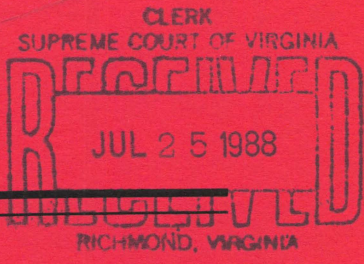


238 Va 183



IN THE
Supreme Court of Virginia
AT RICHMOND

RECORD NO. 870591

TRIANGLE AUTO AUCTION, INC.,

Appellant,

v.

DANIEL F. CASH,

Appellee.

APPENDIX
VOLUME I

David W. Mullen
Attorney at Law
28 East Main Street
Post Office Box 845
Christiansburg, Virginia 24073
(703) 382-8296

Counsel for Appellant

Joseph R. Johnson, Jr.
David D. Embrey
JOHNSON & CUNNINGHAM
Allied Arts Building
Suite 900
725 Church Street
Lynchburg, Virginia 24505
(804) 845-4541

Counsel for Appellee

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VIRGINIA: IN THE CIRCUIT COURT FOR THE CITY OF LYNCHBURG

DANIEL F. CASH
2113 Burnt Bridge Road
Lynchburg, Virginia 24503,
Plaintiff

v.

MOTION FOR JUDGMENT

TRIANGLE AUTO AUCTION, INC.,
Defendant

Serve: Kendall O. Clay
Registered Agent
1217 Grove Avenue
Radford, Virginia 24141

COMES NOW, the plaintiff, Daniel F. Cash, by counsel, and moves the Court for judgment against the defendant, Triangle Auto Auction, Inc., a Virginia corporation, in the sum of TWO HUNDRED FIFTY THOUSAND (\$250,000.00) DOLLARS, all of which is due and owing from the defendant to the plaintiff, for the following cause, to-wit:

(1) The plaintiff, Daniel F. Cash, is engaged in the business of selling used automobiles and other vehicles, doing business as Danny's Auto Sales, a sole proprietorship, which business is located at 2100 Twelfth Street in the City of Lynchburg, Virginia; and

(2) The defendant, Triangle Auto Auction, Inc., Radford, Virginia, is engaged in the business of selling and auctioning used automobiles and other vehicles to used vehicle dealers such as the plaintiff for re-sale; and

(3) Between November 12, 1984 and November 26, 1984, plaintiff tendered three (3) checks aggregating \$16,423.00 to the defendant to purchase vehicles for re-sale, but due to an accounting error unknown to plaintiff at the time the checks were written,

said checks were returned for insufficient funds; and

(4) The plaintiff, when contacted about said checks by the defendant, assured the defendant that the checks would be paid as soon as possible and a partial reimbursement of \$2,457.00 was made by plaintiff to defendant on November 29, 1984; and

(5) That on December 17, 1984, at the request of Frank Sale, agent for the defendant, the plaintiff forwarded Virginia Certificates of Motor Vehicles Titles to six (6) vehicles to defendant to hold as security for the remaining reimbursement due on said checks, which reimbursement was agreed to be made within thirty (30) to forty-five (45) days from December 17, 1984; and

(6) That on December 28, 1984, plaintiff made a further partial reimbursement to defendant on said checks in the sum of \$2,000.00; and

(7) That notwithstanding plaintiff's assurances, his making partial reimbursement to defendant and his providing defendant with adequate security for complete reimbursement, on or about December 21, 1984, the defendant, Triangle Auto Auction, Inc., acting by and through its agent, Eugene R. Lancour, did maliciously appear before Iris B. Tucker, a magistrate for the County of Montgomery, Virginia, and caused her to issue warrants for the arrest of the plaintiff, Daniel F. Cash, on the charge of three (3) counts of grand larceny by worthless check; and

(8) On December 31, 1984, plaintiff was arrested within the corporate limits of the City of Lynchburg, Virginia, pursuant to said warrants, and was caused to give unsecured bond in the amount of \$2,000.00 in lieu of confinement to secure his appearance for a preliminary hearing on said charges in the General District Court

for the County of Montgomery, Virginia; and

(9) Upon the preliminary hearing of said charges held on February 8, 1985 in the General District Court for the County of Montgomery, Virginia, all of said charges brought against the plaintiff by the defendant were dismissed by the Court; and

(10) The defendant, Triangle Auto Auction, Inc., instigated and procured this prosecution of the plaintiff wrongfully, unlawfully and maliciously and sued out a criminal process against the plaintiff and caused his arrest thereunder, not for the purpose of enforcing the criminal laws of the Commonwealth, but solely for the ulterior and unlawful purpose of enforcing the collection of a debt, and did, therefore, willfully and maliciously abuse or misuse the criminal process of the Commonwealth to enforce the collection of a debt, and did pervert and oppressively use the criminal process as a whip to force the payment of the alleged indebtedness for the payment of which the defendant had already received security and guaranty of payment; and

(11) By reason of defendant's actions as aforesaid, plaintiff has been greatly injured in his credit and reputation and brought into public disrepute among members of his community; has been hindered in the operation of his business; he has lost and will continue to lose profits, income and other benefits from his said business and occupation; has been required to spend substantial time away from his business and to expend substantial sums of money to defend against these wholly frivolous and unjustified charges; and has been caused much anxiety and mental anguish, and has been made the object of public scorn, ridicule and humiliation.

(12) The plaintiff alleges that the defendant did the acts herein complained of with actual and express malice towards the plaintiff.

WHEREFORE, plaintiff, Daniel F. Cash, demands judgment against the defendant, Triangle Auto Auction, Inc., in the sum of TWO HUNDRED FIFTY THOUSAND (\$250,000.00) DOLLARS, TWO HUNDRED THOUSAND (\$200,000.00) DOLLARS of same being compensatory damages and FIFTY THOUSAND (\$50,000.00) DOLLARS of same being punitive damages, together with the costs of this proceeding and legal interest thereon from December 21, 1984 until paid.

DANIEL F. CASH

By

Counsel

Joseph R. Johnson, Jr., p.q.
JOHNSON & CUNNINGHAM
1104 Sovran Bank Bldg.
P. O. Box 717
Lynchburg, Va. 24505

Filed in the LYNCHBURG CIRCUIT COURT on 5th day of May, 1986.
Costs \$25.00
Fees \$2.00
Docket \$50.00
Total Paid \$77.00
Teste: 4
201224 D.C.

VIRGINIA, IN THE CIRCUIT COURT FOR THE CITY OF LYNCHBURG:

DANIEL F. CASH

Plaintiff

v.

MOTION TO ELECT

TRIANGLE AUTO AUCTION, INC.

Defendant

TO: THE HONORABLE J. SAMUEL JOHNSTON, JR., JUDGE:

Triangle Auto Auction, Inc., Defendant, by counsel, moves the Court to direct the Plaintiff to elect his cause of action as either abuse of process or malicious prosecution but not both.

Respectfully,

TRIANGLE AUTO AUCTION, INC.

BY:



David W. Mullen, Counsel

David W. Mullen, p.d.
32 East Main Street
P.O. Box 845
Christiansburg, VA 24073-0845

C E R T I F I C A T E

I hereby certify that a true and correct copy of the foregoing Motion to Elect was mailed this 20th day of May, 1986 to Joseph R. Johnson, Jr., Esquire, JOHNSON & CUNNINGHAM, P.O. Box 717, Lynchburg, VA, 24505, counsel of record for the Plaintiff.

DAVID W. MULLEN
ORNEY AT LAW, INC.
MAIN ST., P.O. BOX 845
STIANSBURG, VA 24073


FILED IN THE CLERK'S OFFICE OF THE CIRCUIT COURT OF THE CITY OF LYNCHBURG, VIRGINIA
DATE 20 MAY 1986 TIME 8:30 A.M.
TESTE: JUANITA E. SHIELDS, CLERK
BY 5 DEP. CLK.

VIRGINIA, IN THE CIRCUIT COURT FOR THE CITY OF LYNCHBURG:

DANIEL F. CASH

Plaintiff

v.

TRIANGLE AUTO AUCTION, INC.

Defendant

PLEA OF THE STATUTE
OF LIMITATIONS

TO: THE HONORABLE J. SAMUEL JOHNSTON, JR., JUDGE:

COMES NOW, Triangle Auto Auction, Inc., Defendant, by counsel, and files this, its Plea of the Statute of Limitations as follows:

1) The gravamen of Plaintiff's Motion for Judgment is the allegation of either abuse of process or malicious prosecution by Triangle Auto Auction, Inc., or both, and states that the Plaintiff was arrested on December 31, 1984 (See paragraph 8) and that the charges against the Plaintiff were dismissed by the General District Court for the County of Montgomery, Virginia, on February 8, 1985 (See paragraph 9).

2) Section 8.01-248 provides that "every personal action, for which no limitation is otherwise prescribed, shall be brought within one year after the right to bring such action has accrued," and Section 8.01-249 provides in relevant part "the cause of action in the actions herein listed shall be deemed to accrue as follows:

"...in actions for malicious prosecution or abuse of process, when the relevant criminal or civil action is

terminated."

The Plaintiff filed his Motion for Judgment herein on May 5, 1986 clearly outside the one year period from February 8, 1985 and for such reason the Plaintiff's action should be dismissed with prejudice.

Respectfully,

TRIANGLE AUTO AUCTION, INC.

BY:


David W. Mullen, Counsel

David W. Mullen, p.d.
32 East Main Street
P.O. Box 845
Christiansburg, Va 24073-0845

C E R T I F I C A T E

I hereby certify that a true and correct copy of the foregoing Plea of the Statute of Limitations was mailed this 20TH day of May, 1986 to Joseph R. Johnson, Jr., Esquire, JOHNSON & CUNNINGHAM, P.O. Box 717, Lynchburg, VA, 24505, counsel of record for the Plaintiff.



DAVID W. MULLEN
ATTORNEY AT LAW, INC.
32 E. MAIN STREET
P. O. BOX 845
CHRISTIANSBURG, VA 24073

FILED IN THE CLERK'S OFFICE OF THE CIR-
CUIT COURT OF THE CITY OF LYNCHBURG
DATE TIME 8:30 A.M.
TESTED BY W. E. SHIELDS CLERK
BY DEP CLK.

VIRGINIA, IN THE CIRCUIT COURT FOR THE CITY OF LYNCHBURG:

DANIEL F. CASH

Plaintiff

v.

TRIANGLE AUTO AUCTION, INC.

Defendant

ANSWER

Defendant, Triangle Auto Auction, Inc., by counsel,
hereby answers the Motion for Judgment filed against it as
follows:

The word "paragraph" refers to the respective
paragraph in the Motion for Judgment.

1) Defendant is not advised of the truth of the
allegations contained in paragraph 1 and therefore denies the
same.

2) Paragraph 2 is admitted insofar as it states that
defendant is in the business of selling and auctioning used
automobiles and other vehicles to used vehicle dealers, but is
denied as to every other allegation contained therein.

3) Paragraph 3 is admitted insofar as it alleges that
Plaintiff tendered three checks aggregating \$16,423.00 to the
Defendant for the purchase of vehicles and then said checks were
returned marked "insufficient funds". The Defendant is without
knowledge as to the other allegations contained in paragraph 3
and therefore denies the same and calls for strict proof
thereof.

4) Defendant admits that the sum of \$2457.00 was paid against the total of the worthless checks by Plaintiff to Defendant on or about November 29, 1984; that the Defendant made the request that the sum total of all of the checks be immediately tendered to the Defendant in accordance with the law and that the Plaintiff failed to do so. All other allegations contained within paragraph 4 are denied.

5) Paragraph 5 is true insofar as it alleges that Frank Sale is agent for the Defendant and that as such, he requested the Plaintiff to provide security for the balance remaining on the worthless checks and to that extent, paragraph 5 is admitted. All other allegations made within paragraph 5 are denied.

6) Paragraph 6 is admitted insofar as it alleges that on or about December 28, 1984 Plaintiff made a further payment on the worthless checks in the sum of \$2,000.00.

7) Defendant emphatically denies the allegations contained in paragraph 7 insofar as they allege that Triangle Auto Auction, Inc., and or Eugene R. Lancour maliciously appeared before the Magistrate or caused the issuance of warrants for the arrest of Plaintiff. The fact of the matter is that the Plaintiff tendered bad checks to the Defendant in violation of Section 18.2-181 of the Code of Virginia and that the Defendant scrupulously followed the requirements of Sections 18.2-181, 18.2-183, 18.2-184 and 18.2-185 in causing the

issuance of the warrants . All allegations contained in paragraph 7 not specifically admitted are denied.

8) Defendant is not advised of the truth of the allegations contained in paragraph 8 and therefore denies the same and calls for strict proof.

9) Paragraph 9 is true and is admitted.

10) Paragraph 10 is absolutely false insofar as it alleges any wrongful, unlawful or malicious conduct, any unlawful or improper purpose or motive, any willful or malicious abuse or misuse of the criminal process of the Commonwealth, any attempt to enforce the collection of the debt by use of the criminal process; any perverted or oppressive use of the criminal process and any allegation that the Defendant received security and guarantee of payment. The fact of the matter is that Defendant relied on the advise and counsel of the Assistant Commonwealth's Attorney for Montgomery County and that it was the Assistant Commonwealth's Attorney for Montgomery County who made the decision to prosecute and did so strictly in accordance with Sections 18.2-181 of the Code of Virginia and following.

