CLERK
SUPREME COURT OF VIRGINIA
RECEIVED
APR 28 1978
RICHMOND, VIRGINIA

IN THE

Supreme Court of Virginia

AT RICHMOND

RECORD NO. 771559

DYRON W. KAYH, ALSO KNOWN AS
KURT KIRILUK,

Appellant,

v.

COMMONWEALTH OF VIRGINIA,

Appellee.

JOINT APPENDIX

STEPHEN L. BRYANT, ESQ.
10110 Iron Bridge Road
P. O. Box 75
Chesterfield, Virginia 23832

Counsel for Appellant

HON. ROBERT H. HERRING, JR.
Assistant Attorney General
900 Fidelity Building
830 East Main Street
Richmond, Virginia 23219

Counsel for Appellee

TABLE OF CONTENTS

		Page
1.	Warrants	1, 2
2.	Notice of Appeal from General District Court	3
3.	Defendant's Motion to Dismiss for Lack of Speedy Trial	4, 5
4.	Statement of Facts	6, 7, 8, 9, 10
5.	Circuit Court Order	11
6.	Circuit Court Order	12, 13
7.	Notice of Appeal from Circuit Court	14
8.	Assignments of Error	15

COMMONWEALTH OF VIRGINIA

COUNTY [CITY] OF CHESTERFIELD

To Wit:

No.

ARREST WARRANT
(Rule 3A:4)

TO ANY SHERIFF, POLICE OFFICER, OR OTHER AUTHORIZED OFFICER:

You are hereby commanded in the name of the Commonwealth forthwith to arrest

Dyron W. Kayh
(Name of accused, or a description by which the accused can be identified)

and to bring him (her) before the CHESTERFIELD GENERAL DISTRICT COURT
(Designation of Court)

to answer a charge that he (she) committed an offense in the County (City) of CHESTERFIELD

on or about August, 1974

namely (give a brief description of the offense) Unlawfully defraud Sears Roebuck & Co. of Cash or Merchandise by the means of a Worthless Check in the amount of Fifteen Dollars and 98/100 ($15.98) with intent to cheat and defraud the said Sears Roebuck & Co., 7101 Midlothian Pike, Richmond, Virginia, against the peace and dignity of the Commonwealth of Virginia.

276 7710

On the basis of the sworn statement(s) of Linda A. Ellis-Security Asst-Sears Roebuck & Co. 7101 Midlothian Pike Richmond, Virginia, the undersigned has found probable cause to believe the accused has committed the offense.

If a written complaint has been made, it is attached to the original of this warrant.

You are also commanded, in the name of the Commonwealth, to summon the following as witnesses:

Name Ray Cash Address Sears Roebuck & Co. 7101 Midlothian Pike, Richmond, Va. ☐

Name _____ Address _____ ☐

Name _____ Address _____ ☐

Name _____ Address _____ ☐

Given under my hand and seal, this 22 day of October, 1974.

Coleman W Kent (SEAL)
(Signature of Issuing Officer)

MAGISTRATE
(Title of Issuing Officer)

DOCKET NO. 770763A

WARRANT OF ARREST

4/27

COMMONWEALTH vs. Chs

Dyron W. Kayh, Kurt Kirilik

4320 Forest Hill Ave, Richmond, Virginia

Executed this, the 6th day of April, 1977.

Serving Officer

DISPOSITION OF CHARGE:

NG

City nolled appeal

APR 27 1977

30 days

Fine $

The defendant having appealed from this judgement, I certify this case to the Circuit Court.

Judge of County Court

Total $ 72.00

JUDGE

(Address of surety)

(Title of acknowledging official)

APP. 1a

COMP. FORM 18 - 150M -7-1-74

COMMONWEALTH OF VIRGINIA

COUNTY [CITY] OF CHESTERFIELD

To Wit:

No.

