CLERK
SUPREME COURT OF VIRGINIA
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RICHMOND, VIRGINIA

IN THE

Supreme Court of Virginia

AT RICHMOND

RECORD NO. 78-0511

JAMES J. REESE,
Appellant,

v.

COMMONWEALTH OF VIRGINIA,
Appellee.

JOINT APPENDIX

Richard N. Levin, Esq.
LEVIN, MARCUS & LEVIN
341 High Street
Portsmouth, VA 23704
Counsel for Appellant

Jim L. Chinn
Assistant Attorney General
900 Fidelity Building
830 East Main Street
Richmond, VA 23219
Counsel for Appellee

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PROCEEDINGS

VERDICT

he jury, find the defendant .....

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.....

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.....

.....

Foreman.

THE CIRCUIT COURT

Docket ..... File .....

COMMONWEALTH OF VIRGINIA

v.

JAMES J. REESE

.....

INDICTMENT

JANUARY Term, 19 73

GRAND LARCENY

..... A TRUE BILL

Angel E. Capozzi Foreman.

Witnesses:

Sgt. Chambers

.....

p. d.

STATEMENT OF COSTS

Fine . . . . . $.....

Clerk . . . . . $.....

Com. Atty. . . . .

Witnesses . . . .

Sgt. . . . .

Court Reporter. . . ..

Atty. (Appt.) . . . .

Jury . . . .

D. M. V. . . . .

Abstracts . . . .

Warrant . . . .

Municipal Ct. Fee. . .....

Atty. (Lower Ct.). . .....

Total Costs $.....

Total Fine & Costs $.....

COMMONWEALTH OF VIRGINIA)
) To-Wit:
CITY OF PORTSMOUTH)

JANUARY 5, 1978
GRAND LARCENY

2839B

IN THE CIRCUIT COURT OF THE CITY OF PORTSMOUTH:

The Grand Jury charges that: on or about September 17, 19 77, in the City of Portsmouth James J. Reese did steal two Firestone Tires valued at $100.00 or more, having a value of approximately $110.00 belonging to Firestone Tire & Rubber Company,

COMMONWEALTH OF VIRGINIA)
) To-Wit:
CITY OF PORTSMOUTH)

JANUARY 5, 1978
GRAND LARCENY

2889B

IN THE CIRCUIT COURT OF THE CITY OF PORTSMOUTH:

The Grand Jury charges that: on or about September 17, 1977 in the City of Portsmouth James J. Reese did steal two Firestone Tires valued at $100.00 or more, having a value of approximately $110.00 belonging to Firestone Tire & Rubber Company,

against the peace and dignity of the Commonwealth of Virginia.

Va. Code § 18.2-95

2

Felony

Commonwealth of Virginia

City of Portsmouth

To any Police Officer of the City of Portsmouth or any other Authorized Officer:
You are hereby commanded in the name of the Commonwealth of Virginia to forthwith arrest

James Junious Reese — Accused

632 Lancer Dr. Ports, Va. — Last Known Address

and to bring him (her) before the Portsmouth General District Court to answer a charge that on or about 9/17/77 19____, he (she) committed an offense in this City, in violation of Section 18.2-95 of the Code of Virginia, in that he (she) did unlawfully and feloniously steal two Firestone tires GR-70x-15 white walls value $ 110.00 ~~belonging to Firestone Tire & Rubber Co. located 901 Frederick~~ Blvd. Portsmouth, Va.

POC 901 Frederick Blvd. Ports, Va.

On the basis of the sworn statement of Det. P. M. Duckwall

I, George W. Cooper, Magistrate for the City of Portsmouth have found probable cause to believe the accused committed the offense.

Dated Sept. 26, 1977 19____ Time 3:20 PM.

Magistrate for the City of Portsmouth

Witnesses:

3

☐ Additional Witnesses on Reverse Side

Form No. M-2 Rev. 1/74 (Rule 3A:4)

Felony

77-907

The Commonwealth

vs.

James Junious Reese

632 Lancer Dr. Portsmouth,

N M DOB 1/13/37

(Description)

Docket No.____

Executed by arresting the within named accused this 26 day of Sept. 1977

Time 1625 P.

Det. J. C. Turner P. O.

Det. P. M. Duckwall P. O.

Complainant Notified?

City Cost 10 00

Richard Lunn, OC P. D.