11) The allegations contained in paragraph 11 are false and are denied.

12) The allegations contained in paragraph 12 are false and are denied. On the contrary, Defendant scrupulously followed the law, Sections 18.2-181, 18.2-183, 18.2-184, and 18.2-185.

13) Defendant is entitled to the protection of Section 18.2-185 of the Code of Virginia which affords the Defendant immunity in any civil action growing out of arrest under Section 18.2-181, if Sections 18.2-183 and 184 have been followed. They have, and the Defendant therefore claims the immunity afforded by Section 18.2-185.

13) And now having fully answered, Defendant moves the Court to dismiss the action filed against it and for its cause.

Respectfully,

TRIANGLE AUTO AUCTION, INC.

BY: 
David W. Mullen, Counsel

David W. Mullen, p.d.
32 East Main Street
P.O. Box 845
Christiansburg, VA 24073-0845

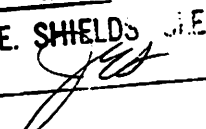
C E R T I F I C A T E

I hereby certify that a true and correct copy of the foregoing Answer was mailed this 20th day of May, 1986 to Joseph R. Johnson, Jr., Esquire, JOHNSON & CUNNINGHAM, P.O. Box 717, Lynchburg, VA, 24505, counsel of record for the Plaintiff.



DAVID W. MULLEN
ATTORNEY AT LAW, INC.
32 E. MAIN STREET
P. O. BOX 845
CHRISTIANSBURG, VA 24073

11

FILED IN THE CLERK'S OFFICE OF THE CIR-
CUIT COURT OF THE CITY OF LYNCHBURG
DATE TIME 8:30 A. M.
TESTE: DEANITA E. SHIELDS, CLERK
B'  DEP. CLK.

VIRGINIA, IN THE CIRCUIT COURT FOR THE CITY OF LYNCHBURG:

DANIEL F. CASH

Plaintiff

v.

TRIANGLE AUTO AUCTION, INC.

Defendant

REQUEST FOR ADMISSIONS

Pursuant to Rule 4:11 of the Supreme Court of Virginia the Defendant requests that you admit within the time period specified by the rules the following facts for purposes of this action:

1) You issued three bad checks totaling \$16,423.00 to Triangle Auto Auction between November 12 and November 26, 1984.

2) These checks were returned by the bank upon which they were drawn marked "insufficient funds".

3) You were notified in each of the above instances by certified mail return receipt requested that the checks had been returned marked "insufficient funds".

DAVID W. MULLEN
ATTORNEY AT LAW, INC.
32 E. MAIN STREET
P. O. BOX 845
CHRISTIANSBURG, VA 24073

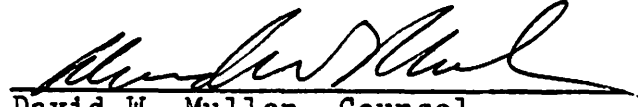
4) You signed for each of the receipted letters above indicated.

5) You did not fully pay within the five day notice period stated in each of the letters the full sum for which each check had been tendered.

Respectfully,

TRIANGLE AUTO AUCTION, INC.

BY:


David W. Mullen, Counsel

David W. Mullen, p.d.
32 East Main Street
P.O. Box 845
Christiansburg, VA 24073-0845

C E R T I F I C A T E

I hereby certify that a true and correct copy of the foregoing Request for Admissions was mailed this 20th day of May, 1986 to Joseph R. Johnson, Jr., Esquire, JOHNSON & CUNNINGHAM, P.O. Box 717, Lynchburg, VA, 24505, counsel of record for the Plaintiff.

DAVID W. MULLEN
ATTORNEY AT LAW, INC.
32 E. MAIN STREET
P. O. BOX 845
CHRISTIANSBURG, VA 24073

FILED IN THE CLERK'S OFFICE OF THE CIR-
CUIT COURT OF THE CITY OF LYNCHBURG

DATE MAY 21 1986 TIME 8:30 A.M. 13

TESTE JUANITA E. SHIELDS CLERK

BY JES DEP. CLK.

VIRGINIA: IN THE CIRCUIT COURT FOR THE CITY OF LYNCHBURG

DANIEL F. CASH,
Plaintiff

v. RESPONSE TO REQUEST FOR ADMISSIONS
TRIANGLE AUTO AUCTION, INC.,
Defendant

COMES NOW, the plaintiff, by counsel, and for his answers to the Request for Admissions served upon him by the defendant, answers and says as follows, to-wit:

(1) The plaintiff admits that he issued three checks payable to Triangle Auto Auction, Inc., Radford, Virginia, totaling \$16,423.00 between November 12 and November 26, 1984, and that same were returned to Triangle Auto Auction, Inc. unpaid when presented for payment.

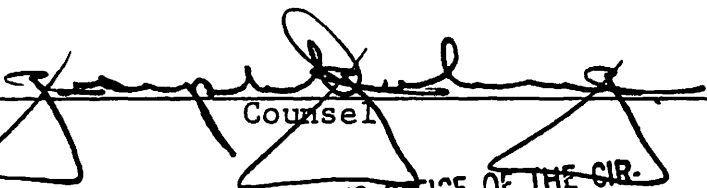
(2) It is admitted.

(3) It is admitted.

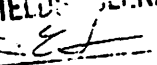
(4) It is admitted.

(5) It is admitted.

DANIEL F. CASH

By 
Counsel

Joseph R. Johnson, Jr., p.q.
JOHNSON & CUNNINGHAM
1104 Sovran Bank Bldg.
P. O. Box 717
Lynchburg, Va. 24505

FILED IN THE CLERK'S OFFICE OF THE CIR-
CUIT COURT OF THE CITY OF LYNCHBURG
DATE JUN 3 1986 TIME 8:30 A.M.
CERTIFICATE VIA E. SHIELD CLERK
TESTE  DEP. CLK.

I hereby certify that a copy of the foregoing pleading was mailed to David W. Mullen, Esq., P. O. Box 845, Christiansburg, Virginia 24073-0845, counsel of record for the defendant, on this 3rd day of June, 1986.

14


Joseph R. Johnson, Jr.

VIRGINIA, IN THE CIRCUIT COURT FOR THE CITY OF LYNCHBURG:

DANIEL F. CASH)
Plaintiff)

v.)

TRIANGLE AUTO AUCTION, INC.)
Defendant)

INTERROGATORIES

TO: DANIEL F. CASH
c/o Joseph F. Johnson, Jr., Esquire
1104 Sovran Bank Building
P.O. Box 7717
Lynchburg, VA 24505

The undersigned Defendant, by Counsel, pursuant to Rule 4:8 of the Rules of the Supreme Court of Virginia submits the following interrogatories to be answered by you, under oath, and personally, within the time period perscribed by the rule. TIME IS OF THE ESSENCE.

1. State the names, addresses, telephone numbers and a summary of the testimony of each witness you expect to call or anticipate calling at the trial of this case.

2. State with particularity each and every element of damage you expect to be able to prove in this case.

3. State with particularity each and every legal authority upon which you or your counsel intend to rely to establish your claim for damages in this case.

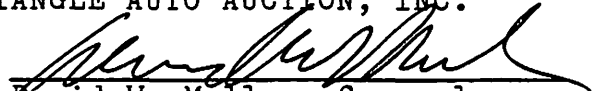
4. You have previously given depositions concerning damages in this case. Do you expect to prove any additional elements of damage to which you did not testify in your previous depositions. If so, what elements and which witnesses will testify to those elements?

5. Is any portion of your previous testimony in the first action of Daniel F. Cash v. Triangle Auto Auction, Inc., to which you testified in your previous depositions untrue? If so, state with particularity the page numbers and lines of the depositions testified to by you which are not true.

These interrogatories are deemed continuing
interrogatories and you are required to update the answers that
you have given to the interrogatories should you learn of any
new information following your preparation these answers.

Respectfully,
TRIANGLE AUTO AUCTION, INC.

BY


David W. Mullen, Counsel

David W. Mullen, p.d.
Attorney at Law
P.O. Box 845
Christiansburg, VA 24073

I, David W. Mullen, Attorney at Law, Christiansburg,
Virginia do hereby certify that I have, this 3rd day of
October, 1986, mailed the original of the foregoing
interrogatories to Joseph R. Johnson, Jr., Esquire, Attorney for
Daniel F. Cash, 1104 Sovran Bank Building, P.O. Box 7717,
Lynchburg, VA 24505.


David W. Mullen

DAVID W. MULLEN
ATTORNEY AT LAW, INC.
MAIN ST., P.O. BOX 845
CHRISTIANSBURG, VA 24073

FILED IN
COURT CO
DATE —
TESTE

CLERK'S OFFICE OF THE CLERK
OF THE CITY OF LYNCHBURG
OCT 06 1986 TIME 8:30 AM
E. SHIELDS CLERK

VIRGINIA, IN THE CIRCUIT COURT FOR THE CITY OF LYNCHBURG:

DANIEL F. CASH
Plaintiff

v.

TRIANGLE AUTO AUCTION, INC.
Defendant

MOTION IN LIMINE

TO: THE HONORABLE JUDGE OF THE AFORESAID COURT:

Defendant, Triangle Auto Auction, Inc., before trial and the selection of the jury, moves the Court in limine to instruct the Plaintiff and his counsel as set forth below on the following grounds:

1) Defendant's counsel is advised that Plaintiff;s counsel will, as a part of Plaintiff's damages, attempt to introduce testimony that Plaintiff has been barred from doing business at several automobile auctions. Defendant's counsel is not advised that any representative of any of these auctions will be present to testify at trial; hence, all such testimony of "barring" is inadmissable hearsay. Defendant's counsel accordingly moves that such testimony be barred.

2) Defendant's counsel is advised that the Plaintiff will attempt to show, as a part of his damages, reductions in gross revenues for 1985 and 1986 compared with prior years and that Defendant is responsible for profits which might have resulted to the Plaintiff but for the reductions. Such evidence and the conclusions to be drawn therefrom does not meet the test of reasonable certainty and encourages the jury to speculate;

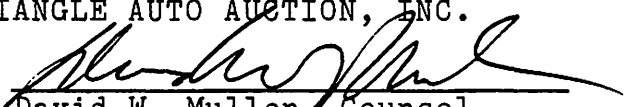
hence, Defendant moves in limine to preclude the introduction of such testimony.

3) Several of Plaintiff's witnesses have been previously deposed and have testified to no loss or reputation of the Plaintiff. Plaintiff's answers to interrogatories filed in this case reveal that he intends to prove loss of reputation as an element of damages. Since the Plaintiff's case can rise no higher than his own testimony and that of his witnesses, counsel for the Defendant moves in limine to preclude the introduction of any testimony regarding the alleged loss of Plaintiff's reputation as a result of Triangle Auto Auction's action.

Respectfully,

TRIANGLE AUTO AUCTION, INC.

BY

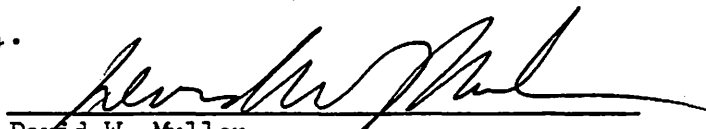

David W. Mullen, Counsel

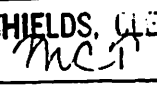
David W. Mullen, p.d.
28 East Main Street
P.O. Box 845
Christiansburg, VA 24073

C E R T I F I C A T E

I hereby certify that a true and correct copy of the foregoing Motion in Limine was delivered this 12th day of November, 1986 to Joseph R. Johnson, Jr., Esquire., Johnson & Cunningham, 725 Church Street, 9th floor of Allied Arts Building, Lynchburg, VA 24504.

DAVID W. MULLEN
ATTORNEY AT LAW, INC.
MAIN ST., P.O. BOX 845
CHRISTIANSBURG, VA 24073


David W. Mullen

FILED IN THE CLERK'S OFFICE OF THE CIR-
CUIT COURT OF THE CITY OF LYNCHBURG
DATE NOV 12 1986 TIME 2:45 P.M.
TESTE: JUANITA E. SHIELDS, CLERK
BY  DEP. CLK.

VIRGINIA, IN THE CIRCUIT COURT FOR THE CITY OF LYNCHBURG:

DANIEL F. CASH

Plaintiff

v.

TRIANGLE AUTO AUCTION, INC.)

Defendant)

MOTION FOR SUMMARY JUDGMENT

TO: THE HONORABLE JUDGE OF THE AFORESAID COURT:

Defendant, by counsel, hereby moves the court for summary judgment against the plaintiff upon the following grounds:

Plaintiff, in his answers to defendant's request for admissions, has admitted that defendant complied with all of the applicable provisions of Sections 18.2-181 - 18.2-184 of the Code of Virginia, thus entitling defendant to the protections of Section 18.2-185 thereof. Section 18.2-185 is as follows:

"Evidence and presumptions in malicious prosecution actions after issuance of bad check. -- In any civil action growing out of an arrest under Sections 18.2-181 or 18.2-182, no evidence of statements or representations as to the status of the check, draft, order or deposit involved, or of any collateral agreement with reference to the check, draft, or order, shall be admissible unless such statements, or representations, or collateral agreement, be written upon the instrument at the time it is given by the drawer.

