q Officer Jasper, did you have occasion to see Calvin Fields on or about the 20th of October?

A No sir, I arrested him on the 11th...11th month, 11th day, 1972.

Q 11th of November. Now, what did you find on his person?

A I arrested him in the Medical Arts Building. He was sleeping in the hallway, and we had a complaint on him, so I

caught him there one morning and carried him on to the jail. I charged him for it and we asked him to take his clothes off and put the prisoners clothes on, and take everything out of his clothes. So he went in the back room there and he took his clothes off and came back and said, well, I got everything out. So, we saw ...I saw something in his underwear, look like a bulge in his underwear and I asked him what he had and he said, nothing, so I searched him. And I found a checkbook in there, belonging to Mrs. Jeffries...

COURT: Belonging to who?

A Mrs. Jeffries, Helen M. Jeffries.

Q Now, what kind of checkbook was this?

A This was American Travelers....American Express Company. And also, I asked him did he have anything else and he said, no, and I checked him again and I found a checkbook belonging to Michael Rosser, and also later when I checked through the traveler's checks book, I found a check belonging to Mr. Geest. I inquired from Mr. Geest about the check and he said he had wrote it, and the next night it was missing and he had reported it stolen.

Q Had he reported it stolen?

A He said he had reported it stolen about a month before I recovered it.

Q Now, who was this check made payable to?

A The Loving Supply Company.

1 Q How much was it payable?

2 A $51.40.

3 Q And the date?

4 A October 20, 1972.

5 Q May it please the Court, I'd like to introduce

6 all three items, the check payable to Loving Supply

7 Company, as Commonwealth exhibit number 1.

8

9 The check was marked and received into evidence

10 as Commonwealth's exhibit number 1.

11

12 Q The book of traveler's checks property of Helen

13 M. Jeffries, as Commonwealth exhibit 2.

14

15 The traveler's checks were marked and received into

16 evidence as Commonwealth's exhibit number 2.

17

18 Q And the personal checkbook of Mr. Michael Rosser,

19 as Commonwealth exhibit 3.

20

21 The checkbook was marked and received into evidence

22 as Commonwealth's exhibit number 3.

23

24 COURT: All right, Mr. Lea.

25 LEA: Your Honor, we have no objection to the check

payable to Loving Supply Co. , which is the subject matter of this particular case in indictment number 2. However, we do object to the entry of the checks bearing the name of Helen M. Jeffries and the checkbook, group of blank checks of Michael Rosser. We contend that they have nothing to do with this case and he is not charged with anything of that nature. We do not feel that they are proper evidence to be entered in this case.

COURT: All right, overruled. Your exceptions are noted.

LEA: All right, sir.

Q Officer, did Mr. Fields give you any explanation as to how he came into the possession of Mr. Geest?

A Yes sir, I advised him of his rights and I asked him about all three.

Q This was the Miranda warning?

A Yes sir. The one about Mr. Geest he said he didn't know anything about, and had never seen it before.

Q And the checkbook of Mrs. Jeffries?

LEA: Your Honor, again, he's not charged with that...

COURT: Same objection....same ruling...overruled, proceed.

Q How did he...

COURT: What did he say about the checkbook of Mrs. Jeffries, he had on him, the traveler's checks?

A Well, he told me...he told two or three different

tales. He said, one boy found them and he gave them to him, and he had been keeping them for this boy. Later on he said that he found them near the Circuit Court steps...different stories he told me.

Q Did he tell you any other stories on those?

A Not on that particular one, but Michael Rosser...

Q No, just the.....

A Those are the only stories he told me on this.

Q Did he give you any reason .... that's all.

COURT: Answer Mr. Lea's questions please.

CROSS EXAMINATION

BY: Mr. Lea

Q Officer, at no time did Mr. Fields admit to you or say anything about going in Geest's Funeral Home, did he?

A No sir. He said he was working for them, he wouldn't steal from them.

Q But he did have these items in his possession?

A Yes sir.

Q That's all.

JEFFRIES: Mr. Geest please.

L. C. GEEST, having been duly sworn, testified as follows:

DIRECT EXAMINATION

By: Mr. Jeffries

Q Mr. Geest, your. . .give us your name, age, address and occupation please sir?