NOV 16 1977 19

$

VIRGINIA: IN THE CIRCUIT COURT FOR THE CITY OF PORTSMOUTH HELD ON THE 13TH DAY OF JANUARY, 1978

COMMONWEALTH OF VIRGINIA	)	Upon an Indictment for Grand Larceny
v.	)	Criminal Docket No. 28896 - January term, 1978
JAMES J. REESE	)	

This day came the Attorney for the Commonwealth, and the accused, James J. Reese, born on January 13, 1937, who stands indicted for grand larceny, being called, appeared in Court in answer to his recognizance, and came also Richard N. Levin, attorney for the defendant, said attorney being of the defendant's own choosing, and upon being arraigned, the accused tendered a plea of "Not Guilty" to grand larceny as charged in the indictment, after private consultation and with the advice of his counsel, and the Court advised the accused of his constitutional rights as to trial by jury, and the accused, in person, waived trial by jury, and with the consent and concurrence of the Attorney for the Commonwealth and of the Court here entered of record, the Court proceeded to hear and determine the case without the intervention of a jury; and thereupon, the witnesses were sworn, excluded from the Courtroom, called singularly, and testified; whereupon, the Court having fully heard the evidence finds the said James J. Reese guilty of grand larceny as charged in the indictment and fixes his punishment at a fine of One Hundred Dollars ($100.00) and eight (8) months in jail, but this judgment is hereby declared to be subject to the right of the Superintendent of the State Penitentiary to apply for and receive into his custody the said James J. Reese for the period of the

aforesaid sentence or the unfinished portion thereof in accordance with the laws of the Commonwealth in such cases provided. It is further considered by the Court that a transcript of this judgment be forthwith transmitted to the Superintendent of the State Penitentiary in Richmond, Virginia. It is therefore considered by the Court that the Commonwealth of Virginia recover against the defendant the sum of One Hundred Dollars ($100.00) and its costs by it about its prosecution in this behalf expended; and thereupon, the Court advised the defendant that he has a right to apply for an appeal from this conviction to the Supreme Court of Virginia and was also advised that counsel would be appointed for that purpose if requested; whereupon, the defendant, by counsel, noted an appeal; and the said James J. Reese, being under a continuing bond to appear at any and all proceedings that may be had relative to said charge, he is hereby directed to make his appearance before this Court at such time as his appeal is terminated in the Supreme Court of Virginia, or upon abandonment of his appeal, whichever occurs first.

And the defendant, James J. Reese, is released from custody until that time.

The Court certifies that the defendant and his counsel were present in person at every stage of the proceedings.

The Court certifies that it provided Faye B. Chapman, a Court Reporter, to record verbatim the evidence and incidents of trial and doth further order that the expense of reporting and recording the same shall be paid by the Commonwealth of Virginia, and the charges therefor have been taxed as a part of the costs in this case.

VIRGINIA: IN THE CIRCUIT COURT FOR THE CITY OF PORTSMOUTH

COMMONWEALTH OF VIRGINIA	
vs.	NOTICE OF APPEAL AND ASSIGNMENTS OF ERROR
JAMES REESE	

TO: Walter M. Edmonds, Clerk of the Circuit Court for the City of Portsmouth

Notice is hereby given that James Reese appeals from a final judgment rendered by this Court on the 13th day of January, 1978, and announces his intention of applying for a Writ of Error and Supersedeas to the Supreme Court of Appeals of Virginia.

ASSIGNMENTS OF ERROR

1. The verdict of the Court is contrary to the law and the evidence.

A transcript is to be hereafter filed.

Given under my hand this 23rd day of January, 1978.

JAMES REESE

By _____
Of Counsel

Richard N. Levin, p. d.
Levin, Marcus & Levin
241 High Street
Portsmouth, VA

I hereby certify that a true copy of the foregoing pleading was duly mailed this 23rd day of January, 1978, to James A. Cales, Counsel of Record for the Plaintiff.

_____

N. MARCUS & LEVIN
ATTORNEYS AT LAW
PORTSMOUTH, VA

FILED
JAN 23 10 12

ELIZABETH P. BERRY
FAYE B. CHAPMAN
COURT REPORTERS
NORFOLK, VIRGINIA

Rec'd 2/10/78

VIRGINIA: IN THE CIRCUIT COURT OF THE CITY OF PORTSMOUTH

Nothing in the transcript to say someone asked Reese to stand up at the time.

COMMONWEALTH OF VIRGINIA :

VS. : INDICTMENT #28,896

JAMES J. REESE :

TRANSCRIPT

Following is the stenographic transcript of the testimony introduced and proceedings had upon the trial of the above-entitled case, in said court, on the 13th day of January, 1978, before the Honorable R. Winston Bain, Judge of the Circuit Court of the City of Portsmouth, Virginia.

* * * * * * * *

APPEARANCES: STERLING H. WEAVER, SR., ESQ.
Attorney for the Commonwealth

RICHARD N. LEVIN, ESQ.
Counsel for the Defendant

(Court reporter sworn)

Reported by Faye B. Chapman

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I N D E X

WITNESS	DIRECT	CROSS	REDIRECT	RECROSS
Sims, Lonnie	12-18	18-25	25-26 27	26-27
Williams, A. V.	28-31	31-36	36-37	
Wooldridge, C. A.	5-7	7-12		

* * * * * * * *

MOTION to sequester witnesses Page 4

MOTION to strike 37

MOTION to strike, renewed 39

* * * * * * * *

THE COURT: How old is your client, Mr. Levin?

MR. LEVIN: Forty-one, Your Honor.

THE COURT: And date of birth?

MR. LEVIN: Today, Your Honor.

THE COURT: Today?

MR. LEVIN: Forty-one today.