If payment of any check, draft, or order for the

payment of money be refused by the bank, banking institution, trust company or other depository upon which such instrument is drawn, and the person who drew or uttered such instrument be arrested or prosecuted under the provisions of Sections 18.2-181 or 18.2-182, for failure or refusal to pay such instrument, the one who arrested or caused such person to be arrested and prosecuted, or either, shall be conclusively deemed to have acted with reasonable or probable cause in any suit for damages that may be brought by the person who drew or uttered such instrument, if the one who arrested or caused such person to be arrested and prosecuted, or either, shall have, before doing so, presented or caused such instrument to be presented to the depository on which it was drawn where it was refused, and then waited five days after notice, as provided in Section 18.2-183, without the amount due under the provisions of such instrument being paid."

In accordance with Section 18.2-185, defendant moves the court to enter summary judgment in its favor and dismiss this action for malicious abuse of process, for its attorney's fees and court costs.

Respectfully,

TRIANGLE AUTO AUCTION, INC.

BY:


David W. Mullen, Counsel

DAVID W. MULLEN
ATTORNEY AT LAW, INC.
MAIN ST., P.O. BOX 845
TIANSBURG, VA 24073

David W. Mullen, p.d.
28 East Main Street
P.O. Box 845
Christiansburg, VA 24073-0845

C E R T I F I C A T E

I hereby certify that a true and correct copy of the foregoing Motion for Summary Judgment was delivered this 12th day of November, 1986 to Joseph R. Johnson, Jr., Esq., Johnson & Cunningham, 1104 Sovran Bank Building, Lynchburg, VA 24505, Counsel of Record for the Plaintiff.

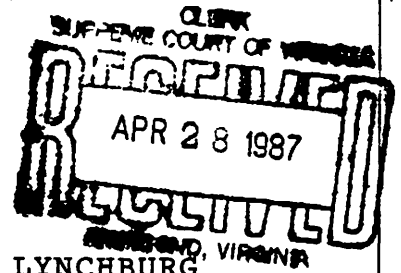


DAVID W. MULLEN
ATTORNEY AT LAW, INC.
28 E. MAIN ST., P.O. BOX 845
CHRISTIANSBURG, VA 24073

22

FILED IN THE CLERK'S OFFICE OF THE CIR-
CUIT COURT OF THE CITY OF LYNCHBURG
DATE NOV 12 1986 TIME 2:45 P.
TESTE: MICHAEL E. SHIELDS, CLERK
BY MCS DEP. CLK.

870591



1 VIRGINIA:

2 IN THE CIRCUIT COURT FOR THE CITY OF LYNCHBURG

3
4 DANIEL F. CASH,

5 Plaintiff,

6 v.

7 TRIANGLE AUTO AUCTION,

8 Defendant.

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12
13 TRANSCRIPT OF PROCEEDINGS

14 November 13, 1986 - 9:30 a.m.

15 Before The Honorable Richard Miller, Judge & Jury

16 Day 1 of 2

17
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19
20 * * * *

21 EVANS, COCHRAN & HONNICK
22 Reported by: Rebecca E. Cochran
23 302 Meadowridge Drive
24 Lynchburg, Virginia 24503
25 804-239-2552
804-384-6000

23

FILED IN THE CLERK'S OFFICE OF THE CIR-
CUIT COURT OF THE CITY OF LYNCHBURG
DATE 1-20-87 TIME 8:30 A.M.
TESTE: JUANITA E. SHEILDS, CLERK
BY: [Signature] DEP. CLERK

1 Appearances: JOSEPH R. JOHNSON, JR., ESQUIRE
Counsel for the Plaintiff

2
3 DAVID MULLEN, ESQUIRE
Counsel for the Defendant

4
5 I N D E X

6 DANIEL F. CASH

7 Direct Examination by Mr. Johnson 47
8 Cross Examination by Mr. Mullen 113
9 Redirect Examination by Mr. Johnson 147
Recross Examination by Mr. Mullen 151

10 STEVEN TAYLOR HAMLET

11 Direct Examination by Mr. Johnson 153
Cross Examination by Mr. Mullen 161

12 ERNEST WILLIAM WOMMACK

13 Direct Examination by Mr. Johnson 162
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15 LONNIE SCOTT MORRIS

16 Direct Examination by Mr. Johnson 189
17 Cross Examination by Mr. Mullen 195
Redirect Examination by Mr. Johnson 196

18 KELLY R. WHITE

19 Direct Examination by Mr. Johnson 196
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E x h i b i t s

Plaintiff's Exhibits:

- No. 1 - three checks
- No. 2 - bill of sale
- No. 3 - 5 day letter
- No. 4 - 5 day letter
- No. 5 - 5 day letter
- No. 6 - Federal Express document
- No. 7 - warrants (3)
- No. 8 - copy of check and letter
- No. 9 - copy of cashier's check and handwritten note
- No. 10 - statement of interest due
- No. 11 - receipt from Mr. Lancour
- No. 12 - letter
- No. 13 - letter
- No. 14 - letter
- No. 15 - statement from Johnson & Cunningham
- No. 16 - worksheet (Wommack)

Defendant's Exhibits:

- No. 1 - check stubs
- No. 2 - bank statement 10-26-84
- No. 3 - bank statement 11-26-84
- No. 4 - bank statement 12-26-84
- No. 5 - bank statement 1-26-85
- No. 6 - bank statement Community Bank of Forest
- No. 7 - notice posted in Commonwealth's Attorney's office

1 THE COURT: Go ahead and call the case.

2 THE CLERK: Daniel F. Cash versus
3 Triangle Auto Auction, Inc.

4 THE COURT: Are both sides ready?

5 MR. JOHNSON: Yes, sir, Your Honor.

6 MR. MULLEN: Yes, Your Honor.

7 THE COURT: Go ahead and swear them in.
8 Are they all accounted for? Maybe you better
9 call them.

10 THE BAILIFF: Brenda Sagar is the only
11 one that is not here. The rest of them are
12 here.

13 THE COURT: Is she supposed to be here?
14 Any juror that is not here I want a rule
15 issued for them. Are they lined up in some
16 kind of order?

17 THE BAILIFF: Yes, sir.

18 THE COURT: Counsel understands how the
19 sheriff has got the jurors lined up?

20 MR. MULLEN: Is that in the same order
21 that they are on the list, Your Honor?

22 THE COURT: I think so. Tell them where
23 you started.

24 THE BAILIFF: Ms. Jenkins is the first
25 person right there and then they come back

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and start over there.

THE COURT: Okay. Go ahead.

(Whereupon the jurors were duly
sworn by the clerk.)

THE COURT: Members of the jury, the case we have set today is a civil case, not a criminal case, in which the plaintiff, Daniel F. Cash, has sued Triangle Auto Auction, Inc. alleging abuse of process. I'm sure the lawyers will tell you more about what that means when they talk to you and ask you questions.

But I need to ask you: Do any of you know anything about this case from any source, any of you acquired any information concerning the case from any source?

(No affirmative response.)

Are any of you related by blood or marriage to Daniel F. Cash whose address is shown as 2113 Burnt Bridge Road, Lynchburg, Virginia? Is that right, Mr. Johnson?

MR. JOHNSON: Yes, sir, that's correct, Your Honor.

THE COURT: Any of you related by blood

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or marriage to Mr. Cash?

(No affirmative response.)

Are any of you in any way connected with
Triangle Auto Auction, Inc.?

And where is that located, Mr. Mullen?

MR. MULLEN: Radford, Virginia.

THE COURT: Any of you related by
employment or otherwise to that corporation?

(No affirmative response.)

Any of you have any interest in the
outcome of the case or are you sensible of any
bias or prejudice against either side?

(No affirmative response.)

Any of you know of any reason whatsoever
you could not render a fair and impartial
verdict in the case based solely on the law
and the evidence?

(No affirmative response.)

The attorneys will probably have some
questions for you, so I'll let Mr. Johnson if
he has any questions --

MR. JOHNSON: Your Honor, you've covered
all the questions we would have.

THE COURT: Mr. Mullen, do you have any
questions?

1 MR. MULLEN: Yes, I do, Your Honor, if I
2 might just finish my little chart here.

3 I'm David Mullen, I'm an attorney from
4 Christiansburg, which is near Radford, that's
5 seven or eight miles from Radford in the
6 southwestern part of the state and also near
7 Blacksburg. I represent Triangle Auto Auction
8 today, which is the company that is defending
9 the suit that Mr. Cash has filed against it.

10 Have any of you had any prior jury
11 service, have you served this term or any
12 other term on any jury panel?

13 (Affirmative response.)

14 All this term?

15 (Affirmative response.)

16 MR. MULLEN: Civil cases, criminal cases?
17 Have you served on any civil juries before?

18 (Negative response.)

19 MR. MULLEN: Do any of you know
20 personally Mr. Cash or his attorney, Mr.
21 Johnson? Has that law firm represented you
22 in any matters?

23 JUROR: Yes.

24 MR. MULLEN: Civil or criminal?

25 JUROR: Civil.

1 MR. MULLEN: Okay. Any of the rest of
2 you been represented by the law firm of
3 Johnson and Cunningham?

4 (No affirmative response.)

5 MR. MULLEN: Have any of you had any
6 business dealings with Mr. Cash who is in the
7 used car business in the City of Lynchburg

8 Do any of you work for a corporation?

9 (Positive response.)

10
11 MR. MULLEN: Is it a small corporation or
12 is it a large corporation in terms of
13 employees?

14 JUROR: Large.

15 MR. MULLEN: And you, sir?

16 JUROR: Small.

17 MR. MULLEN: Because this is a lawsuit
18 today, civil case, seeking money damages by an
19 individual against a corporation, do each of
20 you feel that you could serve and give the
21 same fair treatment to the corporation that
22 you could to an individual?

23 (Affirmative response.)

24 MR. MULLEN: Would it make any difference
25 to you?

1 (Negative response.)

2 If it develops from the evidence that's
3 brought on this witness stand in the courtroom
4 today that the auto auction did nothing to
5 cause any damage to Mr. Cash, could you render
6 your verdict in favor of the auto auction
7 company, if it develops that he may have had
8 damages, but that the auto auction is not
9 responsible for them?

10 MR. JOHNSON: If Your Honor please, I
11 think these questions are argumentative, I
12 think that goes to the issue. I don't mind
13 the questions about not being prejudiced
14 against a corporation, but I object --

15 THE COURT: Isn't the appropriate question
16 in the case whether or not the jurors can
17 follow the law and the evidence in the case,
18 Mr. Mullen?

19 MR. MULLEN: I'll be happy to ask it that
20 way.

21 Could you follow the law and the evidence
22 of the case and do what the judge says?

23 (Positive response.)

24 MR. MULLEN: Actually that was my next
25 question and my last question. Thank you very

1 much.

2 THE COURT: Any other questions?

3 MR. JOHNSON: No, sir, Your Honor.

4 THE COURT: Ready to select a jury?

5 MR. JOHNSON: Yes, sir.

6 THE COURT: Excuse me, we have a hand.

7 MR. HOWARD: I would like to point out
8 one other fact that I anticipate being asked
9 and that is that I do know one of the
10 witnesses in this case.

11 THE COURT: Anybody want to pursue that?

12 MR. MULLEN: Yes, I do. Which witness?

13 MR. HOWARD: Mr. Mitchell is my father-
14 in-law.

15 MR. MULLEN: And you are Mr. --

16 MR. HOWARD: Howard.

17 THE COURT: Any other questions?

18 MR. JOHNSON: No.

19 MR. MULLEN: No.

20 THE COURT: Go ahead and select the jury.

21 THE CLERK: Members of the jury, answer
22 to your names, please.

23 (Whereupon the jury was called
24 and duly sworn by the clerk.)

25 THE COURT: All right. Mr. Johnson, go

1 ahead and call your witnesses you want sworn.

2 MR. JOHNSON: Would the following
3 witnesses step up to the clerk's desk and be
4 sworn, please. Danny Cash, Robert H. Cash,
5 Darlene Cash, Ernest Wommack, Ernest Mitchell,
6 Steve Hamlet, Kelly White, Eugene Wingfield,
7 Lonnie Scott Morris, Danny F. McCullough.
8 I've told Mr. McCullough that he could come
9 later, Your Honor.

10 THE COURT: Mr. Mullen, do you have any
11 witnesses you want sworn now?

12 MR. MULLEN: Yes, sir, I do. Mr. Lancour
13 Phillip Keith.

14 THE COURT: Come around and be sworn.

15 (Whereupon all witnesses were duly
16 sworn by the clerk.)
17

18 THE COURT: Anybody asking for exclusion,
19 we're going to have to -- so I guess exclude
20 the witnesses. Witnesses remain out of the
21 courtroom until you're called as a witness,
22 the deputy will show you where to go. We'll
23 have to take you to a room on the other floor
24 and you'll be called as you're needed, so
25 remain out of the courtroom until you're

1 called as a witness. Do not discuss the case
2 with anyone until you're on the stand as a
3 witness on the stand. The parties, of course,
4 can stay in the courtroom.