ARREST WARRANT
(Rule 3A:4)

TO ANY SHERIFF, POLICE OFFICER, OR OTHER AUTHORIZED OFFICER:

You are hereby commanded in the name of the Commonwealth forthwith to arrest

Dyron W. Kayh
(Name of accused, or a description by which the accused can be identified)

and to bring him (her) before the CHESTERFIELD GENERAL DISTRICT COURT
(Designation of Court)

to answer a charge that he (she) committed an offense in the County (City) of CHESTERFIELD on or about August, 19 74,

namely (give a brief description of the offense) Unlawfully defraud Sears Roebuck & Co. of Cash or Merchandise by the means of a Worthless Check in the amount of Thirty One Dollars and 67/100 ($31.67) with intent to cheat and defraud the said Sears Roebuck & Co., 7101 Midlothian Pike, Richmond Virginia, against the peace and dignity of the Commonwealth of Virginia.

On the basis of the sworn statement(s) of Linda A. Ellis-Security Asst-Sears Roebuck & Co. 276 7710 7101 Midlothian Pike Richmond, Virginia, the undersigned has found probable cause to believe the accused has committed the offense.

If a written complaint has been made, it is attached to the original of this warrant.

You are also commanded, in the name of the Commonwealth, to summon the following as witnesses:

Name Ray Cash Address Sears Roebuck & Co. 7101 Midlothian Pike, Richmond, Va.

Name Address

Name Address

Name Address

Given under my hand and seal, this 22 day of October, 19 74.

(SEAL)
(Signature of Issuing Officer)

MAGISTRATE
(Title of Issuing Officer)

DOCKET NO. 770763D

WARRANT OF ARREST

COMMONWEALTH vs.

Dyron W. Kayh, aka KURT KIRILUK

4320 Forest Hill Ave., Richmond, Virginia

Executed this, the 6th day of April, 1977.

Serving Officer

DISPOSITION OF CHARGE:

NG

GUILTY

30 days in jail

APR 27 1977

appealed

The defendant having appealed from this judgement, I certify this case to the Circuit Court.

Costs $ 72.00

Total $ 72.00

Judge of Court

JUDGE

(Form of acknowledging Official)

Docket # ~~77-763 1 and~~ 3

APPEAL NOTICE

IN THE CHESTERFIELD GENERAL DISTRICT COURT

Commonwealth
County of Chesterfield

VS ~~Dyron W. Kayh aka Kurt Kiriluk~~

Trial Date: ~~April 27, 1977~~

You have appealed the judgment rendered by this Court to the Circuit Court of the County of Chesterfield. You are now advised that your case WILL BE TRIED in the Circuit Court on July 21, 1977, at 10:00 A.M.

YOU MUST BE PRESENT ON THE ABOVE DATE AND READY FOR TRIAL.

You must arrange for the presence of any witnesses in your behalf. If you desire an attorney to represent you on your appeal, you should employ him promptly and show him this notice. The failure to employ an attorney until just before the above trial date is NOT a ground for continuance.

You may withdraw your appeal within 10 days of your trial date by appearing in person at the General District Court and pay the fine of $ _____ and costs of $ 144.00 by cash and serve the ~~30 days in jailon "a" charge and~~ 30 days in jail suspended on "d" charge for 1 year and restitution. sentence, if any imposed by this Court.

After your ten day appeal period has expired with the General District Court, you may withdraw your appeal at any time before the appeal is heard by giving a written notice of withdrawal to the Chesterfield Circuit Court and to the counsel for prosecution and pay any fine and costs imposed by the Circuit Court and serve the sentence imposed by the General District Court, if any. Circuit Court costs WILL BE considerably higher.

Attorney's Name: ~~Steve Bryant~~

Police officer: ~~Linda Ellis~~ ~~Linda Ellis, Security~~

I certify that the original of this notice was delivered to the defendant in person or to his attorney, this 5th day of May, 19 77.

[illegible] Deputy Clerk

VIRGINIA:

IN THE GENERAL DISTRICT COURT OF CHESTERFIELD COUNTY

COMMONWEALTH OF VIRGINIA, Plaintiff,	)	
vs.	)	CRIMINAL APPEAL NO. _____
KURT WAYNE KIRILUK, aka DYRON W. KAYH, Defendant.	)	

MOTION TO DISMISS FOR LACK OF SPEEDY TRIAL

COMES NOW the Defendant, Kurt Wayne Kiriluk, by Counsel, and hereby moves this Honorable Court to dismiss with prejudice the warrants currently pending against him. In support of his motion, he states as follows:

1. That the warrants herein were obtained on the 22nd day of October, 1974, and were served on him on the 6th day of April, 1977.