A L. C. Geest, Funeral Director, age 70, Culpeper, Virginia.

Q You have a place of business on the edge of town, do you not?

A 405 Sperryville Road.

Q Mr. Geest, did you have occasion to miss a check back in July of 1972?

A I did.

Q And what was that check?

A A check written to the Loving Supply Company.

Q I'm sorry, may it please the Court. . . was that check to Loving Supply in October 20, 1972?

A I don't know exactly the date.

Q Where had you left that check?

A Right behind my desk where I generally write checks on the 1st of the month, they sent me the bill, laying in that basket and then one of my men takes them out and distributes them out over various people that I owe. When I got the checks out well, I found the bill and found a hole in the top where it was pinned on. . .the check was gone, and we never did locate the check and I called the Loving Supply Company to see if the

check had been delivered and they said no, it was never received. They never did get that check. So the following month the amount of that check was included in that month's bill and paid.

Q Now, when did you...did you ever report the loss of this check?

A I never reported it to the law, no.

Q You did not?

A I did not report it.....I'm not sure whether I reported it or not.... I just don't recall whether I reported it or not, right off hand.

Q Is that the check which you lost?

A Yes sir, it is the check and it was pinned onto the bill.

Q It is the check to . . . . Loving Supply Company dated October 20, correct?

COURT: And that check was left in your place of business and what night? October 20? It's dated that day.

A You mean what date did it leave the office?

COURT: I mean what date...you said that you pinned it onto the bill and put it in a basket behind you...

A Approximately that date is when I made the check... on approximately that date.

COURT: All right, when did you discover that the check was missing?

Two or three days later.

A Something like that.

COURT: All right, had anyone broken any locks on your place or entered your place illegally ....

A We keep the doors closed but we don't lock the doors, somebody stays in the building all night...sleeps in the building all night, one or two men sleep in the building all night. We are not in the practice of locking the doors. The doors are closed.

COURT: All right. Do you know which night someone came in and got that check?

A I can't say definitely which night it was.

COURT: Can you tell me whether or not anything else was missing in addition to this check?

A Found nothing else missing. We usually keep the safe locked.

Q Mr. Geest did you stop payment on this check?

A I did.

Q What date did you stop....or how long after you discovered it ...

A Immediately after finding the check missing I stopped payment on it and then I called up . . Loving Supply Company.

Q Now how long was this after the check was written? How long was this after the last.....did you see it the day before, I'll put it that way?

A I can't say I saw it the day before, but as soon as

we found the check missing, I immediately called the bank and stopped payment. I can't say exactly the day, probably they might have a record at the bank, but I don't remember the exact date. I immediately called . . . Loving Supply Company to find out ....first I called them to find out if they had ever received the check and they said no, so I immediately called the bank to stop payment.

Q Can you tell how many days it was between the time that you last saw the check in your office and the time you missed it?

A I can't say the exact number of days because we don't keep any records.

Q Can you give an approximate date?

A It was only a few days I'm sure....I can't say the exact number of days.

Q Three, five?

A Something like that, probably, 5 days maybe.

COURT: Mr. Geest, you know this man seated next to Mr. Lea here, Mr. Fields?

A I know him very well.

COURT: You do know him?

A Yes, know him very well.

COURT: Did he work for you in October of 1972?

A No sir, he did not.

COURT: Did he have....

A He worked for me during that summer, some during the summer....in the hay field.

COURT: I see. Was he on your premises along about that time, in any way?

A He was very familiar with the premises because he was around there a good deal of the time when he was working for me. He came to the Funeral Home to get passage to the farm. He was very familiar with the premises.

COURT: Do you recall seeing him about the time this check was missing?

A I think he came in shortly before then and asked for a job.

COURT: How much before then?

A Well, a third of the time he was in the jail here in the fall and then after he got out, I think it was, he came around and asked me for a job, but I didn't have any job for him. I understood that he was in jail prior to that time.

COURT: Well, what I'm getting at is this, it's perfectly possible that if he was in your place of business at that time, he might have picked up the check at that time, or was it too far ahead of time that you talked to him about it?

A It was too far ahead of time that I was talking to him ....too far ahead of time.

COURT: By that you mean that he came into see you a month or two before this check was missing?

A Some weeks, probably, some weeks...