5 There is a matter that I have to take up
6 unrelated to this case before we start the
7 trial of the case, so members of the jury, if
8 you'll go to the jury room and make yourselves
9 comfortable as possible and we'll start the
10 case in just a few minutes.

11 (Whereupon a brief recess was
12 taken and the jury left the
13 courtroom, were returned and
14 the proceedings continued as
15 follows:)

16
17 THE COURT: We are ready to start the
18 case now and counsel have a right to make an
19 opening statement to you at the beginning of
20 the case. Opening statements and the later
21 closing arguments of the lawyers are intended
22 to help you in understanding the evidence and
23 applying the law, but they are not evidence in
24 the case. The evidence which you are to
25 consider consists of the testimony of

1 witnesses and any exhibits which may be
2 admitted into evidence.

3 The term witness means anyone who
4 testifies in person. The admission of
5 evidence in court is governed by the rules of
6 law. From time the time it may be the duties
7 of the attorneys to make objections and my
8 duty as the judge to rule on those objections
9 and whether you can consider such evidence.

10 You must not concern yourself with
11 objections or the Courts reasons for these
12 rulings. You must not consider testimony or
13 exhibits to which an objection was sustained
14 or which has been ordered stricken.

15 No statement or ruling or remark which I
16 may make during the course of the trial is
17 intended to indicate my opinion as to what the
18 facts are. In this determination you alone
19 much decide upon the believability of the
20 evidence and its weight and value.

21 Okay. Mr. Johnson, you may make an
22 opening statement.
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1 Street, excuse me, just before you get to Fort Avenue.

2 Now, he is the plaintiff, I'm Joe
3 Johnson, I'm representing him in this proceeding. The
4 gentleman over here is Mr. Eugene Lancour, L-a-n-
5 c-o-u-r, and he is an official, an officer and employee
6 and so forth of Triangle Auto Sales, which is as you
7 have already heard, located in Radford, Virginia, and
8 he is being represented by Mr. David Mullen, the
9 gentleman to his right -- to the left of him from where
10 you are looking at him.

11 Now, remember this, what I say at this
12 time and what Mr. Mullen says is not evidence in the
13 case and not to be taken by you as evidence. We are
14 going to give you our view or our client's view, his
15 side of the case, and Mr. Mullen will tell you the
16 defendant's side of the case. So it's not to be taken
17 as evidence, it's kind of like just a preview of what
18 we think the evidence will be.

19 You will hear the evidence from the
20 witness stand and whatever exhibits and documents are
21 presented and from those and when you apply to those the
22 instructions in regard to the law given to you by the
23 judge, you'll make your decision.

24 Now, trying to sort of give a brief but
25 nevertheless a summary of this from the plaintiff's

1 standpoint, which will enable you to fit the facts in
2 as you hear them. Mr. Cash, as I've already said, is
3 twenty-eight years of age, has operated this business
4 about four or five years, since about 1980, 1981. He
5 is, of course, married, his wife is here and will
6 testify. He finished E. C. Glass and shortly after
7 that went to work for his father, Bob Cash, who had a
8 Lincoln Mercury dealership here.

9 Then he managed -- his father retired because
10 of health reasons and whatnot, he managed to purchase a
11 portion of his father's business, the used car portion,
12 not the Lincoln Mercury dealership, but the used car
13 portion and has operated that since then. He has been
14 dealing in this business with various auction sales,
15 including Triangle Auction, including an auction at
16 High Point, North Carolina, an auction at Statesville,
17 North Carolina, an auction that's conducted at
18 Fredericksburg, Virginia, and possibly some others,
19 lastly and recently here in Lynchburg, an auction,
20 Lynchburg Auction Company, I think it is, which he has
21 some interest in, but which wasn't involved at the time
22 of these proceedings here.

23 What these used car dealers do, it's
24 mostly wholesale. They go to an auction which is
25 attended mostly by dealers and they purchase vehicles

1 and then they bring them back and they put them on
2 their lot and sell them or sometimes they sell them to
3 local dealers here as wholesalers for the dealer to
4 retail them.

5 That was the vast majority of his
6 business. He had been dealing with Triangle for
7 probably three, four years, a good period of time. The
8 evidence will be uncontradicted that in 1983 he had
9 purchased automobiles from Triangle, not these other
10 organizations, but Triangle Auction, totaling sixty-
11 three thousand eight hundred seventy-five dollars.

12 In 1984 he had purchased vehicles and
13 paid them seventy thousand three hundred and eighty-
14 four. So '83 and '84 he had purchased vehicles
15 totaling a hundred and thirty-four thousand two hundred
16 fifty-nine dollars.

17 Now, there had never been any problem to
18 his knowledge about any of his transactions with
19 Triangle. He ran into a situation in regards to his
20 business. He had a Mr. Ernest Wommack, who is an
21 accountant here in Lynchburg who had been keeping his
22 books for some time. There was a mix-up in
23 communication between Mr. Cash and Mr. Wommack during
24 the months of November and the first part of December
25 of 1984.

1 And as a result of this, Mr. Cash, in
2 keeping his own checkbook and not having the immediate
3 advice of Mr. Wommack, had a couple of checks or at
4 least one -- they'll have to tell you -- and instead
5 of deducting the amount of the check, a rather large
6 check, had added that as if it was a deposit, and
7 thereby gotten his checkbook mixed up.

8 He went up in November, November the
9 12th, again on November the 19th, and again on November
10 the 26th of 1984 he went up and bought vehicles there
11 at the auction at Triangle Auto Auction. He gave
12 checks for those vehicles, brought the vehicles back
13 here, put them on his lot in Lynchburg.

14 A short while after that along the latter
15 part of November of '84 he got a telephone call from
16 Mr. Lancour who apparently is the manager of the
17 business, was at that time, I assume he is now. In
18 fact, he got a number of telephone calls from Mr.
19 Lancour telling him his check had not cleared the bank
20 and Mr. Lancour told him he was going to redeposit the
21 check or checks or whatnot to see if they would clear.

22 There were constant telephone calls, Mr.
23 Cash will tell you, almost every day. So he finally
24 -- not only Mr. Lancour, but Mr. Sale, Mr. Frank
25 Sale I think is his name, who I believe is the

1 possible owner or president of the company. I presume
2 Mr. Lancour's immediate supervisor, the two of them
3 called Danny Cash. And the evidence will be that at that
4 time they made again demand for payment and whatnot, and
5 Danny Cash told them that he couldn't pay it. They sent
6 letters then on -- but that he would arrange to take care
7 of it if they would give him just a little bit of time,
8 that he was making arrangements.

9 There was a Dodge Charger automobile,
10 Ramcharger, I think they call it, that he had on their
11 lot at the time, and he said, look, go ahead and sell
12 that Ramcharger for whatever you can get on it and
13 apply that on the bill and I'll be working to get this
14 money together, it's a mistake in my bookkeeping and
15 I'll get it together. That was agreed.

16 The evidence will be that they did sell it and
17 some two thousand four hundred -- two thousand four
18 hundred fifty-seven dollars from that was applied to
19 the total of these checks, by the way, which were
20 sixteen thousand four hundred and twenty-three dollars,
21 the total of three checks. So this cut it down
22 substantially when this was paid.

23 Now, he then, of course, received letters
24 -- and there will be no denial of this -- dated
25 December the 4th, December the 6th, and December the

1 12th of '84, that is, within about a week of this -- of
2 these conversations. And those letters were the letters
3 that are required to be given by law to advise somebody
4 that their check has not been honored by the bank and
5 that they must make it good or that other legal action
6 will be taken.

7 After he got these -- and also, in fact,
8 on the 17th of December just before that there were
9 further telephone conversations between Mr. Cash and
10 Mr. Sale, the president of the company. And they --
11 the conversation was basically, well, look, you've got
12 to do something about this. And Mr. Cash said, well,
13 yes, I want to. And Mr. Sale said, well, look, how many
14 cars have you got on your lot? And Danny Cash told him
15 forty to fifty cars. He said, okay, send me enough
16 titles on cars that you have on the lot to cover this
17 indebtedness so that I'll be safe and secure.

18 And the evidence will be that Danny Cash
19 agreed to do that, to send the titles, enough to more
20 than cover the debt. And he sent titles of cars that
21 should sell for something in excess of twenty-one to
22 twenty-four thousand dollars. And he sent those by
23 Federal Express to Triangle.

24 It's been admitted, Mr. Cash will testify and
25 it's been admitted by Mr. Lancour, that he received

1 these six titles by Federal Express which listed the
2 cars along with the document that listed the cars that
3 were being sent. And also there was a statement of the
4 value of the cars on that statement and he sent those
5 by Federal Express to Triangle Auction Company.

6 It's been admitted by Mr. Lancour
7 previously that he received these titles on December
8 17th. Now, Mr. Cash will tell you the understanding
9 will be that this was to protect these people and that
10 it would allow them -- he said that he could pay this
11 by selling other cars in thirty to forty-five days at a
12 maximum and he'll tell you that they agreed to that and
13 he sent the titles for that reason.

14 However, three -- actually four days
15 later Mr. Lancour got these titles on the 17th. On the
16 21st Mr. Lancour went to the authorities there, not
17 here, but in Montgomery County and told the
18 authorities, talked with the commonwealth's attorney,
19 in fact, assistant commonwealth attorney, and said he
20 wanted to get criminal warrants for Mr. Cash.

21 The evidence will be that Mr. Keith here
22 who has been summonsed as a witness by the defendant,
23 and I understand that he will tell you that Mr. Lancour
24 mentioned it to him as is their policy and he told them
25 if you sent the letters and so forth and you got your

1 registered receipt back from your letters, you can go
2 ahead and issue the warrants.

3 Mr. Keith will tell you that he did not
4 know and nothing was said to him about Mr. Lancour
5 having received the proceeds from this Ramcharger and
6 having in his possession the six automobile titles, it
7 was not mentioned, although he just received them four
8 days prior to this.

9 Now, these warrants were issued. These
10 warrants were issued on the 21st. They had to be sent,
11 according to the usual procedure, to Lynchburg to be
12 served upon Mr. Cash. For some reason it was delayed,
13 we don't know why, it was delayed until New Year's Eve,
14 the 31st. And New Year's Eve evening here came the
15 police officials to Mr. Cash's business and advised him
16 -- oh, incidentally, on the 28th, three days before
17 this he sent a cashier's check in the sum of two
18 thousand dollars to Triangle, so that was after the
19 time Mr. Lancour had gotten the warrant, but before he
20 was advised of the warrants being outstanding, he sent
21 two thousand dollars more and they still had the
22 titles.

23 The evidence will be they came to his
24 business on New Year's Eve, arrested him, brought him
25 to the Lynchburg Police station he'll tell you -- and a

1 couple of police officers will testify today -- he'll
2 tell you that all of these people up there are friends
3 of his, he's never been in any kind of trouble, it was
4 extremely traumatic, it was embarrassing, he had to be
5 fingerprinted, he had to be photographed, he was held up
6 in jail for a couple of hours altogether, had to post a
7 bond, it didn't require cash, but he had to sign a bond
8 of two thousand dollars for his appearance in
9 Montgomery County General District Court on these
10 charges.

11 Now, the evidence will be that then just
12 before the date for the hearing in Montgomery County
13 that he sent a cashier's check by Mr. Robert McBride,
14 who worked for him at that time, of the entire balance,
15 eleven thousand nine hundred sixty-six dollars by Mr.
16 McBride and it was delivered to Triangle Auto Auction
17 paying the indebtedness, except for the fact that as
18 will be shown by the evidence, Triangle insisted they
19 were entitled to interest on this account since they
20 hadn't had their money and shortly after that in his
21 behalf I sent a check, my firm check which he paid, and
22 we sent our check for four hundred and thirty-eight
23 dollars and seventy-four cents paying the interest on
24 this obligation.

25 Now, the matter came on February the 8th

1 to be heard in Montgomery County General District
2 Court. When the circumstances, of course, came out as
3 to what had happened, first of all and as to the fact
4 that the checks had been paid for, the charges were
5 dismissed at that time. So he has not been convicted,
6 the charges were dismissed.

7 Now, I tried to go into this a little
8 more in detail than ordinarily because I think it's
9 important for you to be able to put these matters
10 together. What we will show through Mr. Cash's
11 bookkeeper, we'll show through witnesses that, of
12 course, this matter of a young man in business who
13 hadn't had any previous problems, this matter was
14 discussed around town as such things are that Danny
15 Cash had been arrested on felony warrants.

16 The fact often times as happens, the
17 result didn't come out, just the fact that he had been
18 arrested. And this hurt his business, we'll show you
19 that. First of all we'll show you that this happened the
20 latter part of '84. And if you'll notice here you'll
21 see that in 1984 Danny Cash, his business had gross
22 sales, sold vehicles of nine hundred eighty-one
23 thousand three hundred twenty-five dollars. 1985 his
24 gross sales dropped to six hundred sixty-three dollars
25 and thirteen cents, a difference of three hundred

1 eighteen thousand three hundred and nine dollars.

