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CLERK
SUPREME COURT OF VIRGINIA
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RICHMOND, VIRGINIA

IN THE

Supreme Court of Virginia

AT RICHMOND

RECORD NO. 78-0170

PETER DANIEL SMITH,
Appellant,

v.

COMMONWEALTH OF VIRGINIA,
Appellee.

JOINT APPENDIX

George M. Rogers, III
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Hampton, Virginia 23666
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by Court Appointment

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VIRGINIA:

IN THE CIRCUIT COURT OF THE COUNTY OF GLOUCESTER

March 7, 1977

THE GRAND JURY CHARGES THAT:

On or about January 26, 1977, in the County of Gloucester, Peter Daniel Smith did steal property, namely, cash money, jewelry, camera, and other items of personal property, collectively having a value in excess of $100.00, belonging to Willie L. Brooks, Jr. and Mary Brooks.

Virginia Code: 18.2-95

A true bill.

Not a true bill.

John H. Money A True Bill
FORMAN

Upon the evidence of Exxie Robins, Ronald Keith Robins, Mary Brooks and Deputy Sheriff ~~Dewey Evans~~ F.H.Stratton,Jr., witnesses sworn in open court and sent to the grand jury to give evidence.

Filed: March 7, 1977
In Open Court
Charles E King, Jr. Clerk.

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IN THE CIRCUIT COURT OF THE COUNTY OF GLOUCESTER, ON MONDAY, THE 7th DAY OF NOVEMBER, 1977

Commonwealth of Virginia

vs. (Felony No. 2455 - 3/7/77 Grand Larceny

Smith, Peter Daniel
Wicomico, Virginia 23184

This day came again Harry A. Morris, Jr., the Attorney for the Commonwealth and Peter Daniel Smith, who stands convicted for a felony, to-wit: "Grand Larceny" was again led to the bar in the custody of the Sheriff of this Court and came also George M. Rogers III, attorney for the accused, heretofore appointed by the Court to defend him.

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 accused, and the Attorney for the Commonwealth as provided by law.

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 the matters brought out on cross-examination 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 is hereby sentenced to confinement in the penitentiary of the Commonwealth for the term of Four (4) years, and that the Commonwealth of Virginia do recover against the said defendant its costs by it about its prosecution in this behalf expended in the amount of $.

Whereupon, counsel for the defendant moved the Court to set aside the verdict as being contrary to the law and evidence; that the 4 year sentence imposed herein be suspended; which motions after argument of counsel, were overruled.

Whereupon, counsel for the defendant advised the court of his intention to note an appeal of this case and the court doth order the court reporter to provide a transcript of this trial which is to be made a part of the record in this case.

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

Common Law Order book 23, page 18 .

A Copy-teste:

Charles E. King, Jr., Clerk

By_____, Deputy Clerk

MARY LINDA BROOKS, a witness called on behalf of the Commonwealth, having been duly sworn, testified as follows:

Q. In particular, what money was missing?

A. Two dollar bills.

Q. Two dollar bills?

A. Right.

Q. How many two dollar bills did you have?

A. Ten. I had been saving them.

Q. And how many were missing?

A. All of them.

Q. All ten?

A. Yes, sir.

Q. All right. What other money, please?

A. About $170.00, and I had an envelope that had money in it that was my mother's, and I was going to take it over there in the next couple of days. It was hers.

Q. Do you have knowledge of how much money was in that envelope?

A. Yes, sir. It was a five dollar bill and five ones.

MR. MORRIS: Mr. King, would you please let us have the envelope that is in the file that was introduced in the lower court?

THE CLERK: Yes, sir.

BY MR. MORRIS: (Continuing)

Q. I show you this envelope, Ms. Brooks, and ask if you can identify that, please?

A. Yes. That's the one.

Q. All right, Which envelope is that?

A. It's the one that the money was in, the five ones and the five dollar bill.

Q. MR. MORRIS: Your Honor, I would introduce that as Commonwealth's Exhibit No. 1.

THE COURT: Commonwealth's Exhibit No. 1.

NOTE: At this point, the envelope is marked and filed as Commonwealth's Exhibit No. 1.