COURT: Some weeks, probably?

A Uh-huh. Some weeks before.

COURT: All right, sir.

Q I have no further questions.

COURT: Answer Mr. Lea's questions please.

CROSS EXAMINATION

BY: Mr. Lea

Q Mr. Geest, you say those doors out there are never locked?

A Right.

Q Someone stays there all the time?

A Yes sir, night and day.

Q You don't know whether...

A Not in the office at night, they go to bed at night.

Q You don't know whether you reported this check to the law or not, do you?

A I immediately called Loving Supply Company and asked, and I immediately called the bank and stopped payment.

Q All right. You found nothing else that you recall missing at that time?

A No sir.

Q There weren't any other checks missing or torn off

from any of the other bills?

A Not at that time, no sir.

Q Approximately how many bills did you have in this basket, that you are talking about, to be delivered, at that time, do you know?

A Probably it may have been as many as.....it was several.

Q Can you give us an approximate number or...

A It might have been as many as....at times I had as many as a dozen in there at a time.

Q All right, sir.

A You don't take them all out one day, some times you take a few one day, and a few another day.

Q I believed you stated the last time you saw Calvin Fields on your property was approximately 2 weeks prior to this check being written?

A Approximately so.

COURT: Approximately what?

Q Approximately so.

A Approximately two or three weeks, yes sir.

Q That's all I have.

JEFFRIES: That's all.

COURT: Thank you, Mr. Geest. You're excused, Mr. Geest.

JEFFRIES: The Commonwealth rests.

1 LEA: Your Honor, at this time I'd like to make a
2 motion that the case against Calvin Fields be dismissed for
3 the following reasons. One there is no evidence before the Court
4 that this young man was anywhere in the vicinity of the place,
5 no evidence that he broke in. It's true that he had possession
6 of this check, but he's not charged with that. He is charged
7 with breaking and entering and there is no evidence before
8 the Court at this time that Calvin Fields did break and enter
9 in the nighttime on the 20th, on or about the 20th of October,
10 the Geest Funeral Parlor. Mr. Geest stated it was two to three
11 weeks since he had seen the boy, number 1. Number 2, no where
12 in the evidence has the Commonwealth proved that this case occurr-
13 ed in the Town of Culpeper or the County of Culpeper, State of
14 Virginia.
15 COURT: All right, I'm going to overrule your motion,
16 Mr. Lea, on the basis that possession of stolen articles after
17 a breaking and entering case presents a prima facie case, doesn't
18 it? Isn't there one case directly in point of reference to that,
19 stating that the illegal possession is just like larceny it
20 presents a prima facie case.
21 JEFFRIES: Yes sir.
22 COURT: So I overrule your motion.
23 LEA: All right, sir.
24 COURT: Now do you wish to present any evidence?
25 LEA: He doesn't wish to take the stand, Your Honor.

1 COURT: All right, you've advised him of his right
2 to remain silent and his right to testify and he desires to
3 remain silent.
4 LEA: I would like to again at this time renew my
5 motion that I just made, exactly as I stated previously.
6 COURT: All right, what have you got to say about that
7 Mr. Jeffries?
8 JEFFRIES: May it please the Court....
9 LEA: One other item before he starts. I think this
10 man could be convicted probably of possession of stolen property,
11 but certainly not of breaking and entering. There is no evidence
12 here of his breaking and entering the Geest Funeral Parlor.
13 JEFFRIES: May it please the Court, if my recollection
14 serves me correctly, I presumably asked Mr. Geest the location...
15 COURT: He did,he described it... being in the Town of
16 Culpeper on Sperryville Road, on some kind of road. It's on
17 the outskirts of town. I'm not worried about that, Mr. Jeffries;
18 what worries me about this case is the possibility of just as this
19 man says, somebody walked into this Funeral Home and picking up
20 this check and delivering it to him. . . . . .
21 without there being a breaking and entering.
22 JEFFRIES: May it please the Court we've heard Mr....
23 COURT: It wasn't the true opening of any door....
24 JEFFRIES: You've heard Mr. Geest's statement that
25 this ...his place of business is not kept locked.