2 Now, the gross profit those years, a
3 hundred eighty thousand three hundred sixteen in '84
4 less than -- well, about half of that in 1985, eighty-
5 five thousand two hundred ninety-two dollars, a
6 difference or loss of gross profit of ninety-five
7 thousand twenty-four dollars.

8 Then the net profit, the bottom line, if
9 you want to call it that, his profit in '84 was ninety-
10 five thousand three hundred twelve dollars. His -- not
11 profit, but loss, in 1985 was one thousand nine hundred
12 forty-seven dollars, which is a difference, less money,
13 in '84 -- '85 than '84 of ninety-seven thousand two
14 hundred sixty dollars.

15 Now, the accountant will explain this,
16 and there was certain reinvestments, interest and so
17 forth, that had to be worked in these figures. And all
18 of these have been made available to Mr. Mullen, and
19 he'll have an opportunity to ask more questions about it
20 if he chooses. They had certain other income of seventeen
21 hundred and four dollars in '84 which made his total
22 net profit ninety-seven thousand sixteen dollars.

23 In '85 because of the fact that he was having
24 to pick up so much interest and all that had been
25 caused by getting behind on all of these checks, he

1 had income from interest, though, at that time because
2 I'll tell you in a minute why he couldn't get his
3 regular income of twelve thousand forty-eight dollars
4 which would mean that instead of a loss there he did
5 have a total altogether income of ten thousand one
6 hundred and one dollars, which means that's a
7 difference in those two years of eighty-six thousand
8 nine hundred fifteen dollars.

9 Now, why did he have this? Well, right
10 after this occurred and this will be presented later as
11 we have said and Mr. Cash will tell you that --

12 MR. MULLEN: Your Honor, I must object to
13 the introduction of these letters on the basis
14 that they are hearsay testimony.

15 MR. JOHNSON: Your Honor, I'm not
16 introducing them at this time, I simply want
17 to tell the jury they will be put in and it
18 will be our contention and I believe the law
19 is in our favor that they are not hearsay,
20 they are exception --

21 THE COURT: Can you make your statement
22 without specific reference to what the letters
23 say?

24 MR. JOHNSON: Yes, sir, yes, sir, I
25 surely -- other than the effect it had on

1 him, I can do that.

2 THE COURT: All right, sir. I'd rather
3 you do it that way.

4 Again, I warn the jury that statements of
5 counsel in opening statements are not evidence
6 in the case.

7
8 BY MR. JOHNSON:

9 The evidence will be, and, of course, it
10 will be up to the Court as always, the judge, to rule
11 on whether or not these letters actually come in, but
12 the evidence will be, and this part will not be
13 contradicted to our knowledge, that Mr. Cash received
14 letters from two auctions, High Point and Statesville,
15 North Carolina, to the effect of which, without going
16 into language, was to tell him that he could not trade
17 anymore at those auctions.

18 The evidence will be that one of these
19 employees at that time who no longer works for him,
20 Mr. Steve Hamlet, who did some wholesale business
21 buying and selling for him who is here as a witness,
22 that he went to the auction in Fredericksburg right
23 after this matter of these warrants occurred. And the
24 evidence will be that there he took two cars of Mr.
25 Cash's, of Danny's Auto Sales, called first to make a

1 reservation. They have to pick up an auction number or
2 something like that -- not Mr. Hamlett, Mr. Lonnie
3 Morris did that -- and Mr. Hamlett will testify as to
4 another matter.

5 He called to make his reservation for the
6 number at the auction, they gave him that. The
7 following day he went up there with two cars on a
8 truck, attempted to sell those for Danny Cash.
9 After you take the car off the truck or trailer --
10 he was ready to put them in the lot to sell,
11 the loudspeaker called him to the office. He went to
12 the office, he was informed he could not sell these
13 vehicles there, that they could not sell them if they
14 belonged to Danny Cash..

15 The evidence will be that he then had to
16 put these cars back on the truck or trailer, bring them
17 back to Lynchburg. The evidence will be further that
18 Mr. Steve Hamlet will tell you that he knows that when
19 this thing happened that he was dealing with various
20 dealers and so forth, but that somehow the word was
21 advanced to him that they shouldn't or at least they
22 wouldn't deal with Mr. Cash.

23 Now, what this amounts to, of course,
24 obviously he wouldn't go to Triangle because this thing
25 has been pending for some time and that's where the

1 original trouble started, he couldn't deal there.

2 Now, the result of this is that whereas
3 he had realized in 1984 a total of nine hundred eighty-
4 one thousand, three hundred twenty-three dollars from
5 gross sales the evidence will be that a total of five
6 hundred, approximately a little over five hundred
7 thousand was from cars purchased at auctions and that's
8 where he made all of his money in 1984, that too will
9 be uncontradicted.

10 When he was cut off from attending the
11 auctions he no longer could use this source, he no
12 longer could buy and sell at auctions and then sell to
13 dealers and so forth. He was limited then, and that's
14 why we say the other income, as the evidence will show,
15 really to working anyway, that he could only sell cars
16 on his lot, to buy and sell without the benefit of the
17 auctions.

18 Now, the evidence will be further that he
19 has incurred a great deal of expenses which I won't go
20 into at the present time, he's incurred expenses in the
21 matter defending himself on the original charges and
22 so forth and travel expenses and whatnot, such things
23 as sending a man with a trailer up to Fredericksburg
24 trying to sell cars and being sent back without being
25 able to sell them adding to his expense. This suit has

1 been brought for the total amount of two hundred and
2 fifty thousand dollars as what he figured as a minimum
3 in his view of the loss he's sustained.

4 Of that he is asking for and we will ask
5 you at the proper time when it comes time for your
6 verdict to award him the sum of two hundred thousand
7 dollars in regard to compensatory damages or what we
8 call actual damages, such things as his loss of income
9 and so forth, such things as the expenses he's had to
10 go to to defend himself on these charges that we
11 contend should never have been brought in good faith
12 when security had been given for those matters.

13 And then we're asking for the sum of
14 fifty thousand dollars making the total two hundred and
15 fifty, for what we call punitive damages. We believe
16 the evidence will show, and we believe the Court's
17 instructions will show that in the words that the Court
18 will approve so I won't try to put in exact words, but
19 the evidence will be that the law is and the Court's
20 instructions, that if a person, or in this case a
21 corporation acting through its admitted agent, Mr.
22 Lancour, if they misuse criminal process, warrants, not
23 to advance justice or to bring some wrongdoer to
24 justice, but primarily to collect a debt or obligation
25 owed to them that this can be determined by you to be a

1 malicious, wrongful use of process.

2 The language is sometimes used about
3 using the law as a whipping boy, criminal law as a
4 whipping boy or whipping post to force somebody to pay
5 a debt. We believe that after you have heard the
6 evidence after you hear that no mention was made to the
7 commonwealth attorney about these people being secured,
8 no mention was made that they received twenty-four
9 hundred from the Ramcharger and so forth, they issued
10 this warrant as if nothing had been paid. Of course,
11 the court dismissed it when it came before the court.

12 And we will contend, and the judge will
13 instruct you as to the law, and based upon that law we
14 will contend that the evidence will show they have
15 abused criminal process, they have gotten what they
16 could voluntarily and then used criminal process
17 wrongfully to try to force the payment of the balance.

18 Mr. Cash will tell you, and I'll just
19 mention one more thing, Mr. Cash will tell you that
20 when Mr. Sale told him, well, look, send me those
21 titles, send me those titles, we'll work with you, send
22 me the titles up there to secure me, he'll tell you
23 that if at that time they had told him, hey, look,
24 we're not going to wait any longer, we don't want
25 titles, we don't want anything else, you pay the money

1 or we're going to issue a warrant. He'll tell you that
2 had they told him that his father, Bob Cash, would have
3 loaned him the money to pay this, that he wanted to do
4 it on his own, he didn't want his father to do it.

5 But the evidence will show that they in
6 effect encouraged him to send the titles and he thought
7 he was safe and secure and could pay this, did pay
8 another two thousand dollars immediately after this,
9 and the next thing he knew on Christmas Eve (sic) he's
10 thrown in jail and charged with these serious charges.

11 We have witnesses here to corroborate his
12 statements and we ask you to simply listen to the
13 evidence and that when the judge gives you the law, to
14 apply that to the evidence, and then you fit the law
15 and the evidence that you've heard together and come up
16 with your verdict. Thank you.

17 THE COURT: Mr. Mullen?
18
19
20

21 OPENING STATEMENT

22 BY MR. MULLEN:

23 Members of the jury, again, I'm David
24 Mullen and I practice law in Christiansburg, seven or
25 eight miles away from where the Radford Auto Auction is.

1 We appreciate your being willing to come and serve on
2 this jury today and listen to this case and make your
3 judgment according to the law and the evidence that
4 you hear and that you see and that the judge gives
5 you.

6 Since apparently none of you have sat on
7 a civil jury before as to distinguish a criminal jury
8 where some of you may have heard cases before, I would
9 like to spend a couple or three minutes telling you what
10 the procedure is for this type of case today so that
11 you have some idea of what to expect.

12 After these opening statements are
13 concluded then Mr. Johnson on behalf of Mr. Cash will
14 present his evidence through his witnesses and through
15 his exhibits and so forth. I'll have an opportunity to
16 cross examine the witnesses that he presents and I will
17 do that to each one of them.

18 In the cross examination that I will
19 conduct of the witnesses that he puts on the stand, I
20 will be using some folders like these. Now, these are
21 depositions. Depositions are statements under oath
22 which all of his witnesses have previously given. They
23 have been taken down by the court reporter, Becky
24 Cochran, and they have been transcribed and I have
25 copies of their previous testimony, so I'll be

1 referring extensively to the previous testimony they
2 have already given to make sure that they tell the
3 truth in this case and to advise you of what they said
4 earlier.

5 After the evidence has been presented on
6 behalf of Mr. Johnson and his client, Mr. Cash, then I
7 will have an opportunity after some motions are made to
8 the judge out of your presence -- and this is normal,
9 it's nothing for you to be concerned or worried about
10 -- I'll have an opportunity to present Triangle Auto
11 Auction's case. And I'll do that through three witness,
12 Mr. Gene Lancour, who is seated here at counsel table
13 with me. He was the manager at the auto auction then
14 and he is the manager at the auto auction now. And he
15 knows more about what happened during the course of the
16 events in late November 1984 and early 1985 than anyone
17 else does. And in a minute I'll go into what he is
18 going to testify and tell you.

19 And I'll also present Mr. Frank Sale, who
20 is a vice president of Triangle Auto Auction and is a
21 major shareholder in that company. He likewise knows
22 many of the events that occurred during those months of
23 late '84 and early '85 and he'll tell you what happened
24 also.

25 In addition to that Mr. Phillip Keith,

1 who is the assistant commonwealth's attorney for
2 Montgomery County, ninety miles west of here, will take
3 the witness stand and he will tell you about the
4 conversations that he had with Triangle Auto Auction
5 regarding the issuance of bad checks, he will tell you
6 about the law concerning bad checks. He will tell you
7 about the procedures for securing warrants for people
8 who give bad checks in Montgomery County, Virginia, and
9 he'll tell you about the court procedures that have
10 been adopted and are policies of Montgomery County
11 General District Court for what happens when a person
12 pays a bad check before he comes to trial on the
13 charges of giving the bad check.

14 Now, after our evidence is presented and
15 all of the evidence is in and, again, some motions
16 outside of your presence will be made before the judge
17 and he'll make certain rulings, then we'll come back
18 into the courtroom and you'll listen to closing
19 arguments of counsel.

20 Mr. Johnson gets to speak twice, I get to
21 speak once, that's the way the system works. And there
22 is no problem that I have with it. He gives you an
23 opening and he gives you a closing. He speaks first
24 and I speak second, he speaks last. I do not have an
25 opportunity under the system to respond to his remarks

1 that he makes in his closing of the closing argument.

2 After that's finished then you'll be
3 given the jury instructions which constitute the law of
4 the case, go into your jury room over there,
5 deliberate, hash it all out, draw your conclusions,
6 reach your verdict, sign the form, and come back in
7 here, and as far as you're concerned, with maybe one or
8 two minor exceptions, it's all over.

9 Now, to the facts of the situation of
10 this case, 1977 Triangle Automobile Auction Company was
11 formed in Christiansburg, Virginia seven miles from
12 where its present location is in Radford. Two men
13 formed it, Roger Gallimore who is seated over here to
14 my left, and Frank Sale, who will testify later.

15 Over a period of three or four years the
16 business gradually grew to the point that they had to
17 move it to its present location in Radford and build a
18 bigger building.

19 At an automobile auction, and theirs is
20 held every Monday night, dealers from all over the
21 State of Virginia, West Virginia, North Carolina, and
22 some other surrounding states come to that auto auction
23 and bring their automobiles for sale to other dealers.