BY MR. MORRIS: (Continuing)

Q. Now, what did you do with that envelope? Let me ask you this. Where did you find the envelope?

A. Where did I find it?

Q. Where did you find the envelope?

A. On the floor underneath of a whole pile of mess when I was cleaning up.

Q. All right. What did you do with this envelope later on?

A. I called Deputy Sheriff Evans and told him that I found an envelope and that I knew there was money in there, and whoever got the money, the money had to be torn, because of the way the envelope was torn. So, he came and got it and took it back. Plus, it had a piece of paper in there with writing on it, and that was in each half of the envelope.

Q. I show you this piece of paper and ask you if you can identify that, please?

A. Yeah. That was in the envelope.

Q. That piece of paper was in the envelope?

A. Yes.

Q. With the money?

A. Right, with the money.

Q. The money being the one five dollar bill and the five one dollar bills?

A. Right.

Q. How was the paper placed in the envelope?

A. Well, the smaller part was in this side. It was torn in two, and each part was in each part of the envelope that I found.

Q. All right.

MR. MORRIS: I would introduce that as Commonwealth's Exhibit No. 2, Your Honor.

NOTE: At this point, the two pieces of paper are marked and filed as Commonwealth's Exhibit No. 2.

BY MR. MORRIS: (Continuing)

Q. What did you do with that card?

A. What?

Q. What did you do with that card after you found it, Ms. Brooks?

A. That piece of paper?

Q. Yes.

A. I gave that to Deputy Sheriff Evans, too.

Q. All right. Do you recall what day you gave that to him?

A. The 27th, the very next morning.

Q. The next morning after you arrived and found

the break-in?

A. Yes. I called him the next morning.

Q. Right. I quite understand that. Now, as to these two dollar bills, and as to the other cash money that was in the house, you didn't have any serial numbers written down on any of them, did you?

A. No.

EXIE ROBBINS, a witness called on behalf of the Commonwealth, having been duly sworn, testified as follows:

Q. Let the record show that she pointed to the defendant, please. How long have you known Peter Daniel Smith?

A. Well, all my life. I mean, since he's been born.

Q. All right, Did you see him on this particular Wednesday, January 26th, 1977?

A. Yes, sir.

Q. All right. Would you please tell us how many times you saw him and what he did each time you saw him?

A. Well, he come over into the Tasty Freeze, and he give me an order for two large barbecues. So, Mrs. Cook fixed the barbecues for him, and I went to the window to take it to him, and he gived me, he passed me a one dollar bill first. It was torn.

Q. Did you say it was a torn one dollar bill?

A. Yes, sir. Then, he gived me a two dollar bill. So, I give him the change back.

Q. Now, Mrs. Robbins, you say you received a torn two dollar bill. Did anyone else see this torn two dollar bill?

A. It was a one dollar bill.

Q. I'm sorry. This torn one dollar bill, did anyone else see this?

A. I went back and showed it to Mrs. West, and I asked her would it be all right to take it, and she said "Sure, go ahead." So, I went back to the cash register and put it in there and gave him his change back.

Q. All right. Then, did you see this man again that evening?

A. Yes, sir. He was gone out of there for an hour. He was with Lloyd Jenkins.

Q. Lloyd Jenkins?

A. Lloyd Jenkins. So, they went out and come on back in here and ordered two more barbecues, two more large barbecues. So, he give me another two dollar bill, and he give me the eight cents.

Q. All right. Did you see him again that afternoon?

A. Yes sir. He went off, went out again, and stayed about a half hour. I expect it was a half hour. Then, he came on back, and he wanted four small ones and two large cokes. So, he give me two dollar bills then. So, I went ahead and give his change to him.

Q. Well, who was he with on this occasion?

A. Well, the last time he was in, Lloyd Jenkins came in with him.

Q. All right. Now, you stated three times. Was he in a fourth time?

A. Sir?

Q. Was he in a fourth time? How many times did he come in that evening?

A. Well, Danny came in, but he -- well, he came in twice, but you see, on the last time, I gave him the four barbecues, and he just sat there and ate them, you know, in the building.

Q. All right.

A. Then, he got up and he came over to the ice cream side and got two milk shakes. One was vanilla, and one was cherry-pineapple, and he gave me another two dollar bill.

Q. He gave you another two dollar bill?

A. Yes, sir; which was the fifth two dollar bill.

Q. So, he gave you five two dollar bills?

A. Yes, sir.

Q. And a torn one dollar bill?

A. Yes, sir.

Q. All right. Now, Mrs. Jenkins, what did you do with the one dollar bill after you received it?

A. Mrs. Robbins.

Q. Excuse me. Mrs. Robbins, what did you do with the one dollar bill, the torn one dollar bill, after you received it from Mr. Smith?