1 COURT: Yes.

2 JEFFRIES: But it is kept closed. Now it's true on ...

3 COURT: Well, opening of any door is a breaking...

4 JEFFRIES: Breaking and...

5 COURT: It doesn't have to be locked.

6 JEFFRIES: He was not....

7 COURT: The mere parting of a curtain is a breaking...

8 but the fact that this man was there two weeks earlier, the

9 question of dates in my mind....this man may have picked up

10 the check at that time...but it was two weeks earlier, if it

11 was a day or two earlier, it would be a different case....

12 All right, I'm inclined to convict this man. I think there is

13 sufficient evidence in this case to convict. I find him

14 guilty as charged on indictment number 2. Now, what are your

15 recommendations, Mr. Jeffries, as to indictment number 1 and

16 indictment number 2?

17 JEFFRIES: May it please the Court, I'd like a pre-

18 sentence report.

19 COURT: Is that really necessary, hasn't this man

20 been convicted of a number of felonies before?

21 LEA: No sir....no sir...

22 COURT: The man has been before me before, hasn't he?

23 LEA: Yes, on a misdemeanor.

24 COURT: On a misdemeanor.

25 LEA: Yes.

1 COURT: I recognize this man. He has never been con-
2 victed of a felony before.
3 JEFFRIES: That's what he tells me Your Honor.
4 COURT: All right, do you have any objection to a
5 pre-sentence report?
6 LEA: No sir.
7 COURT: All right, the Court finds him guilty as
8 charged on indictment number 1 and indictment number 2 and orders
9 a pre-sentence report. And if this pre-sentence report is
10 ready by February 19, well Judge Penn can proceed to sentence
11 this man. If not, it can wait until I get back....if you prefer,
12 I doubt if it will be ready by that time.
13 LEA: No sir, I feel like that Mr. Fields wants to note
14 an /appeal, Your Honor.
15 COURT: Well, of course, the date for noting an appeal
16 would be 60 days after the sentencing....not today.....I will
17 be here on March 6, 7 and 8. I don't know what day that the
18 probation officer will ...
19 LEA: Sir?
20 COURT: I will be here on March 6, 7 and 8. I reckon
21 certainly we will get this report by that time. The Court orders
22 a pre-sentence report in each of these cases.
23 LEA: Since I was court appointed in the case, I imagine
24 if he wants to note that appeal I will be appointed also?
25 COURT: Yes, and if you have that in mind you ought to

1 notify the Court reporter, so maybe she could go on and have
2 this record for you in advance, Mr. Lea.
3 LEA: That's what he stated to me, so I guess you
4 better go ahead.....
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7 (Court is adjourned.)
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March 6, 1973

Court convened at 10:00 A.M.

COURT: Commonwealth v. Calvin Dan Fields, what is the situation, Mr. Lea?

LEA: This was....asked for a pre-sentence report this morning and we understand from Mr. Estep that it's just about available but not available at this time.

COURT: What is the story, Mr. Estep?

ESTEP: Your Honor, this is my fault, I was under the understanding that this case was set for a date...I confused it with two others ....and I can be immediately available on this thing, because the man has been on probation before and it was violated and he was placed on it again....several months later.

COURT: Do you have his file with you?

ESTEP: I don't have the investigative material, Your Honor.

COURT: All right, sir.

ESTEP: That is my error, I didn't think it was the date....

COURT: All right, what is your situation for ...I just don't know what's going to happen to this case on the 8th. I just have an idea Mr. Peachy is going to settle that case.

They are bickering over a few dollars. I'm inclined to set this case for the 13th, you are here any way on that day, Mr. Lea. Does that suit you?

LEA: No problem, sir.

COURT: All right, I'll set this for the 13th.

(Court is adjourned.)

1 March 13, 1973

2 Court convened at 10:00 a.m.

3

4 COURT: This is Commonwealth v. Calvin Dan Fields.
5 Let the record show that Calvin Fields was convicted in this
6 Court on January 30, '73, of forging and uttering and of
7 breaking and entering, and a pre-sentence report was ordered.
8 Let the record show that Calvin Fields is before the Court
9 with his assigned counsel, Mr. Lea, who has had a copy of the
10 pre-sentence investigation and Mr. Estep, the probation officer,
11 is now sworn and placed on the stand so that Mr. Lea can cross
12 examine the probation officer as to anything in the probation
13 report.