2. That the alleged offenses occurred in August, 1974.

3. That the Defendant has been incarcerated since November 5, 1975, and in the State Department of Corrections Systems since February 28, 1977.

4. That Defendant has made numerous attempts and requests of the Commonwealth's Attorney for the County of Chesterfield that he be brought to the County of Chesterfield and tried on these offenses, these warrants having been lodged as detainers against him since on or about November 22, 1975.

5. That the preparation of any defense herein by the Defendant has been substantial prejuciced by this unnecessary delay.

6. That the aforesaid action on the part of the Attorney of the Commonwealth constitutes a violation of the

the UNITED STATES CONSTITUTION and Article 1, Section 8 of the VIRGINIA CONSTITUTION.

WHEREFORE, your Defendant prays that the warrants lodged against him herein be dismissed with prejudice for failure of the Commonwealth to provide Defendant with a speedy trial.

KURT WAYNE KIRILUK

BY _____
COUNSEL

STEPHEN L. BRYANT
P.O. Box 75
Chesterfield, Virginia 23832

CERTIFICATE

I hereby certify that a true and correct copy of the foregoing Motion to Dismiss for Lack of Speedy Trial was hand delivered this 8th day of July, 1977, to Oliver D. Rudy, Attorney for the Commonwealth, Chesterfield Courthouse, Chesterfield, Virginia.

_____
STEPHEN L. BRYANT

RECEIVED AND FILED
JUL 8 1977
LEWIS H. VADEN, CLERK
M. J.

STATEMENT OF FACTS

The evidence in the above-styled case was heard by the Chesterfield County Circuit Court on July 21, 1977, by The Honorable D. W. Murphey, upon the Defendant's appeal of two (2) convictions of presenting worthless checks in the amounts of FIFTEEN AND 90/100 DOLLARS ($15.98) and THIRTY-ONE AND 67/100 DOLLARS ($31.67), respectively. Prior to the Defendant's arraignment and entry of a plea, counsel for the Defendant was heard concerning a Motion to Dismiss for failure of the Commonwealth to provide the Defendant a speedy trial in violation of the Sixth and Fourteenth Amendments to the United States Constitution and Article I, Section 8 of the Virginia Constitution . . .. After the facts as alleged in the Motion to Dismiss were accepted by the Trial Court for the purposes of this Motion only, the subject Motion to Dismiss was denied by the Trial Court based on its ruling that a Defendant's right to a speedy trial only applies after he has been arrested and has no application to the period of time between the issuance of the warrant or offense date and the time of arrest. * * * Objection to the denial of the Defendant's Motion . . . was made by counsel for the Defendant. The Defendant was then arraigned, entered a plea of not guilty to both charges, and evidence was presented on behalf of the Commonwealth.

RAYMOND L. CASH, Witness:

Raymond L. Cash, salesman at Sears, Roebuck and Company, Cloverleaf Mall, in Chesterfield County, testified that on or about the 15th day of August, 1974, while employed at this business, he received two (2) checks in the amounts of FIFTEEN AND 98/100 DOLLARS ($15.98) and THIRTY-ONE AND 67/100 DOLLARS ($31.67), respectively, (Commonwealth's Exhibit No. 1). These two (2) checks were signed by Dyron W. Kayh. Mr. Cash further testified that he identified the checks because of his initials thereon in his handwriting. Mr. Cash further testified that he required an identification before acceptance of the two (2) checks, in this case, a Virginia driver's licence. The Virginia driver's license number was then copied by him on both of the checks at the time the checks were presented, the number being 225-42-7194. Further, Mr. Cash stated that he compared the picture on the driver's license presented with that of the individual who presented the two (2) checks, and concluded that they were the same person. Upon cross-examination, Mr. Cash testified that he could not identify the Defendant in the Courtroom as being the individual who presented these two (2) checks to him on August 15, 1974.