A. Well, I went down and showed it to Mrs. West in the kitchen, and I asked if it would be all right to take it, and she told me yeah, to go ahead, but to tape it together.

Q. Was it taped together?

A. No, sir.

Q. Now, did you put it to one side, or did your put

it with the rest of it?

A. I put it in a little drawer like she told me.

Q. Was it with the rest of the bills?

A. No, sir. I put it in with the two dollar bills.

Q. Okay. Now, could you roughly describe, if you can recall, where the one dollar bill was torn? How close to the end was it torn?

A. Well, it was torn kind of not quite halfway.

Q. All right.

A. Not quite halfway to the end.

Q. I show you this one dollar bill and ask you if you can identify that at all, Mrs. Robbins?

A. Yes, sir; that's it.

Q. How can you tell?

A. Because I can tell, because when he give it to me, I was going to try to tape it, but we didn't have no tape, so I just put it in just like it was. It was torn just like that. That's it.

Q. All right.

A. It was torn like that, but that sure is it.

Q. You said that the bill, in answer to Mr. Morris' question, was torn not quite halfway. Now, do you mean it was only torn halfway through?

A. No, sir. He passed me -- when he passed me the dollar bill, both pieces was there.

Q. It was in two pieces then.

A. Yes, sir.

Q. Oh, okay.

A. And I was going to tape it, but we didn't have no tape, so Amy told me to shove it in the drawer, so I put it in the drawer with the two dollar bills.

Q. Did you do anything with it after you shoved it in the drawer?

A. No, sir. I put it in the drawer with the rest of the two dollar bills.

Q. And that's the last you saw of it.

A. Yes, sir. I put it right in there.

Q. Now, that night, who made up the money to be deposited, or to be taken from the Tasty Freeze when you all closed up?

A. Well, let's see. Mrs. Cook and I counted the money.

Q. And did you and Mrs. Cook count it that night?

A. Yes, sir.

Q. And you counted all the money?

A. (Shaking head affirmatively)

Q. Is that right?

A. Yes, sir. We counted all the money.

Q. And you did on that night, is that right?

A. Yes, sir.

Q. What did you do with it then?

A. Well, we put it in the cash box. I don't want to speak out of turn, but I said "Well, I got five two dollar bills at one time from the same person," I even showed it to Mrs. West.

Q. What did you do with the cash box?

A. Well, the boss took it home.

Q. Who was the boss taking it home?

A. Edgar West.

Q. Did you receive any other torn one dollar bills during your shift besides this one dollar bill?

A. No, sir.

Q. When you counted the money that night, did you see any other torn one dollar bills besides this torn one dollar bill?

A. No, sir. That was all we had.

EDITH ANN WEST, a witness called on behalf of the Commonwealth, having been duly sworn, testified as follows:

Q. Did you see any money with your eyes that was in any way damaged or mutilated?

A. Yes, sir.

Q. Would you please describe what you saw?

A. Well, I was in the back room working, and the girl that I had there in the front, who was working the counter that night, came to the back door and asked me if it was all right for

her to take this piece of money, and I looked at it, and it was torn in half, and I told her it was all right, and for her to put it in the drawer underneath the tray.

Q. All right. When did you next see this money, Mrs. West, this torn one dollar bill?

A. The next morning when I went in my cash box to fix my money to go to the store at 10:00 o'clock.

Q. In the morning?

A. Yes, sir.

Q. All right. Now, where was the cash box? Where did you get the cash box?

A. Well, the cash box was brought home that night by my husband when he came home, but I didn't go in there that night. I only went in there in the morning to get the money straight.

Q. To your knowledge, was the box opened from the time it left the Tasty Freeze until the time you opened it the next morning?

A. No, sir.

Q. It was not opened?

A. That's right, sir, not opened. The girls close the cash register and put the money in the cash box, and my husband brings it home.

Q. It was in your home overnight?

A. Yes, sir.

Q. And you took it to work the next morning?

A. Yes, sir. We always take a certain amount to work

in the morning and leave the rest at home.

Q. All right. Now, did you see the torn dollar bill again the next day?

A. Yes, sir. I saw it the next morning when I went in the cash box. It was torn, and I took it and laid it aside, because I didn't use it.