14

15 ROBERT ESTEP, having been duly sworn, testified as
16 follows:

17

18 DIRECT EXAMINATION

19 By: Mr. Lea

20 Q Mr. Estep, I direct your attention to the prior
21 record of the individual in this case. He has, I believe, never
22 been sentenced or convicted of any serious crime, in other
23 words, a felony prior to this time, or his sentence has been
24 less than a year?

25 A He has no prior felony convictions, as of a felony.

1 Q All right.

2 COURT: Mr. Estep, there's one thing in this report
3 that's sort of bothers me. This man has previously been on
4 probation and then did not follow the instructions of the proba-
5 tion department of the Court and then had to serve his time,
6 isn't that right?

7 A That's correct Your Honor, he was placed on
8 probation, January 21, 1972, by Your Honor...

9 COURT: What was the charge that time?

10 A Uttering a bad check, Your Honor. Your Honor
11 directed him to pursue a course of training in the Job Corps,
12 as a....

13 COURT: That's what he wanted to do at the time,
14 wasn't it?

15 A Yes Your Honor, he did ....all those arrangements
16 were made through the Job Corps. He left Culpeper, went to
17 San Marcos, Texas, stayed for approximately 8 days, negatively
18 resigned from the Job Corps, and returned. Upon his return he
19 was arrested, brought before Your Honor as a probation violator
20 and probation was revoked at that time.

21 COURT: I see, well, how much time did he serve in
22 jail at that time?

23 A Approximately 5 months, Your Honor.

24 COURT: Where did he serve it?

25 A At the State Farm....he was subsequently transferred

to the State Farm. Then he was convicted again....he was released from confinement, convicted again in this Court on September 8, 1972 and once again placed on probation. He is currently on probation at this time.

COURT: How much probation time does he have hanging over his head at this moment?

A Your Honor gave him a nine month sentence in September of 1972, suspended 7 months of that. He has 7 months hanging over his head. He was placed on probation for a period of three years.

COURT: That's 7 months in the penitentiary?

A Seven months in jail, Your Honor.

COURT: In jail?

A Yes sir.

COURT: Sentenced him to jail.

JEFFRIES: Is it not true that he has three months from an assault conviction back in 1972? He got a six months sentence and 3 months of which was suspended?

A That was in the County Court, Mr. Jeffries, not in the Circuit Court.

JEFFRIES: But isn't it true?

A You are correct, yes sir.

JEFFRIES: And he was convicted of assault and battery/again within that 12 months? In the County Court? While still on probation? According to your record, page 3.....

1 A No, he was off probation when he was convicted
2 of that, Mr. Jeffries.
3 JEFFRIES: You've got 6-20-72 assault, six months,
4 three months suspended. 9-8-72, assault and battery, nine months,
5 7 months suspended.
6 A The June conviction was a County Court conviction.
7 The September conviction was a Circuit Court conviction.
8 JEFFRIES: Was that for the same thing?
9 A No sir, two different charges.
10 JEFFRIES: They are within a year, they were nine
11 months.....that September charge was within 1 year of the
12 one in June of '72....
13 A But he wasn't placed on probation....
14 JEFFRIES: That was suspended conditioned upon his
15 good behavior?
16 A In the County Court...
17 JEFFRIES: In the County Court?
18 A Yes sir.
19 JEFFRIES: And within three months he was convicted
20 again of the same offense?
21 A Yes sir, but I had no jurisdiction...
22 JEFFRIES: No, I say he was convicted of the same
23 offense while on a suspended sentence for doing the very same
24 thing?
25 A The record so indicates.

JEFFRIES: The record so indicates. And the record also indicates that while he was a juvenile, he twice was on probation and the probation had to be ...he was a probation violator?

A That is correct.

COURT: All right any other questions, Mr. Lea or Mr. Jeffries? Step down Mr. Estep.

LEA: There's a lapse of time of course there of some four to five years from his juvenile record, is there not, Mr. Estep? There's only one felony charge as a juvenile or do we have two?

A I believe the breaking and entering...

LEA: Is a felony?

A Is a felony. I had no jurisdiction over Calvin when he was a juvenile.

LEA: All right, sir.

JEFFRIES: Your notes indicate that there were four charges there don't they?

A Yes sir.