THE COURT: All right. Commonwealth of Virginia vs. James J. Reese charged with grand larceny. Commonwealth ready to proceed?

MR. WEAVER: Yes, sir, Your Honor, the Commonwealth is ready to proceed.

THE COURT: Is the defense ready to proceed?

MR. LEVIN: Defense is ready and waives trial by jury. Comes on a not guilty plea.

THE COURT: Very well. Defendant stand. Mr. Edmonds, arraign the defendant.

Oh, yes, swear the court reporter.

(Court reporter sworn).

(Defendant arraigned on Indictment #28,896).

CLERK EDMONDS: How say you, guilty or not guilty?

10

THE DEFENDANT: Not guilty.

CLERK EDMONDS: Do you wish to be tried by the Court or be tried by a jury?

THE DEFENDANT: Court.

CLERK EDMONDS: Does the Commonwealth's Attorney waive trial by jury?

MR. WEAVER: Commonwealth waives trial by jury.

CLERK EDMONDS: All witnesses in the case of the Commonwealth vs. James Junious Reese who are going to testify come forward to be sworn, please.

(Witnesses and defendant sworn).

MR. LEVIN: Motion to sequester the witnesses, Your Honor.

THE COURT: Very well. Motion to sequester granted.

Are you sending the Commonwealth's witnesses upstairs?

MR. WEAVER: Your Honor, for the sake of brevity they can stay here since I only have three and I call Mr. Wooldridge.

(Witnesses leave courtroom).

* * * * * * * *

C. A. WOOLDRIDGE, Witness called by the Commonwealth, having been first duly sworn, was examined and testified as follows:

* * * * * * * *

DIRECT EXAMINATION

EXAMINED BY MR. WEAVER:

Q Would you state your name, sir.

A Charles A. Wooldridge.

Q Where are you employed, sir?

A Firestone Stores, Frederick Boulevard and South Street, Portsmouth.

Q Is that in the City of Portsmouth?

A That's correct, sir.

Q Were you employed there September 17, 1977? DATE

A Yes, I was.

Q Have you ever seen the defendant before?

A I wouldn't recognize him, no.

THE COURT: You are the manager, aren't you?

A That's correct, sir.

MR. WEAVER: 12

Q Did anything happen at your Firestone

Store on this day, sir?

A Well, no more than we missed two tires there that I had pulled from the storage room and put in the service department waiting for one of our representatives from another store to come and pick them up.

Q Did the representative arrive to pick up the tires?

A Yes. He had to sign for them if he picked them up.

Q Did he ever pick them up and sign for them?

A No, sir.

Q Did you look for these tires, sir?

A After about an hour I missed them and questioned around. Finally one of the other employees said -

MR. LEVIN: I object to anything anybody said, Your Honor.

THE COURT: Sustain the objection unless the defendant was present.

MR. WEAVER:

Q What was the value of these tires, sir?

A Wholesale value, approximately $110.00.

Q What type of tires were they?

A It was a radial tire, whitewall radials.

THE COURT: Is that $110.00 apiece, you mean?

A No, sir, together.

MR. WEAVER:

Q Have you seen these tires since you placed them out there that day?

A No, sir.

MR. WEAVER: Answer Mr. Levin's questions, please.

CROSS EXAMINATION

EXAMINED BY MR. LEVIN:

Q As manager for - And you did manage the store, is that correct?

A That's correct, sir.

Q So you are familiar with pricing and cost, Firestone cost?

A That's correct.

Q So if Mr. Weaver says to you what is the cost of these items approximately, and we're dealing with a value that is important to this defendant, approximately is not good enough. Do you know what the value is, the exact value of each tire and what kind of tire was it?

A Well, I stated they were $55.00 each.

Q Now, what kind of tire was it, sir?

A This was a steel radial tire.

Q Made by whom?

A Firestone Tire and Rubber Company.

Q And the serial number? —

A No, sir, I don't have the serial number.

Q How do you know it was a $55.00 tire?

A Sir, we go by size.

Q And you pulled these tires?

A Yes, sir.

Q When the tires came in, did you index them for inventory?

A Yes, I did.

Q How many tires do you have there?

A I'd say about 2,000 tires.

Q Two thousand different tires, and how many different makes?

A Only one, Firestone.

Q I mean, when I say makes, maybe that's not right but how many different sizes and kinds?

A Oh, I'd say about approximately fifty or sixty sizes.

Q And so you can sit here and tell the Court that you know the cost value of each one of those,

No serial number to identify the tires so no way to tell if they belonged to which Firestone store.

your cost value?

A We looked it up at the time, sir.

Q Who looked it up?

A My office and credit man and myself.

Q Did you look it up?

A That's right. We have a cost and then we have a retail value.

Q So the cost was $55.00 on each tire?

A That's correct.

Q So if your manager - You did not testify in lower court, did you?

A No, I did not.

Q Were you still the manager at the time?

A Yes.

Q Of that store and still are on this day?

A That's correct.

Q And so if your manager indicated in lower court -

MR. WEAVER: Objection, Your Honor. He can ask him -

MR. LEVIN: I think I laid the groundwork, Judge.