Q. What did you do with that torn dollar bill?

A. I put it in the box, then put it in the safe until I had a chance to go to the bank.

Q. Did you give it to anyone that day?

A. Later on that day, Deputy Evans came over and asked me about the money, and I told him I had taken in some, and he asked me if he could see it, and I told him I would have to go home, and he asked me had I taken it to the bank, and I said no, that I didn't take it to the bank.

Q. Did he come and see you that day?

A. Yes, he came over later that afternoon.

Q. And you gave it to him?

A. Yes, sir. He came down and got it.

Q. I show you this and ask you if you can identify it, Mrs. West.

A. Well, I can't definitely say it's the same one, but the dollar bill was torn in half. Like I say, whether this is the same one or not, I don't know. I know I had a dollar bill that was torn.

Q. Was it torn in the same manner as this?

A. Yes, sir.

Q. Now, did you see who had handed this torn instrument to the lady who was working for you?

A. No, sir; because I was working in the back room.

Q. Who was working the front counter that night?

A. Exie Robbins.

Q. All right. Now, you say this one dollar bill was kept in your safe until it was given to Deputy Evans?

A. Yes, sir.

Q. Was it locked up in your safe?

A. Yes, sir.

Q. Now, in response to Mr. Morris' question, you said that from the time the cash box got home until it was opened up the next morning, nobody had opened it, is that right?

A. Yes, sir.

Q. But, you had taken some money out of it, is that right, and left it in the safe at your home.

A. No, sir. All the money is brought from the store at night and put in the safe at night until the next morning, and then, I take my money out.

Q. All right, When you took the box -- I take it it's a cash box?

A. That's right, sir. We have a small box.

Q. Was the cash box, without being opened, put into the safe, or was the money taken from the cash box and then put into the safe?

A. No, sir. The cash box is brought in the home at night, and I put it in the safe until the next morning. Then, I take my money out.

Q. All right. Does the cash box go into the safe, too?

A. Yes, sir. Nothing is removed from the cash box at nighttime.

Q. And then, the next morning is when some of the money was taken out and left in your safe?

A. Right, sir.

Q. All right. So, you didn't see this dollar bill or see a torn dollar bill from the time that Ms. Robbins asked you about it until you saw a torn dollar bill in the cash box the next morning, is that right?

A. That's right. I didn't count the money that night, sir.

Q. Okay. And as you were very fair in saying, you can't say that this is the same dollar bill that you saw that night, is that right?

A. That's right, sir. I had a torn dollar bill, but whether that's the same one or not, I don't know. We had a torn dollar bill that was taken in that night. That's all I can say.

Q. As a matter of fact, you can't even say, can you, ma'am, that the torn dollar bill that you saw the next morning was the same one that you saw the day before, can you?

A. Well, I assume it was the same one taken in the night, because --

Q. I understand that, but that's an assumption. You can't state that as a fact, because you weren't there the rest of the evening, is that right?

A. No, sir. I didn't count the money that night.

Q. Did you see any other torn dollar bills in the

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box besides that one?

A. No, sir. That was the only one.

Q. Did you have any other torn one dollar bills in your safe?

A. No, sir.

EDGAR WEST, a witness called on behalf of the Commonwealth, having been duly sworn, testified as follows:

Q. I direct your attention to the last week in January of this year. Do you recall who picked up the money, who took it home, and this sort of thing during this week?

A. January the 26th?

Q. Yes, sir.

A. I took it home.

Q. You took it home that week?

A. I carried the box home.

Q. From the time you picked it up from the West Tasty Freeze to the time you brought it home, what did you do with the box?

A. I don't bother the money at all. The girls at the store put the money in the box, I put it in the car and lock it, then carry it home, and that's it.

Q. Did you see Mrs. Exie Robbins that night?

A. Yes, sir.

Q. All right. Tell me in what condition the box was when you got there that night to pick it up?

A. Well, the box stayed underneath the counter, and at the time we closed, we took the box out and checked the cash registers. That's the first thing we do.

Q. Were you there when that was done?

A. Yes.

Q. Were you there when the money was counted?

A. No. I was trying to get everything straight for the next morning, and the girls are charged with that.

Q. Okay. Now, when the box was handed to you, was there or was there not money in it?

A. There was money in it.

Q. Was the led closed?

A. Closed.

Q. Did you open it again?

A. No.

Q. What did you do with it when you got home?

A. I carried it home and put it in the my wife's bedroom.

Q. Did you give it to her.

A. A lot of times, she's asleep, so I just put it in the bedroom.

Q. What did you do with it?

A. I put it in the bedroom.

Q. Any particular place in the bedroom?

A. Most of the time, I just put it on the dresser.

Q. Okay. Now, did you go to work the next day?

A. Oh, yes.

Q. Whereabouts do you work?

A. I've been in the service for 45 years.

Q. When you got up the next morning to go to work,

where was the box?