COURT: All right, step down, Mr. Estep. All right, Mr. Lea, do you desire to present any evidence in mitigation of punishment in this case?

LEA: I'd just like to have argument.

COURT: All right...you've advised the accused of his right to testify and his right to remain and he desiresto

1 remain silent?

2 LEA: Yes sir.

3 COURT: All right, sir. The Court has found him

4 guilty and is now ready to hear recommendations from counsel

5 in reference to his sentence to be imposed.

6 JEFFRIES: Your Honor....you're speaking of both

7 reports we have...the breaking and entering....

8 COURT: I beg your pardon?

9 JEFFRIES: You're asking for recommendations on

10 both charges?

11 COURT: Both charges.

12 JEFFRIES: May it please the Court, the Commonwealth

13 does not feel that a suspended sentence or probation of any

14 type would be of any value in this case whatever. The defendant

15 has a long history of, as was indicated in the report, of

16 violation of the law and in every single incident and I can almost

17 say that without exception, he was put on probation or at least

18 suspended sentence which was followed by a violation or the

19 revocation of that probation or a violation of the conditions

20 of the suspension. I don't see a bit of sense of a suspended

21 sentence now. The Commonwealth recommends that he be required,

22 that he be sentenced to three years on forgery and five years

23 on the breaking and entering to serve consecutively.

24 COURT: All right, sir. Mr. Lea.

25 LEA: Your Honor, this young man has only been involved

1 in a felony on one prior occasion which was approximately 4 to 5
2 years ago as a juvenile. Although his record in the last two
3 years has not been good, there are not what we would call real
4 serious offenses. I think the defendant should be treated here
5 not as someone who has actually been before the Court on any
6 serious offense and he should be treated otherwise and that
7 these proposed sentences by the Commonwealth Attorney, I feel
8 are excessive. Certainly, the breaking and entering charge -
9 this young man pled not guilty to that, still insists that he
10 is not guilty of it. I think that is excessive. I think and
11 ask the Court that it suspend that sentence, at least that sen-
12 tence and that any time or any served time that the defendant
13 may get in this particular case would be under the charge on
14 the forgery. He has readily admitted that and been cooperative
15 with the officer as the evidence will show - gave them statements.
16 And this young man is 20 years old, certainly his probationary
17 period here has not been suited to probation, but we have to
18 realize that he was confined a great length of time in the
19 Department of Welfare and Institutions. He had just gotten out.
20 Maybe a short period of time now will make him see the light so
21 to speak. I always like to feel that a man of this age certainly
22 has an opportunity, much more of an opportunity of making something
23 out of his life, rather than someone we have here that is twice
24 his age and has been through many, many years, but he is 20 and
25 will not be 21 until next month and although the age now of

1 majority is 18 - he is still a very young man. I ask that
2 certainly all of the sentence on the breaking and entering
3 be suspended and also ask that the other be suspended or a
4 short term of sentence. The young man has been in jail for
5 a considerable period of time. I believe he has been in . . .
6 confined for six months already here locally. . .awaiting trial and
7 waiting to be processed on these charges. I ask the Court to
8 be lenient with him and consider his age, consider his prior
9 felony record and the short period of time in which these
10 offenses have happened. They start at 1/21/72 and it's just
11 over a period of a little bit in excess of a year.
12 JEFFRIES: May it please the Court, in the first place,
13 the Court should not consider the time that Calvin has been in
14 jail because he has been in jail serving time on offenses
15 previously committed. He has not been in jail on this. . .
16 waiting for trial on this matter. He is only 20 years old and
17 he has accumulated a record here that would do credit to an
18 habitual criminal by the age of forty. At this rate by
19 the time he is forty, it will take a book to accumulate his
20 record, if we don't put a stop to it now. And, suspended sentences
21 haven't done it.
22 COURT: All right, sir. Stand up, Calvin Fields.
23 Do you have anything you want to say to the Court before the
24 Court pronounces sentence?
25 A No sir, Your Honor, like I said, I plead guilty to