THE COURT: Let Mr. Weaver make his objection.

MR. WEAVER: Your Honor, the manager

is not on the stand to testify. Anything he said in lower court would not be admissible at this proceeding through this witness as to what this person said.

This man has stated as to the value of the tires to his knowledge. I don't think he can impeach this witness with something that somebody else said.

MR. LEVIN:

Q Let me ask you something -

THE COURT: I don't think you can either.

MR. LEVIN:

Q Was the number of the tire GR-15?

A GR-70x15.

Q GR-70x15. What type of automobile does a GR-70x15 fit?

A They can fit Oldsmobiles, Buicks -

Q Is there any model number or any year they would fit, go back to 1950's, '60's, or would it have to be 70's on up?

A No, not necessarily.

Q Would they fit a Chevrolet?

A They could, very easily.

The type of tire that was taken GR-70x15 will fit and Olds & Buicks

Q These tires, do they - Are they - Do they have serial numbers?

A Yes, they do.

Q And when you inventory these for your, come in as part of your stock, you take inventory with the serial number?

A No, we do not.

Q Then what is the point of the serial number?

A Serial numbers are on the tires and are recorded when we sell them, not until we sell them.

Q All right. Fine. If you were going to give these tires to another store as part of Firestone's service to service store, would you record those serial numbers that are going out?

A No, we do not.

Q Why is that, sir?

A They record them when they sell them.

Q But they would be missing from your inventory, wouldn't they? How does that balance out?

A We go by size, not serial numbers.

Q How many of these tires did you have?

A I have no idea how many I had. I'd say about twenty in that particular size and type.

Q Now, when you went to check your

the tires are never inventoried by serial no. until after they are sold. So how could you tell if they were yours?

When you went to check your cost on them, doesn't your cost statement indicate how many of these size tires you have?

A No, sir.

Q No? You just - Just the cost of the tire and so that's the only inventory check you have. Well, if I may be so curious, how do you check inventory?

A By size.

MR. LEVIN: That's all I have, Your Honor.

MR. WEAVER: Your Honor, I would ask that this witness be excused at this time to return to his business.

THE COURT: Yes. Mr. Wooldridge, you're excused now and may leave if you like.

* * * * * * * *

(Lonnie Sims called to witness stand by Mr. Weaver).

* * * * * * * *

LONNIE SIMS, Witness called by the Commonwealth, having been first duly sworn, was examined and testified as follows:

* * * * * * * *

DIRECT EXAMINATION

EXAMINED BY MR. WEAVER:

Q State your name, please, sir.

A Lonnie Sims.

Q Mr. Sims, where were you employed on September 17, 1977?

A Firestone Tire and Rubber Company.

Q Where is it located?

A It's on Frederick and South Street, Frederick Boulevard and South Street.

Q Have you ever seen the defendant before?

A Yes.

Q Where did you see him?

A At the place I worked, Firestone.

Q What day was this?

A I don't know the exact date but it was in September. Don't know exact date;

Q What if anything happened that day concerning this defendant?

A Say that again, please.

Q Did you observe the defendant doing anything when he was at this place?

A I noticed - I saw him carry the two tires out.

THE COURT: Let's get a little background in here of when it was, what time it was, the circumstances he was there, those sort of things before you jump to the conclusion that he just saw him take some tires.

MR. WEAVER: Judge, he stated he was employed there.

THE COURT: I know he's employed there but I don't know what time it happened or the circumstances, where in the store he was or anything.

MR. WEAVER: Yes, sir.

Q What time -

THE COURT: All this man said was he saw him take some tires. It could have been 7:00 o'clock in the morning or 7:00 o'clock at night as far as we know.

MR. WEAVER:

Q Do you recall the time of day, sir?

A I think it was somewhere, I guess around 11:30 or 12:30, somewhere within that range.

THE COURT: During the day?

A During the day, yes.

MR. WEAVER:

Q What part of the business did you observe the defendant in?

A It was in the service area.

Q And how far was the defendant from you when you first observed him?

A Maybe thirty-five feet maybe, something like that.

Q What if anything did you observe him doing at this time?

A Well, I just, at the time I noticed it, like I say, I only noticed him when I saw him going out with the tires. That's the only thing that got my attention at that time.

Q Where did he go with the tires?

A He went out to a car that was parked in front of the door in front of the service area.

THE COURT: How many tires did he have?

A Two.

THE COURT: How was he carrying them?

A He was carrying one under each arm.

MR. WEAVER:

First saw the Δ 35 feet from himself

Saw Δ carry out 2 tires

Q What did he do when he got out to the car?

A He set them down beside the bumper and unlocked his trunk and he picked them both up and put them in and shut his trunk down.

Q What type of car was this?

A Appeared to have been about a '73 or '74 Chevrolet Monte Carlo.

Q Do you recall the color of the car?

A It was a dark color, looked like maybe dark green or something, blue or something within that range.

Q Was the defendant having any work done to his car at this Firestone Store at this time?