24 Now, the way they go about doing this is
25 they can deal in cash, they can bring their cars, they

1 can bring the titles to the cars showing on the cars,
2 and they can bring a pocketful of cash and buy and
3 sell. That's no problem, that's one way.

4 There's another way. They can bring
5 their cars and not have the titles because they may
6 have obtained financing on those car titles from some
7 banker or lending institution and they can sell the
8 same car without the title through the auction and then
9 have a given six or seven day period within which to
10 get the title to Triangle to deliver it to the buyer of
11 the car, whoever bought it on the lot.

12 Triangle will tell you that the manner of
13 paying the sellers for the cars that are sold on that
14 auction block is with Triangle Auto Auction's check,
15 not someone else's check, Triangle's money is used to
16 pay the sellers. The sellers bring their cars and they
17 want payment that night and they get it. Titles or no
18 titles they take the cars home, the buyers do, the
19 sellers take the money home, that's just the way it
20 works.

21 In November of 1984 on the 12th day of
22 the month, a Monday night, Mr. Daniel Cash went to
23 Triangle Auto Auction and bought several automobiles.
24 He gave a check for nine thousand seven hundred and
25 eighty-eight dollars, took those cars with him. He

1 gave another check for three thousand eighty dollars
2 and took that car or those cars with him. He went
3 back two weeks later on November the 26th, bought
4 another vehicle or two, and gave them another check for
5 thirty-five hundred and fifty-five dollars. The total
6 amount of the checks that he gave Triangle Auto Auction
7 over a two week period, sixteen thousand four hundred
8 and twenty-three dollars.

9 Triangle Auto Auction paid the sellers of
10 those cars sixteen thousand and some dollars, they
11 deducted their fees and they paid the balance to the
12 people that bought the cars to sell. So they were out
13 the money, but they had Danny's check at that point
14 there was no problem.

15 When those three checks were presented to
16 the bank, the First Virginia Bank in the City of
17 Lynchburg for payment, they bounced. They did not
18 clear the bank. The funds were not paid into
19 Triangle's account.

20 The bank got a hold of Triangle and said,
21 look, your account is short sixteen thousand dollars,
22 get up here and put the money back in the account to
23 cover the checks that bounced, Mr. Cash's checks, and
24 they did that.

25 Triangle Auto Auction has a policy against

1 accepting bad checks because they don't have the funds
2 to finance every dealer that comes to the auction.

3 On December the 4th of 1984 Triangle
4 Automobile Auction by letter certified with return
5 receipt, notified Mr. Cash that certain of these checks
6 had bounced and gave him within that letter five days
7 within which to pay those checks totally, completely,
8 and in full.

9 On December the 6th another letter was
10 sent for another one of the checks that had bounced.
11 Same language. On December the 12th still another
12 letter was sent for the third and final bad check that
13 had been given to Triangle.

14 The procedure for doing this had been
15 worked out in advance between Triangle Auto Auction and
16 the commonwealth's attorney for Montgomery County,
17 Virginia. The commonwealth's attorney assistant, who
18 is Mr. Phillip Keith who will be here to testify,
19 advised them what the law on bad checks was and to
20 give the proper notice to stay out of trouble. And
21 they did exactly what he told them.

22 These checks were not paid within the
23 five day period that the law specifies. Some money was
24 paid, but not sixteen thousand four hundred and twenty-
25 three dollars which was the amount of the total of the

1 bad checks. At that point Triangle Auto Auction's
2 representative, Mr. Lancour, consulted the
3 commonwealth's attorney again. He went to the
4 magistrate's office to secure a warrant to have Mr.
5 Cash arrested for giving bad checks. It's grand
6 larceny by bad or worthless checks.

7 The magistrate's office has a notice
8 posted, if you want a warrant for somebody for grand
9 larceny by worthless check, first you have to see the
10 commonwealth's attorney. So the commonwealth's
11 attorney was consulted again in this case before these
12 warrants were issued. He reviewed the matter with Mr.
13 Lancour, was advised that the total of sixteen thousand
14 four hundred and twenty-three dollars of the bad checks
15 had not been paid and he said, go get the warrants.
16 Mr. Lancour did.

17 Mr. Keith's testimony will be that Mr.
18 Lancour did not advise him that partial payments had
19 been made, His further testimony will be that it
20 wouldn't have made a bit of difference in the world,
21 because unless Triangle had sixteen thousand four
22 hundred and twenty-three dollars the crime had been
23 committed and the warrant should be issued.

24 There were many conversations between
25 Gene Lancour and Frank Sale of Triangle Auto Auction

1 and Mr. Cash regarding how Triangle was going to get
2 its money back. Mr. Sale did request some collateral,
3 he didn't have the funds to finance every dealer in the
4 State of Virginia, including Mr. Cash on cars. He
5 asked for collateral, but he never got it. What he did
6 get was six pieces of paper, he got six car titles to
7 cars that were sitting on Mr. Cash's lot in Lynchburg,
8 but there was not one legitimate legal thing he could
9 do with them. He couldn't sell those cars, they were
10 Cash's cars, he couldn't put a lien on them because
11 Cash hadn't signed anything to permit a lien, he
12 couldn't do anything else except hold six worthless
13 pieces of paper. Nothing was signed by Mr. Cash to
14 permit Triangle Auto Auction to market those vehicles
15 or to put a lien on the face of the title.

16 So on December 21 the warrants were sworn
17 out by a representative of Triangle Auto Auction and in
18 the events that followed Mr. Cash was arrested on the
19 grand larceny by bad check charges and he was ordered
20 to stand trial in Montgomery County, Virginia.

21 And the day before those charges were to
22 be brought against him and his trail was to be had, he
23 did, in fact, send a representative to Triangle to pay
24 the checks. The balance at that time was about twelve
25 thousand dollars and he paid that.

1 On the morning of the trial, the
2 scheduled trial, he showed up in Montgomery County with
3 his attorney, Mr. Johnson, and there was a conference
4 held in one of the small rooms off the courtroom, very
5 similar to this one. And at that conference Mr.
6 Lancour advised the commonwealth's attorney that
7 Triangle had now been paid all of the checks, some
8 interest was still due, but the checks had been paid.

9 The commonwealth's attorney then, and I
10 emphasize the commonwealth's attorney because this will
11 be the testimony uncontradicted, made the decision not
12 to further prosecute, in other words to go into the
13 judge and say, restitution has been made, even though
14 the crime was complete, we, the Commonwealth, the State
15 of Virginia choose not to prosecute.

16 And there is a reason for this and he
17 will tell you what the reason is, the policy of the
18 judge is to dismiss the charges anyway if restitution
19 has been made. Now, whether that's right or whether
20 it's wrong is another question, but that's the policy.

21 The judge then on the recommendation of
22 the commonwealth's attorney dismissed the criminal
23 charges against Mr. Cash.

24 Several months followed that time and out
25 of the blue one day a sheriff's deputy delivers to

1 Triangle Auto Auction some suit papers. The first
2 suit that was filed said that Mr. Cash had been damaged
3 to the extent of fifty thousand dollars. That suit was
4 later dismissed here in Lynchburg at the request of Mr.
5 Cash through his attorney, this was in March of 1986.

6 A couple of months later Mr. Cash refiled
7 his suit in Lynchburg, that's the one we're here on
8 today. And in that suit he is asking for two hundred
9 and fifty thousand dollars damages for the same thing
10 that he alleged to be worth fifty thousand dollars in
11 the first suit.

12 It is a suit for malicious abuse of
13 process. As such that is a wrong and it's a wrong for
14 which compensation can under the law be granted.
15 However, it requires proof, proof by the greater weight
16 of the evidence, enough to tip the scales to one side,
17 to the side in favor of Mr. Cash. He must show that
18 Triangle Automobile Auction Company's actions, resulted
19 from malice, not from an intent to see justice done,
20 but from malice, a deliberate, oppressive, perverted
21 desire to injure him, Daniel Cash, and that's what he's
22 got to show.

23 He claims in his suit papers that you're
24 trying today that he's lost his reputation and ability
25 to buy cars. His evidence will not bear that out. His

1 witnesses according to the depositions they have
2 already given under oath will say that his reputation
3 is as good today as it was in early 1984, late 1984,
4 and throughout 1985 and 1986.

5 He says in his suit papers today that
6 Triangle Auto Auction somehow abused with malice the
7 court process. The commonwealth's attorney will tell
8 you that Triangle Auto Auction followed all the rules
9 and did everything that was legally required of them or
10 permitted of them to do.

11 Mr. Cash will bring nine witnesses before
12 you. He will talk about an inability to do business
13 at certain auto auctions. He will also be honest with
14 you and tell you that the source of his inability to do
15 business if, in fact, that is a problem for him is
16 unknown. He doesn't know why he can't do business, he
17 only thinks that he can't do business.

18 He will also tell you that not one single
19 automobile auction has told him he cannot deal there
20 today. They have only told him that he must use cash,
21 hard green stuff, and hard titles for his cars. They
22 won't take his checks anymore. He will be honest with
23 you and tell you he does not know the source of that
24 new requirement.

25 You will decide after the conclusion of

1 all of the testimony today whether Triangle Automobile
2 Auction, Incorporated followed the law, properly had
3 him arrested, properly had him charged, properly agreed
4 to appear as a witness to tell the facts to Montgomery
5 County General District Court and then had nothing more
6 to do with the prosecution, commonwealth's attorney
7 asked that it be dismissed and it was.

8 After all of this testimony is in and you
9 see the course of dealing in which Daniel Cash engaged
10 over the latter part of 1984 into 1985 and into 1986
11 was such that he habitually issued bad checks, he got
12 prosecuted for these and he came out on top, at least
13 as far as the present is concerned.

14 After all of this evidence is in and
15 you've seen it and you've heard it all and you go back
16 and you try to figure out what Triangle has done wrong,
17 if anything, and in accordance with the law the judge
18 gives you, we're convinced that the evidence will
19 indicate to you your only proper verdict is to award
20 Mr. Cash zero damages, that the problems, if any, he
21 might have had were brought on by himself. Thank you.

22 THE COURT: May I see the two lawyers
23 here for just a second?

24 (Whereupon counsel approached the
25 bench and an off-the-record

1 discussion was had.)

2
3 THE COURT: It's been called to my
4 attention that Courtroom B is available if
5 you want to go down there. There's a matter
6 that I have to talk to the attorneys about
7 just keep your seat there or if you want to
8 go to the jury room for any reason it's okay.
9 We'll be back in just a few minutes.

10 (Whereupon a brief recess was
11 taken and the proceedings moved
12 to another courtroom.)

13
14 THE COURT: Sorry we had to do that, but
15 this courtroom was occupied when we started.

16 Okay. Mr. Johnson, call your first
17 witness.

18 MR. JOHNSON: Call Mr. Daniel Cash, Your
19 Honor.

20 THE COURT: Okay.
21
22
23
24
25

DANIEL F. CASH - DIRECT

DIRECT EXAMINATION

1
2 BY MR. JOHNSON:

3 Q Please state your full name.

4 A Daniel Franklin Cash.

5 Q And Mr. Cash, you're the person that
6 through your attorney brought this suit, is that
7 correct?

8 A Yes, sir.

9 Q And where do you live, Mr. Cash?

10 A 2113 Burnt Bridge Road.

11 Q Here in the City of Lynchburg?

12 A Yes, sir.

13 Q And what is your age?

14 A I'm twenty-eight years old.

15 Q I believe you're married?

16 A Yes, sir.

17 Q To Ms. Darlene Cash and she's here as a
18 witness today?

19 A Yes.

20 Q I believe you have one child, a daughter?

21 A Three year old daughter.

22 Q Okay. That's the extent of your family,
23 is that right?

24 A Yes, sir.

25 Q Now, let me ask you first of all, what is

DANIEL F. CASH - DIRECT

1 your educational background?

2 A I'm a graduate of E. C. Glass High School
3 and then I worked for my father in the automobile
4 business and really I graduated from --

5 Q Your education is E. C. Glass, is that
6 correct?

7 A Uh-huh.

8 Q After you graduated from E. C. Glass, did
9 you go to work right away or go to work before you
10 graduated or what?

11 A That's the only job I've ever had is
12 working in the automobile business, so, yes, while I
13 was in E. C. Glass I was working for him and then I
14 continued on when I graduated.

15 Q Now, when -- did there come a time that
16 you got your own business?

17 A Yes, sir.

18 Q About when was that?

19 A It was in 1980 -- 1981 my father retired
20 and I bought out his used car business where he had
21 been for twenty-eight years.

22 Q I believe your father's business was Bob
23 Cash Lincoln Mercury?

24 A Yes, sir.

25 Q And he was the Lincoln Mercury dealer

DANIEL F. CASH - DIRECT

1 here for how long?

2 A He was the Lincoln Mercury dealer for
3 fifteen years in Lynchburg, but he had the business
4 that I've got, that's where he started twenty-eight
5 years ago and he carried that on along with Lincoln
6 Mercury.

7 Q So what you acquired when he retired was
8 not the dealership, the new car dealership, but was the
9 used car portion?