A. T. NORTON, Witness:

Mr. A. T. Norton, Security Manager at Sears, Roebuck and Company, Cloverleaf Mall, in Chesterfield County, next testified that he was so employed in August of 1974, and that

in that capacity he received the two (2) checks that are the subject of this prosecution, the checks being returned by the depository bank for insufficient funds. Mr. Norton further testified that the two (2) checks were twice deposited and both times returned due to insufficient funds. Mr. Norton further testified that a notice was sent to the individual whose name and signature was on the checks, Dyron W. Kayh, at 4320 Forest Hill Avenue, Richmond, Virginia, the address on the checks, informing Mr. Kayh that the checks had been returned to Sears. Mr. Norton did not testify that the notice had been sent by certified or registered mail, return receipt requested. This notice was mailed on September 6, 1974, and restitution on the checks was never made. Mr. Norton further testified that he received a letter addressed to Linda Ellis, a former Assistant Security Officer for Sears, in February, 1977, signed by Kurt W. Kiriluk (Commonwealth's Exhibit No. 2). Mr. Norton did not identify the signature on the letter as being that of the Defendant. * * * The Trial Court admitted the letter into evidence . . .. Mr. Norton further testified that he could not identify the Defendant as being the one who presented the checks.

LT. ALAN DAVIS, Witness:

Lt. Alan Davis, Detective for the Chesterfield County Police Department, next testified that he investigated the charges as alleged in the warrants, and that, further, he received into his possession, from A. T. Norton, the two (2) checks, Commonwealth's Exhibit No. 1. Detective Davis

further testified that he investigated the origin of the Social Security/driver's license numbers that were used as identification on the subject checks when they were presented on August 15, 1974, to Sears, Roebuck and Company. Mr. Davis further testified, . . . that he had contacted the Virginia Division of Motor Vehicles and determined that Driver's License Number 225-42-7194 was issued to Dyron Wayne Kayh. Detective Davis testified that he further learned from the Division of Motor Vehicles that another Social Security Number given on the checks was the number assigned to Kurt Wayne Kiriluk. * * * Detective Davis further testified that he never interviewed personally Kurt W. Kiriluk or Dyron W. Kayh, either prior to or subsequent to the arrest. Detective Davis did not identify the Defendant as being Dyron W. Kayh or Kurt W. Kiriluk. Commonwealth's Exhibit No. 1 was then introduced into evidence.

At this stage of the proceeding the Commonwealth rested its case and counsel moved to dismiss the two (2) warrants based on the failure of the Commonwealth . . . to sufficiently show a prima facie case that the Defendant in Court was the same individual who presented the two (2) checks. The Trial Court overruled Defense Counsel's Motion to Dismiss after which the Defendant rested his case and renewed these motions then based on the standard of proof being beyond a reasonable doubt. The Trial Court overruled this motion and found the Defendant guilty as charged of the

two (2) offenses. The Court then overruled Defense Counsel's motion to set aside the Court's finding of guilty as being contrary to the law and evidence, for objections to evidence raised during trial, and for failure to sustain Defendant's pre-trial motions. The Trial Court then found the Defendant guilty as charged and sentenced him to thirty (30) days in jail on each charge, and further that he pay the costs of the proceeding.

DATE APPROVED: 10-7-1977

s/ D. W. Murphey
JUDGE

SEEN AND AGREED:

s/ Stephen L. Bryant, p.d.
Stephen L. Bryant
P. O. Box 75
Chesterfield, Virginia 23832

s/ Charles R. Watson, p.q.
Charles R. Watson
Assistant Commonwealth's Attorney
Chesterfield, Virginia 23832

Virginia:

IN THE CIRCUIT COURT OF THE COUNTY OF CHESTERFIELD

the 21st day of July, 1977

COMMONWEALTH

Vs. Upon Warrant #770763A for Misdemeanor. Worthless Check. Appealed from General District Court of Chesterfield County.

DYRON W. KAYH aka KURT KIRILUK

This day came the Attorney for the Commonwealth and the defendant in person, and by his attorney, Stephen L. Bryant.

Whereupon, the accused was arraigned and pleaded Not Guilty to the charge in said warrant.