A He came to have his wheels aligned, came to get his wheels aligned.

Q Was he having any tires changed or repair work done on any tires?

A No.

THE COURT: Was his car in the shop being aligned when this incident took place?

A Not at this time, no, sir.

MR. WEAVER:

Q After you saw him put the tires in

the car, what did he do then?

A He left then.

THE COURT: Was that his car he put them in?

A I don't know if it was his car but that's the one he was driving.

MR. WEAVER:

Q Did he return to the Firestone Store after that time?

A Yes, he returned back after about I guess maybe twenty, maybe thirty minutes maybe or a little better.

Q Is this when he got his car aligned?

A Yes, he got the car aligned after the second return.

THE COURT: Well, was he in the car you say you saw him put the tires in the trunk of?

A Was he in the car, you say?

THE COURT: Yes. You say he drove off in a car and thirty minutes later he came back and had his wheels aligned.

A Yes. This was after he had put the tires in his trunk.

THE COURT: What I'm asking you is

did he come back and have the same car aligned that he put the wheels in?

A Yes.

THE COURT: The tires in?

A Yes.

MR. WEAVER: Answer Mr. Levin's questions, please.

CROSS EXAMINATION

EXAMINED BY MR. LEVIN:

Q Your job capacity at Firestone is what?

A It's auto brake and front end mechanic.

Q And you were working that day?

A Yes.

Q And how many other mechanics were on duty that day?

A Just one.

Q Who?

A His name was Raymond Elliott.

Q Does he still work there?

A Yes, sir.

Q And is his bay next to your bay?

A Well, we doesn't have any particular bay that we work in.

Q Well, now, as you face Firestone and

look into Firestone, how many bays are there?

A It's seven bays.

Q Seven bays?

A Right.

Q And from left to right, which bay were you in, the first one, second one, seventh one?

A At which angle -

Q Looking straight at Firestone, here's a door, here's a door, here's a door, here's a door, which one were you at?

A Further end.

Q Which way?

A Left.

Q You were in the first bay as you're facing it on the left?

A I was in the second bay facing it from the left.

Q Where was this other fellow at, which bay?

A He was the next bay to me.

Q So you all were next door to each other?

A Right.

Q Does any of your job capacity include fixing tires?

A Yes, occasionally I fix tires.

all the workmen and there were only 2 were next to each other in the bays at Firestone

Q If you're not busy?

A Right.

Q Was this a busy day?

A No, this was not a busy day. Well, actually it was kind of slow like. It wasn't as busy as it had been being on a Saturday.

Q What was this fellow's name again?

A Who?

Q The other fellow working in the bay next to you.

A Raymond Elliott.

Q Does he still work at Firestone?

A Yes.

THE COURT: Are you a mechanic?

A Yes, sir.

MR. LEVIN:

Q Now, when you saw him he had two tires in his hand. Had he approached you? Do you take the service orders?

A Had he - When I saw him you say had he approached me?

Q Let me rephrase that. Do you take the service orders?

A No, sir.

Q And if somebody comes in with problems,

it's referred to you through the office, is that correct?

A Right.

Q And did you get a repair order on this motor vehicle?

A No.

Q Did you ever do any work on this car?

A No, I didn't.

Q How do you know he had his tires aligned? Somebody told you that but you don't know of your own knowledge, do you?

A Yes, I saw the car.

Q Who worked on it?

A Raymond Elliott.

Q When you saw this man put two tires in his car, did you thereafter say something to Charles Wooldridge, I guess it's your boss?

A No, I didn't say anything.

Q And did you say anything to Raymond Elliott?

A No.

Q Did you say anything to the other gentleman who is waiting to come out?

A No.

Q What I'm asking you is there was

Didn't say anything to his boss after he saw he put the tires in the car

nothing unusual about him taking these tires, was it? I mean that happened every day, as a matter of fact, people get tires fixed and put them in the car, is that right?

A But this was not a tire repair.

Q But you don't know what it was, do you, my friend?

A Yes, I know it was not a tire repair. It was a tire that had not been mounted.

Q Car that what?

A The tire had not been mounted.

Q Well, somebody brings a tire in - When was your attention first drawn to those tires?

A Well, the reason that I noticed it is because it's unusual, very seldom that anyone will get tires and just put them in the trunk.

Q But it happens, doesn't it?

A It happens, yes.

Q When was your attention drawn to it thereafter, when your boss said something to you?

A Yes.

Q How long thereafter?

A It was about three hours.

Q Three hours thereafter. And you didn't work on this man's car?

Sims never saw the kind of work done on the car.

indicates that people do get tires fixed but them in the car

didn't bring it to his bosses attention until almost 3 hrs after the incident

A No.

Q And you didn't carry on any conversation with this man, did you?

A Not - This was after.

Q You talked to him?

A After the incident.

Q Where did you talk to him?

A Well, just in general talking -

Q Where?

A As he was waiting to get his car aligned.

Q At Firestone?

A In the building, yes.

Q And this was the second time you saw him or the first time?