A. Same place.

Q. Same place?

A. Huh-uh.

Q. And so, you didn't see the money put in the box?

A. No, sir.

Q. And when you got the box, it was closed?

A. Right.

Q. So, you don't know whether there was any money in the box or not, do you?

A. There better be some in there.

Q. I understand there better be, but you didn't actually see it, did you?

A. No, but that's --

Q. Just answer my questions.

A. That's what the girls are for.

Q. Right. I understand that, but you didn't see any that night?

DEWEY W. EVANS, a witness called on behalf of the Commonwealth, having been duly sworn, testified as follows:

What are they, please? (Indicating Commonwealth's Exhibits 1 and 2)

A. This is an envelope which I retrieved from Mrs. Brooks' home.

Q. What Exhibit No. is that, please?

A. Exhibit No. 1.

Q. All right, And this is an envelope?

A. Yes, sir.

Q. Tell me what you know about that envelope?

A. Yes, sir.

Q. Tell me what you know about that envelope.

A. This was in the -- this particular envelope was in the master bedroom of the Brooks' home. It was lying on the floor when I first observed it.

Q. All right. How did you come to be in possession of that envelope?

A. I retrieved it from Mrs. Brooks.

Q. All right. Now, how about the other item, Exhibit No. 2?

A. This particular item was on the floor also, in the same area of the envelope.

Q. All right. When did you get these items, what day?

A. I picked these up on the 27th day of January.

Q. The day after?

A. The day after.

Q. The day after the break-in?

A. Yes, sir.

Q. All right. What did you do with these two items?

A. I had these items processed for fingerprints by the Newport News Police Department.

Q. All right. What did you do then?

A. I got them back, and then, I submitted them to the Consolidated Laboratory in Richmond, Virginia.

Q. All right. Then, how did you come to be in possession of them again?

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A. These were sent back to me.

Q. By whom?

A. By Mr. Davis.

Q. Who is Mr. Davis?

A. He's a fracture match and handwriting expert for the Consolidated Labs in the State for Virginia.

Q. The Forensic Laboratory?

A. Yes, sir.

Q. Do you know when you got those back roughly?

A. It was in February. I can't remember the exact date.

Q. All right. What have you done with them since you received them?

A. They have been locked up.

Q. All right. How did you receive them? By what method?

A. They were sent by certified mail.

Q. All right. And you received it as certified mail?

A. Yes, sir.

Q. Was the seal broken when you received it?

A. No, sir; it was not.

Q. All right. I show you another item and ask you if you can identify this, please?

A. Yes, sir.

Q. What is that, please?

A. This is a one dollar bill. It has my initial and the date on it, 1-27-77.

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Q. Is it on both pieces of the one dollar bill?

A. Yes, sir; it is.

Q. Are your initials and the date 1-27-77 on both pieces of the other two exhibits also?

A. Yes, sir.

Q. All right. How did you come into possession of the one dollar bill?

A. I received this dollar bill from Mrs. Ann West.

Q. Mrs. Ann West?

A. Right.

Q. Where?

A. At her home.

Q. And who is Mrs. Ann West?

A. She is the co-owner and manager of the West Tasty Freeze in Hayes, Virginia.

Q. What day did she give these to you?

A. On the 27th day of January, 1977.

Q. What did you do with the dollar bill that she gave to you?

A. I also submitted this, along with these other items, to the Police Department in Newport News to see if they could obtain some fingerprints from the dollar bill.

Q. Would it be correct to say that the dollar bill followed the same route of travel as the other exhibits, 1 and 2?

A. Yes, sir; it did.

Q. And you received that from the lab by certified mail also?

A. Yes, sir.

Q. And it has been locked up also?

A. Yes, sir.

MR. MORRIS: I have no further questions.

THE COURT: Thank you, Mr. Morris.

Mr. Rogers.

CROSS-EXAMINATION BY MR. ROGERS:

Q. Deputy Evans, now, as to Exhibits 1 and 2, the envelope and the piece of papers, did you retrieve these from the floor or from Mrs. Brooks' hand?