And after being advised 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 a jury.

And thereupon the Attorney for the defendant having filed written motions regarding a Plea to Statute of Limitations and Lack of Speedy Trial, the Court having heard evidence as to said Motions denied said Motions, to which action Counsel for the defendant excepted.

And the Court having heard the evidence and argument of counsel, doth find the accused Guilty of Worthless Check as charged in said warrant and doth sentence the defendant to serve thirty (30) days in jail.

The said jail sentence shall be served in the appropriate correctional field unit and the said defendant is retained in the custody of this Court to answer another misdemeanor charge.

A Copy, Teste:

Clerk.

Criminal O.B. 9-Pg 169

IN THE CIRCUIT COURT OF THE COUNTY OF CHESTERFIELD

the 21st day of July, 1977

COMMONWEALTH

Vs. Upon Warrant #770763D for Misdemeanor. Worthless Check. Appealed from General District Court of Chesterfield County.

DYRON W. KAYH aka KURT KIRILUK

This day came the Attorney for the Commonwealth and the defendant in person, and by his attorney, Stephen L. Bryant.

Whereupon, the accused was arraigned and pleaded Not Guilty to the charge in the warrant.

And after being advised 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 a jury.

And thereupon the Attorney for the defendant having filed written motions regarding a Plea to the Statute of Limitations and Lack of Speedy Trial, the Court having heard evidence as to said Motions denied said Motions, to which action Counsel for the defendant excepted.

And having heard the evidence of the Attorney for the Commonwealth, thereupon the Attorney for the defendant moved the Court to strike the Commonwealth's evidence, which motion the Court denied. And after hearing the argument of counsel, thereupon the Attorney for the defendant renewed the motion to strike the Commonwealth's evidence, which motion the Court denied.

And the Court doth find the accused guilty of Worthless Check, as charged in the warrant and doth sentence the defendant to serve thirty (30) days in jail.

Thereupon the Attorney for the defendant moved the Court to set aside the verdict, which motion the Court denied.

And the said Dyron W. Kayh aka Kurt Kiriluk, having been temporarily released from the State Farm, Goochland Side, to answer said charge, he is returned to the State Farm, Goochland Side.

77
c/o jail
State Farm

A Copy, Teste:

4

Clerk.

Criminal O.B. 7-19-70

IN THE CIRCUIT COURT OF CHESTERFIELD COUNTY

COMMONWEALTH OF VIRGINIA, Plaintiff,	)	
vs.	)	CRIMINAL NO. 2492
KURT WAYNE KIRILUK, a/k/a DYRON W. KAYH, Defendant.	)	

NOTICE OF APPEAL

In accordance with Rule 5:6 of the Rules of the Supreme Court of Virginia, as amended, Notice is hereby given that the Defendant, Kurt Wayne Kiriluk, will appeal to the Supreme Court of Virginia from the Final Orders entered July 21, 1977, against him in the Circuit Court of Chesterfield County, finding the Defendant guilty of two (2) misdemeanor violations of the Virginia Code Section 18.2-181, as amended.

STATEMENT OF FACTS

A Statement of Facts will be hereafter filed in the Clerk's Office of the Circuit Court of Chesterfield, Virginia.

KURT WAYNE KIRILUK

By Stephen L. Bryant
COUNSEL

CERTIFICATE

This is to certify that a true and correct copy of the foregoing was hand delivered to Charles Watson, Assistant Commonwealth's Attorney for Chesterfield County, Virginia, this 17th day of August, 1977.

Stephen L. Bryant
STEPHEN L. BRYANT

RECEIVED AND FILED

AUG 18 1977

LEWIS H. WADEN, JR.

ASSIGNMENTS OF ERROR

I. The Trial Court erred in overruling Kiriluk's Motion to Dismiss the two (2) prosecutions herein for failure of the Commonwealth to provide the Defendant a speedy trial.

VI. The Trial Court erred in overruling Defendant's Motion to Strike the Evidence and to Dismiss the two (2) prosecutions based on the fact that there was no identification of the Defendant as being the party who presented the subject checks nor was he personally connected to them in any way.