1 the forgery charge which I done, but the breaking and entering
2 charge, I really didn't do. That's all I have to say.
3 COURT: Let me say to you that the Court feels awfully
4 sorry for you and it is never any pleasure on the part of the
5 Court to sentence people to the penitentiary. I don't get any
6 pleasure out of it. There is no spirit of even vengeance as far
7 as the Court is concerned, but there are some people that we have
8 to protect society from, and it appears that you are one of
9 those people that you just are intent upon the idea of taking
10 what doesn't belong to you. The probation officer, he made a
11 thorough investigation, says that from your record it appears
12 that you are just an habitual thief and I'm inclined to agree with
13 that statement. Now, I don't know whether you are going to stay
14 in the penitentiary the rest of your life or not. I hope not,
15 but there is every indication from your previous life that that's
16 what is going to happen to you, and whether you do or not depends
17 upon whether you have a change in your feeling towards society
18 and so far as the rules of society are concerned. The laws
19 are meant to ...not to be violated but the laws are set up
20 because its been found that that's the only way society can get
21 along, and you seem to be breaking them at will. The Court
22 gives you credit for your cooperation with the officers on indict-
23 ment number 1, for your entering a plea of guilty on that charge.
24 The Court has taken into consideration the probation report,
25 the fact that you haven't been convicted of felonies before, has

1 taken into consideration your entire previous record. On indict-
2 ment number one, the Court sentences you to five years in the
3 penitentiary. For reasons satisfactory to the Court, three years
4 is suspended upon the following conditions. One, that you keep
5 the peace and violate none of the penal laws of the Commonwealth
6 of Virginia and the sub-division thereof, for a period of five
7 years from your release from confinement. Two, that you pay
8 the cost of this proceeding, including an attorney's fee which
9 I shall allow Mr. Lea for representing. Three, that you make
10 restitution...who was the loser in this case, A&P? On this
11 forgery charge?
12 JEFFRIES: Geest Funeral Home.
13 COURT: Geest Funeral...
14 JEFFRIES: I don't know....
15 LEA: I believe A&P was the loser, Your Honor.
16 COURT: All right....three, that you make restitution
17 to A&P Store in the sum of $96.47, within six months from your
18 release from confinement. Four that you abide by all the rules
19 and regulations imposed upon you by the probation/parole officer
20 and you will be placed on probation/parole for a period of
21 five years from your release from confinement. Now, it said
22 here that you never made a good probationer before. It said
23 here that you're not going to make a good probationer this time....
24 and that may be so. If that is so, then there is nothing they
25 can do but bring you back and you'll have the additional three

1 years to serve. Now that's the Court's sentence on indictment
2 number 1. On indictment number 2, the Court sentences you to
3 five years in the penitentiary. For reasons satisfactory to
4 the Court, three years is suspended upon the following conditions.
5 One, that you keep the peace and violate none of the penal laws
6 of the Commonwealth of Virginia and the sub-division thereof,
7 for a period of five years from your release from confinement.
8 Two, that you pay the cost of this proceeding including an
9 attorney's fee which I shall allow Mr. Lea for representing
10 you in this matter, within 60 days from your release from confine-
11 ment. Three, that you abide by all the rules and regulations
12 imposed upon you by the probation and parole officer of this
13 Court and you will be placed on probation/parole for a period
14 of five years from your release from confinement. This means
15 Mr. Fields, that you have four years in the penitentiary to
16 serve. During this four year period, now, I hope that you will
17 think about changing your way of life, think about becoming a
18 good citizen, thinking about working for a living, think about
19 not stealing other people's property, but making your own living.
20 All right, sir. Sheriff, take charge...
21 A I'd like to say something, please...
22 COURT: Yes..
23 A On this ....you know, I was in here and faced you
24 before....
25 COURT: Yes.

A On the basis, could you suspend that at this particular time because...the reason I've been in jail for six months on that...

COURT: Yes, I'm not going to impose any further sentence on you in reference to the previous sentences against you.

A That is done away with, sir?

COURT: Yes...

LEA: He is to be given credit for the time he's been in jail on this?

COURT: No...

LEA: He's not...

COURT: I'm not going to invoke any previous suspended charges against you. Mr. Lea, will you give the Court some idea of the amount of time spent on each of these cases.....

(Court is adjourned.)

STATE OF VIRGINIA AT LARGE:

I, Catherine K. Lane, Notary Public in and for the State of Virginia at Large having been so duly commissioned and qualified do certify that the foregoing hearing was duly taken by me at the time and place specified in the caption hereof, said

1 witnesses having been first duly sworn.