A. I got these from Mrs. Brooks' hand.

Q. Okay. How many pieces were you handed?

A. Pieces? I know this paper was in the same shape that it's in now, the two pieces in the envelope here.

Q. So, she handed you four pieces separately? In other words, they weren't attached in any form?

A. No, sir; they were not.

Q. Okay. Now, at the time that these items were sent to Newport News, did you hand carry them over there for prints?

A. Yes, sir; I did.

Q. And after the processing was done on those, you hand carried them back?

A. Yes, sir; I did.

Q. Okay. Then, on the trip of these exhibits up to Richmond, did you hand carry those?

A. Yes, sir; I did.

Q. And you turned those over on February the 2nd of this year? You can check your notes if you want to.

A. Yes, sir.

Q. And your turned those over to Mr. Cleon C. Mauer?

A. Mr. Mauer.

Q. Okay. And you did not see Mr. Durley B. Davis that day?

A. No, sir: I did not.

DURLEY B. DAVIS, JR., a witness called on behalf of the Commonwealth, having been duly sworn, testified as follows:

A. I'm a Questioned Document Examiner for the State of Virginia's Bureau of Forensic Science and Crime Labortory System under the Division of the Consolidated Labortory Services, and I'm assigned to the Northern Virginia Branch in Merryfield, Virginia.

A. This torn envelope, which is marked Exhibit No. 1 for the Commonwealth, this torn note, which is marked Exhibit No. 2, and this torn dollar bill, which is initialed by me as evidence, all three were received in my labortory for examination.

MR. MORRIS: Your Honor, may I introduce it as Exhibit No. 4?

MR. ROGERS: If the Court please, I want to object to the introduction of the torn dollar bill as an exhibit since the chain of evidence has not been established on this.

Q. Where did you receive this dollar bill, may I ask?

A. In my laboratory in Merryfield, Northern Branch of

the Bureau of Forensic Science.

Q. Do you recall when you received it, sir?

A. Yes, I do. It was February the 2nd.

Q. Where did you receive it? From whom?

A. This was recieved in what we call a lockbox. It's a van that carried evidence between the Central Laboratory and the Northern Branch. I got it out of the lockbox where Mr. Cleon Mauer put it.

Q. Did you see Mr. Mauer place this in the lockbox?

A. No. He was in Richmond and I was in Merryfield. I have a notation as to Mr. Mauer putting it in the lockbox in Richmond, and I received it out of the lockbox. This is the way we currier our evidence.

Q. But, you didn't see Mr. Mauer place that in the box?

A. No. He was in Richmond and I was in Merryfield.

Q. And in the normal course of your business, how does a lockbox of the sort get from Richmond up to northern Virginia?

A. Well, it's in a very secure van that has an alarm system. There is an armed guard driver, and there is a CB or whatever, a shortwave radio, and when the lockbox arrives, the principal examiners, the document examiners and the paint examiners and chemists, open the lockbox together and obtain the evidence that's marked for them.

Q. But, Mr. Mauer did not come up to your lab at northern Virginia?

A. No, he did not. It was an armed guard.

NOTE: At this point, the torn dollar bill is marked and filed as Commonwealth's Exhibit No. 4.

Q. Before you get into that examination, what did you do with them when you finished examining them?

A. I placed them in an evenlope, sealed the envelope, placed a certified mail sticker on it, and mailed it to Deputy Sheriff Evans.

Q. By certified mail, sir?

A. Yes, sir.

Q. Now, for what purpose did you examine these three exhibits?

A. I was requested to examine these three items to see if they could have been torn apart all together in the same transaction, if the note and the bill were in the envelope and torn at the same time as the envelope.

Q. All right, sir. How did you go about this, if I may ask? What procedure?

A. Well, it's a meticulous examination that requires low power magnification, and it's a matter of placing the right sides of each of these three items together and the left sides together and seeing if the shear marks match.

Q. Did you have occasion to make a photograph of these instruments placed as you described?

A. Yes, sir.

Q. Do you have it with you today?

A. I do.

Q. Would you let us see it, please? Did you make this photograph yourself, sir?

A. It was made under my direction.

A. All right. This is approximately a five and-a-half times enlargement of Commonwealth's Exhibit No. 2 and Commonwealth's Exhibit No. 4, the note and the dollar bill respectively. These are superimposed to show the findings I have, and in examining this evidence, it was determined that the note, Commonwealth's Exhibit No. 2, and this is an enlargement of it, was torn in pieces which matched perfectly, were torn apart, and the picture, the enlargement here of Commonwealth's Exhibit No. 4, the dollar bill, was torn in two pieces which matched exactly.