A This was after the incident had happened, he had brought it back while his car was waiting to get aligned.

Q Did you say anything to him about tires if it was unusual to you, did you mention anything to him at all?

A No.

Q So if it was that unusual to you, my friend, wouldn't you have said something to him?

A No, because I didn't know had he paid

the second time he came to the garage he never said a word to the D about the tires being taken

for the tires or how, see, that's the reason I didn't say anything.

Q What kind of tires were they? Of your own knowledge, not what somebody's told you.

A Of my own knowledge, I don't know.

Q How close were you to him when he had those tires?

A Like I say, about -

Q From here to that wall or from here to that chair or what?

A I was as far as from here to the wall back there. It might have been a little further than that.

Q Even further than the gentleman sitting in the very back, is that correct?

A Right.

Q That's when you saw the man with two tires, right?

A Yes, I noticed him with the tires.

Q Let me ask you something, my friend. If I'm back there past that wall, can you tell whether those tires were new tires, used tires or what? Was there any chalk on them?

A No.

Q All you saw was a gentleman with two

tires; you couldn't tell whether they were Firestone tires or new tires or used tires?

A At that distance, no.

MR. LEVIN: That's all I have.

THE COURT: Well, I take it when you saw the defendant leaving with two tires, that didn't arouse any suspicion in your mind at all?

A No, sir. No, I didn't have no idea at all that it was nothing like this. It didn't arouse no suspicion, no.

MR. LEVIN:

Q One more question. The tires that you saw, just for the Court's - And I have asked it before; I don't want to be repetitive, but the tires you saw in this man's hands past that wall you couldn't say belonged to Firestone?

A That's true. I couldn't tell what name it was. I couldn't truly say it was, no.

MR. LEVIN: Thank you very much.

REDIRECT EXAMINATION

EXAMINED BY MR. WEAVER:

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Q But the defendant was walking out of Firestone with these tires under his arm, wasn't he?

THE COURT: You have gone all through that. No use repeating that.

You're excused -

MR. WEAVER: Just one other question, Judge.

THE COURT: Is it something fresh in rebuttal to what's been asked on cross examination?

MR. WEAVER: I may have asked it, Judge -

THE COURT: You sure asked that first one.

MR. WEAVER: I hope I'm not repetitive, Judge.

Q Did he have any type of tire work done in Firestone that day?

A No, not to my knowledge, no.

Q Did you see him each occasion which he was there?

A Yes.

RECROSS EXAMINATION

EXAMINED BY MR. LEVIN: 33

Q If he approached Mr. Elliott - Is Mr. Elliott here?

A No, sir.

Q And the work that was done on his motor vehicle was done by Mr. Elliott, correct?

A Yes.

Q And if he talked to Mr. Elliott, you don't know what the conversation was, do you?

A No.

MR. LEVIN: Fine. That's all.

REDIRECT EXAMINATION

EXAMINED BY MR. WEAVER:

Q If he'd had tire work done in the shop area, would you have been in a position to have observed it?

A I don't know. Sometimes, no, not all the time because it depends on what I'm doing, what location I'm in in the shop. Sometimes tire work is done and I don't know it; I don't observe all of it, you know.

MR. WEAVER: I have no further questions, Your Honor.

THE COURT: All right. Thank you, Mr. Sims. You're excused now. You may stay or leave, as you like. If you wish to remain, you may stay in the courtroom.

* * * * * * * *

MR. WEAVER: I call Mr. Alvin Williams.

* * * * * * * *

A. V. WILLIAMS, Witness
called by the Commonwealth,
having been first duly sworn,
was examined and testified
as follows:

* * * * * * * *

DIRECT EXAMINATION

EXAMINED BY MR. WEAVER:

Q State your name, please, sir.

A Alvin Van Williams.

Q Where were you employed on September 17, 1977?

A Firestone Stores, Portsmouth, Virginia.

Q And in what capacity?

A Assistant manager.

Q On this date, sir, did you see the defendant, James Reese, at this store?

A Yes, sir, I did.

Q Approximately what time did you see him?

A I'd say between 9:00 and 10:00.

THE COURT: Is that in the morning?

A It was Saturday morning, right.

MR. WEAVER:

Q Did you have a conversation with him at this time?

A Yes, sir.

Q What was the nature of the conversation?

A He come in and wanted to get his car worked on. He had a shimmy in it and wanted to check the alignment to find out if that was the cause of the nature of his problem.

Q Did he want any tire work done, any work done to the tires?

A Probably so if the shimmy was in the tires or whatever because the common nature with radial tires, sometimes they may cause a shimmy in the car.

Q Did he go through you to get the service order?

A Yeah.

Q What if anything did you observe Mr. Reese doing at this store that day?

A Well, the only thing I observed him doing was he came in, placed the order to get his car worked on, and later he came back to me and said he had to leave and he left and later returned.

THE COURT: He left his car there -

A No, sir, he did not leave his car there.

THE COURT: He did not?

A No, sir.

MR. WEAVER:

Q What kind of car was he driving that day?

A It was a Monte Carlo.