10 A Yes, sir.

11 Q Did you operate that entirely on your
12 own?

13 A Yes, sir.

14 Q By that I mean you didn't and don't have
15 partners or anything like that?

16 A No, sir.

17 Q You're the sole owner?

18 A Yes, sir.

19 Q All right. Would you explain first of
20 all, Mr. Cash, what's the situation in this matter of
21 you as a used car dealer purchasing or selling at
22 public auctions and so forth, how does that work?
23 Without going into a lot of detail, tell the jury how
24 it works.

25 A Well, my main process is buying -- all of

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1 the automobile auctions the prices don't run the same
2 on all of them so if you know the business well enough
3 you can figure out where you can buy cars at one
4 auction and take to another auction and sell at a
5 higher price.

6 New car dealers, some of them in the area
7 only keep certain year model cars. The year models
8 that they don't keep they wholesale to dealers, you buy
9 them at the right price, you take them to an automobile
10 auction and sell them, and that's the way in 1984 I
11 made a good living of doing that.

12 Q Is that the way that you had been
13 operating the entire time that you had been running your
14 own business?

15 A Yes, sir.

16 Q All right. What auction sales normally
17 did you deal with, say, on up until the latter part of
18 1984?

19 A I dealt in Statesville, North Carolina, I
20 dealt in High Point, I dealt in Fredericksburg, and
21 before the incident with Triangle I dealt with them.

22 Q And, of course, Triangle has already been
23 stated is located in Radford, Virginia?

24 A Yes, sir.

25 Q There, I think, will later be some

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1 documents headed, Radford Auto Auction, is that the same
2 as Triangle so far as you know?

3 A Yes.

4 Q Okay. Now, let me ask you this: Had you
5 been dealing with Triangle?

6 A Yes, sir.

7 Q Had you been dealing with Mr. Laney?

8 A Yes, sir.

9 Q And had you had dealings with Mr. Sales
10 as well?

11 A Yes, sir, I knew them all.

12 Q All right. Now, for how long had you
13 been dealing, as of November or December 1984 for how
14 long had you been dealing with Triangle?

15 A I think I had been up there on occasion
16 in '82, but '83 I started doing a lot of business with
17 them. I think in the year of '83 in twelve months I
18 spent somewhere in the area of sixty to sixty-three
19 thousand dollars with them. 1984 I spent in the area
20 of seventy thousand dollars with them. So I was
21 averaging about fifty (sic) thousand dollars a month
22 with them.

23 Q I think it was a total of those two years
24 of a hundred and thirty-four thousand two hundred and
25 fifty-nine dollars?

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1 A Yes, sir.

2 Q Now, were there any problems in regard to
3 that, anything such as we're here about now?

4 A Not to my knowledge.

5 Q All right. Now, you said you spent that
6 much with them, what do you mean by that?

7 A Purchased automobiles.

8 Q At auction?

9 A Yes, sir.

10 Q Would this be considered wholesaling?

11 A Sure, it's a wholesale auction, yes.

12 Q Only for wholesale people who are
13 licensed to deal wholesale?

14 A Automobile dealers.

15 Q So you bought them with the intention of
16 reselling?

17 A Yes, sir.

18 Q Now, how often back prior to November,
19 December of '84 did you attend automobile auctions?

20 A I was going on a weekly basis.

21 Q Every week?

22 A Yes, I had a cycle that I was actually
23 working. I would go to Fredericksburg on Thursday, and
24 Monday night would go to Radford, and then on Tuesday,
25 not every Tuesday, I went to High Point, because

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1 working Radford at night and then waking up the next
2 morning and going to Tuesday, that's a day sale in High
3 Point, but I worked the auction from Tuesday to
4 Thursday in Fredericksburg and back and forth, plus I
5 had an outlet to buy the cars at the auction and sell
6 to local dealers.

7 Q All right. So now how often would you go
8 then to Triangle? You said you went to some of the
9 auctions every week, how often did you go to Triangle?

10 A I was going to Triangle pretty regular,
11 it was two or three days out of a month, which it's
12 only run once a week.

13 Q All right. Now, then, on -- did you have
14 occasion to go up there to Triangle on November the
15 12th?

16 A Yes, sir.

17 Q Who, if anyone, went with you?

18 A A gentleman was with me that night when I
19 bought the automobiles.

20 Q What --

21 A Steve Hamlett was with me the night I --
22 he worked for me at the time and, of course, he bought
23 cars on the wholesale basis.

24 Q I'll show you what I have marked
25 Plaintiff's Exhibit No. 1 and ask you -- this appears

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1 to be three checks -- and ask you if you can identify
2 those?

3 A Yes, sir, they are mine.

4 Q Would you look at them, please, sir, and
5 tell me, I believe the first one is -- the number of the
6 check is what?

7 A Twenty-three fifty-nine.

8 Q And what's the amount? And it's dated
9 as you already said, November the 12th, 1984?

10 A Yes, sir.

11 Q What's the amount of that check?

12 A Nine thousand seven hundred and eighty-
13 eight dollars.

14 Q Do you recall whether that was for a
15 number of cars or do you have any idea how many it was
16 for?

17 A It was for a '77 Jeep, an '83 Chevette,
18 and an '81 Buick.

19 Q They are marked on the check?

20 A They are marked on the check.

21 Q The total then would have been the
22 ninety-seven eighty-eight?

23 A Yes, sir.

24 Q Now, then do you have another check, I
25 believe all of these are marked Exhibit 1, the three

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1 are on the same document?

2 A Yes.

3 Q Right here, is that right?

4 A Yes, sir.

5 Q What's the next check, the one in the
6 middle, what's the number of that check?

7 A Twenty-three seventy-six.

8 Q What's the date of that check?

9 A Three thousand eighty dollars.

10 Q Do you have what that was for on there?

11 A '76 Cadillac Seville.

12 Q That was the only one that was purchased
13 by that check?

14 A Yes, sir.

15 Q Do you have a check dated November the
16 26th?

17 A Yes, sir.

18 Q What's the number of that check?

19 A Check number twenty-three ninety-three.

20 Q And what's the amount of that check?

21 A Three thousand five hundred and fifty-
22 five dollars.

23 Q And what vehicle or vehicles was that
24 for?

25 A '77 Cadillac Seville.

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1 Q All right. So then the total of those,
2 I believe, is sixteen thousand four hundred twenty-
3 three dollars?

4 A Yes, sir.

5 Q And they are all within the time frame
6 from November the 12th to November the 26th, over two
7 weeks?

8 A Yes, sir.

9 MR. JOHNSON: Your Honor, we would like
10 to introduce this?

11 THE COURT: Any objection?

12 MR. MULLEN: No objection.

13 THE COURT: Mark it as Plaintiff's No. 1.
14 (Whereupon the checks were marked
15 as Plaintiff's Exhibit No. 1.)
16

17 BY MR. JOHNSON:

18 Q Now, after -- you say Mr. Hamlett was
19 with you up there when these --

20 A Yes, sir.

21 Q Was he with you all three of these
22 occasions or some of them or what, do you recall?

23 A I really don't recall.

24 Q He is here as a witness today, is he not?

25 A Yes, sir.

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1 Q What now was the first thing that
2 happened after you gave these checks?

3 A You mean in regards to --

4 Q In regard to any contact with Triangle?

5 A Well, I was called and said that the
6 checks had came back.

7 Q Who called you?

8 A Mr. Lancour.

9 Q The gentleman here at counsel table?

10 A Yes, sir.

11 Q He called you and told you that the checks
12 or --

13 A A check.

14 Q A check had come back?

15 A A check had come back.

16 Q Do you know about when that call was?

17 A It was four or five or six days, I would
18 say, after I had written the first check.

19 Q So it would have been within four or five
20 or six days after November the 12th?

21 A Right.

22 Q Which would have been before, immediately
23 before the second check was given?

24 A Yes, sir.

25 Q Of course, that was given on the 19th?

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1 A Right.

2 Q All right. Let me ask you to break off
3 this just one minute. Did you think or did you not
4 think you had the money in your account to cover these
5 checks when you gave each of the three checks?

6 A Oh, I was showing a positive balance in
7 my checking account.

8 Q Have you since found out that it was not
9 correct, the balance that you were showing?

10 A Yes, sir.

11 Q Did you know that at or before the time
12 you gave these three checks?

13 A No, sir.

14 Q You thought you had a positive balance?

15 A Yes, sir.

16 Q All right. He called you about the one
17 check, what took place in that conversation?

18 A He said he would rerun it again.

19 Q To go through again?

20 A And I think I had explained that I had
21 made a deposit and maybe his check had beaten my
22 deposit because I was showing a positive balance.

23 Q So as I understand it, you still didn't
24 know your balance was wrong?

25 A Right.

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1 Q Now then, what happened after that,
2 what's the next contact?

3 A Well, I had gone to the auction after
4 that and bought another car.

5 Q On the 19th?

6 A When he was running the first check back
7 through the bank that had come back.

8 Q Okay.

9 A And then when I had bought that car, we
10 came back and he said the first one had come back. And
11 by the time I had gone back to the auction and bought
12 the third car and wrote the third check, if I'm not
13 mistaken, two of them had come back and he accepted the
14 third check. Then he called me and told me all three
15 of them were back.

16 Q What did he say about them being back?

17 A He said all three of them were returned
18 and what were we going to do about it.

19 Q What did you tell him?

20 A I told him I didn't know what the problem
21 was, evidently somehow I was -- I was showing a
22 positive balance in my checking account, I was upset
23 because I was showing a positive balance. I wouldn't
24 have had intentions of writing it if I had know it wasn't
25 going to be a positive balance there and that I would

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1 do whatever was possible to get the money to him as
2 quick as I could.

3 Q Did he seem to accept that at that time
4 or not?

5 A Well, he said he would call me back and
6 see what I could do. And I said, well, I can probably
7 take care of it in thirty to forty-five days, but at
8 this time of year the car business is slow and
9 Christmas is coming on, the car business is down and I
10 can't just go and turn the money that quick.

11 But we want it right now is the way it was
12 being said, and in a sense. And I said, well, just give
13 me a little bit of time.

14 So I had a vehicle at the auction, a '79
15 Dodge Ramcharger, that was at the auction that I
16 couldn't bring back when I was up there.

17 Q At Triangle?

18 A Yes, sir.

19 Q All right.

20 A So I said, well, sell that vehicle and I
21 will send you the title. And I think he asked me what I
22 wanted for it and I said, it doesn't make any
23 difference what it brings, take it and apply it towards
24 what I owe you, that's the main point is to pay you.

25 Q Did he agree to do that?

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1 A Yes, sir.

2 Q I show you what purports to be a Triangle
3 Auto Auction -- I suppose you call it a bill of sale,
4 which we marked Plaintiff's Exhibit No. 2, and it
5 appears to be -- the print is pretty poor on here, it's
6 a carbon, but did you say a '79 Dodge Ramcharger?

7 A Yes, sir.

8 Q Is that the vehicle that you're talking
9 about that was there on the lot?

10 A Yes, sir.

11 Q Was that vehicle sold?

12 A Yes, sir.

13 Q Is that the bill of sale for that
14 vehicle?

15 A Yes, sir.

16 Q All right. And what was the amount that
17 was due you as a result of that sale?

18 A The twenty-four hundred and fifty-seven
19 dollars and down at the bottom here --

20 Q What does it say at the bottom?

21 A It says: The proceeds of this sale,
22 twenty-four hundred and fifty-seven dollars were
23 retained by Triangle Auto Auction and applied towards
24 bad checks we are holding, Eugene Lancour, Manager,
25 Triangle Auto Auction.

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1 Q That's Mr. Lancour's signature, is it?

2 A Yes, sir.

3 MR. JOHNSON: Your Honor, we would like
4 to introduce this as Plaintiff's Exhibit 2.

5 MR. MULLEN: No objection.

6 THE COURT: All right.

7 (Whereupon the bill of sale was
8 marked as Plaintiff's Exhibit No.
9 2.)
10

11 BY MR. JOHNSON:

12 Q Now, so this was credited now. Now, did
13 you receive -- that was on November the 29th, I
14 believe, this document?

15 A Yes, sir.

16 Q Is that correct?

17 A (Affirmative nod.)

18 Q Which incidentally would have been three
19 days after the third check was given?

20 A Yes, sir.

21 Q On the 26th?

22 A (Affirmative nod.)

23 Q Now, did you receive a document dated
24 December the 4th from Mr. Lancour?

25 A A registered letter?

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1 Q Yes, sir.

2 A Yes, sir, that's the first one I had ever
3 received.

4 Q The first one you had ever received?

5 A Yes, sir.

6 Q Let me ask you: In regard when you -- to
7 the first one you ever received, in opening statement I
8 understood Mr. Mullen to say that you had had problems
9 with your checks and so forth, had you had any problems
10 of that kind with Triangle or anybody else prior to
11 this situation?

12 A Not to my knowledge.

13 Q And --

14 A I was still doing business there with
15 them.

16 Q Is this -- could you identify this, is
17 this the letter that's dated, I think, December the
18 4th?

19 A Yes, sir.

20 Q And, of course, it recites the fact that
21 you -- this is in regard to the first check dated
22 November 12th, is that correct?