The sheared edges of the note and the sheared edges of the dollar bill do not match. The vertical sheared edges do not match perfectly, but approximately one and three-quarter inches of the note and one and three-quarter inches of the dollar bill's sheared edges have contour edges that are the same. The contour for that distance is the same. The sheared particles of the edges do not match exactly, but the likelihood of anything --well, it's extremely likely that these were torn when they were held together when they had sheared edges with a contour that matched this distance.

Well, the sheared edges on the envelope don't have the same contour as the sheared edges on the note and the dollar bill

Q. So, they could have been torn at different times, the envelope from the dollar bill or the envelope from the piece of paper, Exhibit No. 2?

A. Experiments with envelopes that I have conducted indicated to me that they could have been torn at the same time, or they could have been torn at a different time.

Q. It was inconclusive?

A. It was inconclusive.

Q. Okay. As to the dollar bill, Exhibit No. 4, and the piece of paper, Exhibit No. 2, you are not saying that the contours of the two are identical, are you?

A. I'm saying the contour is the same for one and three-quarter inches, and by contour, I'm using a special term, contour meaning the shape of the tear, which is shown by this picture, the shape of the tear. I could not say that the sheared edges were the same because the sheared edges don't match exactly, but the contour is about the same.

Q. It's similar?

A. Using the word contour, I would say that they have the same contour, which means to me that they --

Q. The curve is the same?

A. I admit the edges don't match, but I'm saying the contour is the same.

Q. You are not saying, are you, sir, that they have identical angles, are you?

A. Well, what I'm trying to say is that a contour means that the lines are about the same.

Q. A contour generally is a curved line, right, or one following the edge?

A. Well, I would say that a contour means a curved line, yes.

Q. A curved line, and you're not saying that the degree of the curve between the piece of paper, Exhibit No. 2, and the

curve of Exhibit No. 4, are the same, are you?

A. Well, I'm just not quite sure when you say angle what you are referring to. Now, I'm matching the edges by curve, which really doesn't have an angle, but the general contour of this note is about the same as this here, and I admit that the little sheared edges don't match, because they probably weren't stuck together, and they are of different paper strengths.

Q. And how tall from top to bottom is a dollar bill?

A. Well, sir, the dollar bill is 2 and 19/36 inches.

Q. All right, sir.

A. The note is 3 and 1/16 inches.

Q. So, for about the first two-thirds of the way?

A. Of the dollar bill.

Q. Right. Of the dollar bill, the best you can say is that the curves are similar.

A. It matches about 1 and 3/4 inches of the note.

Q. But, you cannot in your expertise and in your expert opinion state unequivocally that these two were torn at the same time?

A. No, I can't, unless the torn fibers match, and they don't match.

Q. And the fibers did not match?

A. The fibers didn't match.

MR. ROGERS: If the Court please, at this time, I would make a motion that the Commonwealth's evidence be stricken. If the Court please, I realize that the evidence at this stage is taken in the light most favorable to the Commonwealth, but by the same token, even with the evidence taken in that light,

it's still incumbent upon the Commonwealth to prove their case beyond a reasonable doubt.

If the Court please, we have two things here that the Commonwealth has to do, prove that the crime has been committed -- I don't think there is any question about that. We surely don't question that. Second, they must prove that the defendant did it. Now, in order to do this, the Commonwealth must get from the description of a torn dollar bill to the dollar bill, and if the Court please, he can't do it, and he hasn't done it, or he would have done it.

If the Court please, we had an expert in here. All he could say was that it was similar, and in his bottom line, he could not say that they matched. He could not say they were torn at the same time, and if the Court please, without that, all this testimony from Exie Robbins and Mrs. West and Mr. West, all that shows is that Mr. Smith had a torn dollar bill, something any of us could have had, and it is no crime to possess a torn dollar bill, and that's all the Commonwealth has, and if the Court please, he is not even in a position to overcome the burden at the end of his evidence, and based on that, I would make a motion that the evidence be stricken.

THE COURT: Thank you, gentlemen, for your statements. At this time, the Court overrules the motion. Next witness, Mr. Rogers.

MR. MORRIS: I have no questions, Your Honor.