Q Do you remember the color?

A It was a dark Monte Carlo with a dark top, I think.

Q Did you have - Did you see him when he came back to the Firestone dealership?

A Yes, I did.

Q What type of work did he have done at that time?

A He had his car aligned.

THE COURT: What time did he come back, do you recall?

A Around, somewhere around noontime, I guess, close to it, maybe a little later, maybe a little earlier than that.

MR. WEAVER:

Q Do you all do service orders for tire repairs?

A Yes, sir, we do.

Q Did you do a service order for James Reese for a tire repair that day?

A Not that I know of.

Q Did you sell him any tires?

A No, sir.

Q Okay. Did you see the work that was done on his car when it was brought back?

A I saw the work order as far as the hard copy that was brought back to me as far as the alignment that was done, yes.

MR. WEAVER: Answer Mr. Levin's questions.

CROSS EXAMINATION

EXAMINED BY MR. LEVIN:

Q You didn't see him take any tires either, did you?

A No, sir, I didn't.

Q And your testimony is that with radials it's common that there could be a tire problem, is that correct?

A Yes.

Q So all you did as a matter of fact was take the service order?

A Right.

Q And when he came in did you see where he parked his car? Did you see that car when he first came in?

A Yes.

Q And so I take it from where you take your orders you have a common view to the service area?

A Correct.

Q And from that common view did you see him pick up any tires and put them in his car?

A No, sir.

Q And you were working that morning, weren't you?

A That's correct.

Q When he came back, wasn't it around 1:00 or 2:00 o'clock that he came back?

A It was later that day. I can't recall exactly what time it was.

Q As a matter of fact, he had the work done and paid for it, didn't he?

A That's correct.

Q And do you know Mr. Elliott who works at Firestone?

A Yes.

Q And who did the work on his car, Mr. Elliott or the other gentleman?

A I don't know which one.

Q You don't assign the work, then?

A No, sir.

Q Who assigns that work?

A No one assigns the work. The one that's not busy that particular day or not working on a job will most likely do the work on the car.

MR. LEVIN: That's all I have.

THE COURT: You don't know who took the tires?

A No, sir.

THE COURT: Did you work on the inventory to see if any tires were missing?

A Two tires were in fact missing that day, sir, yes.

THE COURT: Well, is that hearsay with you -

A No, that's not hearsay. The tires were in inventory on our books and were missing because they were pulled to be transferred to another

store.

THE COURT: Did you ever question this man about the missing tires?

A No, sir.

THE COURT: When did you all find out the tires were missing?

A Later that evening we found out the tires were not where we had placed them.

THE COURT: All right, sir.

MR. LEVIN:

Q Let me ask you this. How do you take inventory?

A How do we take inventory? We have a stock ledger, for one.

Q What does that stock ledger indicate?

A How many tires you have on hand.

Q Are those tires serial numbered?

A Yes, sir, they are.

Q But you don't have them -

A Yes, sir. Maybe a thousand tires in the store, there's no way you can account for serial numbers. The only time you record serial numbers is when you sell them. According to law, you have to do that.

Q When was the last time you inventoried these tires?

A The last time?

Q Before the tires were missing.

A I can't really say.

Q Do you take inventory? Is that part of your job?

A Yes.

Q A day, two days, a week, a month -

A I still can't say. More than likely twice a month we take -

Q Twice a month?

A Yes.

Q Do you know when this happened?

A I can't recall.

Q Do you know the month?

A September.

Q You don't recall when the last inventory was on those tires?

A Probably around the middle of the month.

Q Is cost also a part of your job?

A Yes.

Q Do you know cost to Firestone, not retail but cost to Firestone?

A Yes.

Q What was that cost?

A It was certainly worth more than $100.00 -

Q I'm not asking you that. If you don't know, say it.

A Not -

Q You don't know what Firestone's cost is?

A No, sir.

MR. LEVIN: Thank you.

THE COURT: Do you know of your own knowledge when the tires were recovered or did you all ever recover them?

A No, sir.

THE COURT: The tires were never recovered?

A Never recovered.

MR. LEVIN:

Q Was this matter reported to the police?

A Yes, it was.

REDIRECT EXAMINATION

EXAMINED BY MR. WEAVER:

Q When was it reported to the police?

A It was reported that same day, later

that evening.

MR. WEAVER: I have no other questions of this witness, Judge.

THE COURT: All right. Thank you, Mr. Williams. You're excused and you may stay in the courtroom or leave, as you see fit.

* * * * * * * *

MR. WEAVER: Judge, that's the Commonwealth's case. We rest.