2 I do further certify that said hearing was correctly
3 taken by me by mechanical methods and the same was accurately
4 written out in full and transcribed into the English language
5 and that said hearing is a true, accurate and correct record
6 of the testimony by said witnesses.

7 I further certify that I am neither attorney nor
8 counsel for or related to or employed by any of the parties to
9 the action in which this hearing was taken and further that I
10 am not a relative or employee of any attorney or counsel employed
11 by the parties hereto or financially interested in this action.

12 My Commission expires

13 Given under my hand and seal this day of
14 March, 1973.

15
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17 _____
18 Notary Public
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Book 34 page 398

VIRGINIA: IN THE CIRCUIT COURT OF CULPEPER COUNTY

COMMONWEALTH OF VIRGINIA

VS.....FELONY # 1-ORDER

CALVIN DAN FIELDS

This day came John L. Jeffries, III, Attorney for the Commonwealth, and Calvin Dan Fields, the defendant, with T.C.Lea, Jr., his attorney. The defendant stands convicted of a felony, to-wit: forging and uttering, and he was led to the bar in the custody of the jailor.

And the Probation Officer of this Court, to whom this case has been previously referred for investigation, appeared in open court with a written report, which report he presented to the Court in open court in the presence of the defendant who was fully advised of the contents of the report and a copy of said report was also delivered to counsel for the defendant.

Thereupon the defendant and his counsel were given the right to cross-examine the Probation Officer as to any matter contained in the said report and to present any additional facts bearing upon the matter as they desired to present. The report of the Probation Officer is hereby filed as a part of the record in this case.

Whereupon the Court taking into consideration all of the evidence in the case, the report of the

Probation Officer and such additional facts as were presented by the defendant, 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 this Court that the defendant be and he is hereby sentenced to confinement in the penitentiary of the Commonwealth for a term of five years.

But for reasons satisfactory to the Court, the serving of three years of the aforesaid sentence is suspended for a period of five years from the date of his release on the condition that the accused (1) be of good behavior and not violate any of the penal laws of the Commonwealth of Virginia nor any of her political subdivisions for a period of five years from the date of his release, (2) pay the costs of this proceeding and an attorney's fee of $150.00 within sixty days from the date of his release, (3) make restitution in the sum of $96.47 to the A & P Store within six months from the date of his release, and (4) abide by the rules and regulations of the Probation Officer of this court under whose supervision he is placed for a period of five years from the date of his release.

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 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 defendant is remanded to jail to await transfer to the penitentiary.

ENTER: /s/ Harold H. Purcell Judge
March 13, 1973

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A copy

Teste: Dorothy A. Faulconer, CLERK

By: /s/ Donna C. Tompkins ,Deputy

VIRGINIA: IN THE CIRCUIT COURT OF CULPEPER COUNTY

COMMONWEALTH OF VIRGINIA

vs.

CALVIN DAN FIELDS

NOTICE OF APPEAL

Notice is hereby given that Calvin Dan Fields appeals from a final judgment rendered by this Court on the 13th day of March, 1973, and announces his intention of applying for a Writ of Error to the Supreme Court of Appeals of Virginia.

ASSIGNMENT OF ERRORS

The defendant complains of the Trial Court's Rulings and assigns his errors as follows:

1) It was error for the Trial Court to admit into evidence the checks bearing the name of Helen M. Jeffries and the checkbook, group of blank checks of Michael Rosser;

2) It was error the Trial Court to admit into evidence testimony concerning the checks bearing the name of Helen M. Jeffries and the checkbook, group of blank checks of Michael Rosser;

3) It was error for the Trial Court not to dismiss the case against Calvin Dan Fields on motion of his attorney in that there was no evidence throughout the trial of any breaking and entering on the part of

Calvin Dan Fields, but only evidence of his possession of stolen goods, namely the check payable to Loving Supply Company.

4) It was error for the Trial Court not to dismiss the case against Calvin Dan Fields on motion of his attorney in that there was no evidence throughout the trial that this offense occurred in the Town of Culpeper, Culpeper County, State of Virginia.

Given under my hand this 11th day of April, 1973.

_____

Counsel for defendant