MR. LEVIN: Your Honor, I would move to strike the Commonwealth's evidence. I don't think we even have suspicion here, Your Honor. We have a man go to Firestone, has work done. He said he saw two tires. The very best the Commonwealth has produced before Your Honor is a mechanic who saw a man with two tires. So what? He can not identify those tires, can not even say those were in fact new tires. He can't say anything, Judge, except they were two tires. So what? It didn't raise any suspicion to him. It certainly must not have been an uncommon practice. As this man

1 indicated when he left the stand,
2 Your Honor, as a matter of fact
3 there's nothing uncommon for something
4 to be wrong with radial tires and,
5 therefore, if you say reasonable
6 doubt, you must prove this man beyond
7 a reasonable doubt, they're not even
8 close in this case. It's certainly
9 not Mr. Weaver's fault but the evidence
10 isn't there, Your Honor.
11 MR. WEAVER: Judge, I have to disagree with
12 him. Our first witness said he put the
13 tires in the service area. The second
14 witness said he saw this man walking out
15 of the service area with two tires under
16 his arms, went out, put these tires in
17 the car.
18 There's a lot of talk about this
19 man having his car in there and something
20 may be wrong with his tires, but the
21 evidence is the man drove the car away
22 after he put the tires in it, drove the
23 car back, put it up, got it aligned and
24 then he drove away again. Now, if he
25 had something wrong with his tires, I say

to the Court a car only has five tires; how could he have two of his own tires in his arm and drive the car away at the same time? That's impossible.

The company say they did no work on the tires, no work order on the tires, and they do work orders for all of this.

I say we have proved our case, Your Honor - We have a witness say he saw the man walk out of the store with the tires - especially at this point.

THE COURT: Overrule the motion.

MR. LEVIN: We're not putting on any evidence, Your Honor. We would renew our motion, Your Honor.

Judge, I think in renewing my motion - I may have missed it when I made my original - I think Mr. Elliott certainly would clarify all matters here and where is he?

If he was here he could tell Your Honor what transpired and didn't transpire. I don't think the Commonwealth

has carried the burden at all, Judge.

THE COURT: I don't know that you need Elliott. All Elliott did was align the wheels on the car.

The thing is two tires were stolen. The manager of the store testified definitely the value of the tires, where he had them placed, the fact that they were removed. The mechanic testified he saw this man walk out of the building with two tires, one under each arm, and put them into the trunk of the car and drive off in the car.

MR. LEVIN: Judge, I don't mean to interrupt you, honest, but I think I could say if this man was on the stand and said 'I saw where the tires were placed in the service area; this man went to the service area and picked up the tires,' that would be one thing, but all he said was 'I saw him with two tires and I don't know where they came from.'

THE COURT: I think the Commonwealth's made out a case myself. There's no evidence

that other than two tires were missing that day and this man was in there and he was seen walking out and putting tires - There's no explanation of the tires -

MR. LEVIN: Judge, I'm not so sure he has to explain. It's not a duty on him to take the stand and explain.

THE COURT: Well, I have concluded that they made out a case and when the Commonwealth has made out a case in the mind of the Court if there's no rebuttal the Court doesn't have anything else to consider.

MR. LEVIN: Yes, sir.

THE COURT: All right. Defendant stand up, please.

James J. Reese, you having come on for trial this date under Indictment #28,896 wherein you're charged with grand larceny at which time you entered a plea of not guilty and waived trial by jury, the Court after having heard the evidence and considered same thoroughly does find you guilty of grand larceny as

charged in the indictment.

Mr. Levin, do you have a motion?

MR. LEVIN: We waive presentence, Your Honor.

THE COURT: Presentence report?

MR. LEVIN: We waive it, Your Honor.

THE COURT: Waive? Very well.

MR. LEVIN: Judge, and I think I should be candid with the Court. The man is on two years probation from the Federal Court for forgery. It was up last month, Judge, but they're holding that up pending the outcome of this matter, Your Honor.

THE COURT: Well, I mean I don't have anything to do with that.

MR. LEVIN: No, I just thought I should tell the Court because it's not usual to waive a presentence.

THE COURT: If he's on two years probation for a charge in Federal Court, which you say -

MR. LEVIN: It was over the 20th of December but they held it up pending the outcome of this, Judge.

THE COURT: All right, then. James J. Reese,

is there any reason why sentence shouldn't be pronounced at this time?

THE DEFENDANT: No, Your Honor.

THE COURT: Is there anything you wish to say before sentence is pronounced?

THE DEFENDANT: No.

THE COURT: Very well, then. The Court having found you guilty as aforementioned sentences you to eight months in jail and imposes a fine of $100.00 and costs.

MR. LEVIN: Judge, we'd like to note an appeal. Judge, and we would ask - You're a lifelong resident of the City of Portsmouth. Mr. Butcher, Your Honor, is his bondsman. He's in the court and I think he's willing to stay on his bond; I don't know.

SHERIFF FUTRELL: Mr. Butcher, do you have anything to say?

MR. BUTCHER: Yes, sir, I'll stay on it.

SHERIFF FUTRELL: He will stay, Your Honor.

MR. LEVIN: Thank you very much, Judge.

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CLERK'S CERTIFICATE

I, Walter M. Edmonds, Clerk of the Circuit Court of the City of Portsmouth, Virginia, do hereby certify that the foregoing transcript of the testimony and other proceedings of the trial of the case of Commonwealth of Virginia vs. James J. Reese was filed in my office on the day of , 1978.

Clerk