23 A Right, check number twenty-three fifty-
24 nine.

25 Q In the sum of ninety-seven hundred and

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1 eighty-eight dollars?

2 A Yes, sir.

3 Q And it goes on to say that unless you
4 take care of it in five days or so forth, legal action
5 would be taken?

6 A Yes, sir.

7 Q You did receive that?

8 A Yes, sir.

9 Q All right.

10 A After I had given him the money.

11 Q At the time you received this, how much
12 money had you given to them?

13 A Twenty-four hundred and fifty-seven
14 dollars.

15 Q For the Ramcharger?

16 A Yes, sir.

17 Q Had they asked you, Mr. Lancour asked you
18 for the money at that time?

19 A Asked me when I could pay it and I told
20 him I was going to pay it as quick as I could, that I
21 would need thirty to forty-five days.

22 MR. JOHNSON: We would introduce that as
23 an exhibit.

24 MR. MULLEN: No objection.

25 THE COURT: All right, sir.

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1 BY MR. JOHNSON:

2 Q Now, I believe then that you got -- I'll
3 ask you now, please, sir, to look at each of these,
4 take the first one, I believe that's dated November
5 the 19th -- excuse me, dated December the 6th.

6 A Yes, sir.

7 Q It's in regard to the November the 19th
8 check?

9 A Yes, sir.

10 Q And it's the same type letter, in fact,
11 it's a form letter, is it not?

12 A Right, yes, sir.

13 Q About five days making it good?

14 A Uh-huh.

15 Q And then the other one right under that,
16 I believe marked Plaintiff's Exhibit 5 is dated what?

17 A 12/12.

18 Q December the 12th, same type of letter,
19 is that correct?

20 A Yes, sir.

21 MR. JOHNSON: Your Honor, we would like
22 to introduce these as Exhibits 4 and 5.

23 MR. MULLEN: No objection.

24 THE COURT: Okay.
25

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1 BY MR. JOHNSON:

2 Q All right, sir. Mr. Cash, now, what
3 happened after the third letter that you received
4 sometime after December the 12th?

5 A Well, of course, I had been called asking
6 when I was going to pay it and I told them I needed
7 thirty to forty-five days. So I got a call from Mr.
8 Sale and he asked me what I had on my lot that I had
9 the titles to.

10 Q Let me ask you at this point: You had
11 been dealing, were talking with Mr. Lancour --

12 A Yes.

13 Q -- the gentleman here previous to this?

14 A Right, I think Mr. Lancour called me and
15 Mr. Sale got on the phone.

16 Q On this occasion?

17 A Right.

18 Q How many telephone conversations would
19 you estimate you had with Mr. Lancour prior to this
20 conversation with Mr. Lancour and Mr. Sale?

21 A I would say from the day before I sent
22 the -- let them sell the Ramcharger I was called every
23 day.

24 Q All right. Now, on this particular day,
25 are you talking about December the 17th?

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1 A I believe that's when they sold the --
2 the day before they sold the Ramcharger.

3 Q Well, December the 17th you were talking
4 about that you received a telephone call you think from
5 Mr. Lancour and Mr. Sale got on the phone?

6 A Right.

7 Q What happened in that telephone
8 conversation?

9 A Mr. Sale wanted me -- he called me up and
10 he was mad and he said that I was going to go bankrupt;
11 and I told him I wasn't, that I had too much to lose, I
12 had been in business too long, that I wasn't that kind
13 of a person. And he said he didn't floor plan cars.
14 I said I realized that. I said, but I had a mess up in
15 my checking account somewhere and I'm in the midst of
16 trying to get it straightened out, I'm not meaning to
17 do anything wrong and I will pay you interest and I
18 will get it paid in thirty to forty-five days.

19 He then told me -- asked me, what do you
20 have on your lot in the way of cars that you could
21 send me titles to? And I told him that I had thirty
22 automobiles, thirty-five automobiles. He said, well,
23 send me the titles to some of those cars and I'll hold
24 them as collateral until we get this thing straight.

25 Q Now, did -- was it specified how much in

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1 value those titles were to be when he told you to send
2 him titles? What was said about value?

3 A He told me to pick them at my own random
4 that would justify the collateral.

5 Q And what did you understand by, justify
6 the collateral?

7 A That they would be held for the money I
8 owed him.

9 Q In other words, some value of titles
10 exceeding -- equal to or exceeding the value that you
11 owed?

12 A Yes, sir.

13 Q Did you pick out vehicles -- what else
14 was said?

15 A And then I sent them to him Federal
16 Express the next day and he called me back and we went
17 over it and he accepted the titles.

18 Q Was there any -- when you sent them to
19 him, was there -- you said you sent it Federal Express.

20 A Yes, sir.

21 Q Was there anything with that or do you
22 know?

23 A I believe --

24 Q With the titles?

25 A I believe I put a list in there showing

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1 -- a typed list showing the automobiles, what I owed
2 them, and the amounts that I had in each car. And it
3 more than justified what I owed them.

4 Q I believe you do not -- I believe you do
5 not or cannot find in your records a copy of that list?

6 A No.

7 Q But let me show you another document
8 dated December the 17th and ask you if you can identify
9 this. I'll show you what I marked Plaintiff Exhibit
10 No. 6 and ask you if you can identify this Federal
11 Express document?

12 A Yes, sir.

13 Q What is that?

14 A That's the Federal Express document where
15 I sent them the titles as collateral.

16 Q This shows a package or something being
17 sent, that's what the package was, the titles?

18 A Yes, sir.

19 Q How many titles were there?

20 A Five titles, I believe.

21 Q Now, this is dated December the 17th?

22 A Yes, sir.

23 Q That's the day that you sent them?

24 A Uh-huh.

25 MR. MULLEN: No objection.

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1 BY MR. JOHNSON:

2 Q All right, sir. You say Mr. Lancour
3 called you or you called him the next day or Mr. Sale or
4 whoever you were telling us?

5 A Mr. Lancour called me.

6 Q The day after you sent these?

7 A Yes, and told me that they received them
8 and we went over them and they accepted them.

9 Q All right. Was there any objection
10 stated either to the vehicle titles that you sent or to
11 the amount that you had shown or anything at that time?

12 A No, I think he asked me would I send
13 more. At first we had a little disagreement as to what
14 he thought they were worth versus what I did and we
15 later came to an agreement that that would justify the
16 collateral.

17 Q Did you go over that and discuss that?

18 A Oh, yes. That's how we got it straight.

19 Q Did he or did he not agree to the titles
20 that you had sent?

21 A He agreed and accepted the titles.

22 Q Now then, that was on the 17th?

23 A Yes, sir.

24 Q Now, incidentally, when you bought the
25 cars that you have described as shown by the three

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1 checks --

2 A Yes, sir.

3 Q -- back in November, you took the cars
4 with you when you bought them, is that right?

5 A Yes, sir.

6 Q What happened to the titles to those cars
7 when you took them with you?

8 A I held those so I could turn them -- I
9 figured that those -- in other words, what I did, I
10 took the cars that I had and kept the titles that I
11 could turn the quickest, the automobiles that I could
12 sell the quickest in order to justify, because I knew I
13 had a thirty day deadline to work with. And then I
14 sent him the ones that wouldn't move as fast. But had I
15 sent the ones that would move quicker I probably would
16 have had a hard time raising the money, so I kept the
17 ones that would move the quickest in order to pay him.

18 Q Did you still have the vehicles and the
19 titles on the cars that you had bought up there?

20 A Sure, yes, sir.

21 Q Did he ask you to return those --

22 A No.

23 Q -- for which the checks had been given?

24 A No, he didn't specify any titles that he
25 wanted, he told me at my random to pick out the titles

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1 that would justify the collateral.

2 Q You did that?

3 A Yes,

4 Q And called the next day and y'all agreed?

5 A Right.

6 Q What happened after that?

7 A After I sent him the titles, then shortly
8 after that, I believe I've got it dated, it was a couple
9 of days later that I sent him two thousand more
10 dollars.

11 Q Was this on the -- you sent him two
12 thousand more on -- do you remember the date?

13 A Let's see, 12 --

14 Q I'll show you this.

15 A No, I don't remember the date. It was
16 shortly after I sent him all the titles, though.

17 Q I'll show you a document with a sender's
18 receipt and also a purchaser's or recipient's receipt
19 attached to it dated December the 28th, 1984, can you
20 identify that?

21 A Yes.

22 Q What is that?

23 A This here is where I had sent --

24 Q What is this document right here?

25 A This is a letter with a little note that

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1 I sent with them, enclosed a cashier's check.

2 Q And that's dated December 28th?

3 A Right, December the 28th.

4 Q Just go ahead and read it to the jury.

5 A It says, enclosed is cashier's check for
6 two thousand dollars to serve as a partial payment on
7 three checks you are holding for the amount of nineteen
8 thousand fifty-one dollars. This will make the balance
9 seventeen thousand fifty-one dollars. You also are
10 holding six automobile titles to hold as collateral,
11 '71 International road tractor, '78 Dodge Challenger,
12 '79 Mustang, '77 Toyota Landcruiser, 1980 Mazda RX7,
13 '79 Pontiac station wagon.

14 Q And those are listed on there along with
15 the breakdown of --

16 A Right, then I break it down where it was
17 twenty-one thousand five hundred and eight dollars
18 beginning balance with a twenty-four hundred fifty-
19 seven dollar payment which made it to the nineteen
20 thousand fifty-one that I was speaking of here; then
21 two thousand dollars which gave me a balance at that
22 given period of time of seventeen thousand fifty-one
23 dollars; and then I put at the bottom, the balance
24 would be paid as quickly as I receive the funds.

25 MR. JOHNSON: Your Honor, we would like

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1 -- give me one second, please.

2
3 BY MR. JOHNSON:

4 Q Along with this I believe you said you
5 forwarded the two thousand dollars with this?

6 A Yes, sir.

7 Q Now, let me ask you if this is a copy of
8 the two thousand dollars, a cashier's check, is it
9 not, that you sent?

10 A Yes, sir.

11 Q That was attached to Exhibit 8?

12 A The letter, yes, sir.

13 MR. JOHNSON: Your Honor, we would ask
14 the Court to admit this with the copy of that
15 check, some of that got ripped off.

16 THE COURT: You want to make the copy of
17 the check and the letter that Mr. Cash sent
18 as No. 8 collectively?

19 MR. JOHNSON: Yes, sir.

20 MR. MULLEN: No objection.

21
22 BY MR. JOHNSON:

23 Q Now, at this time and when you sent this
24 did you or did you not know that on December the 21st,
25 some seven days before this was mailed, did you know at

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1 that time Mr. Lancour had sworn out warrants on the
2 21st, seven days before that letter was sent?

3 A No, I had no reason to really think that,
4 because we had made an agreement. I mean, the debt was
5 justified with collateral and partial payments. I
6 didn't have any reason to think that he would put me in
7 jail because we had an agreement with Mr. Sale.

8 Q All right, sir. Now, what happened then
9 on the -- after you sent this on the 28th and I think
10 this shows that he received it on the 29th, what, if
11 anything, happened on December the 31st, two days
12 later, which I believe was New Year's Eve?

13 A I got a call they wanted the balance of
14 the money, after I had made all these payments and
15 agreements they wanted the balance of the money.

16 Q They still had the titles?

17 A They still had my titles, everything was
18 like we agreed upon, and then they told me that -- I
19 said, well, I'll pay you like we agreed and I'll pay
20 you on time and I'll pay you interest.

21 Well, we need the money. And it got to where
22 they kind of called me every day and said that they
23 were going to put me in jail if I didn't come up with
24 the money. So they went on for a period of days and
25 finally they did.

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1 Q When was that -- when were you contacted
2 by the Lynchburg Police Department?

3 A I think it was New Year's Day, if I'm not
4 mistaken. I can look at the --

5 Q New Year's Day or New Year's Eve,
6 December the 31st?

7 A New Year's Eve, it's dated in my records
8 there, but it was New Year's Eve is when it happened.

9 Q All right. And how did that come about?

10 A I was called and said that some warrants
11 were down there and that, you know, I had the
12 opportunity to come down there or they would come get
13 me, so, of course, I had --

14 Q You're talking about the police station
15 across the street?

16 A Right.

17 Q And did you go down there?

18 A Sure I went down there.

19 Q What procedure did you go through when
20 you got there?

21 A I was read my rights, I was read what I
22 was being charged of, I was fingerprinted, my picture
23 was taken, I was held until the magistrate could get to
24 me and give me bond where I could get out of jail.

25 Q How long were you over there at the

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1 police station altogether?

2 A I would say I was there a couple of
3 hours.

4 Q I'll show you some documents which I
5 have clipped together and marked Plaintiff's Exhibit 7.

6 MR. JOHNSON: This is 7, Judge, we put
7 it out of order, but it's dated earlier.

8

9 BY MR. JOHNSON:

10 Q And ask you, are they the three warrants
11 that were served on you, delivered to you at the police
12 station and the recognizance where I believe they put
13 you on your own bond for two thousand dollars to
14 appear?

15 A Yes, sir.

16 Q And they are -- who does it show on there
17 had taken out the warrants in Montgomery County?

18 A Eugene R. Lancour, Triangle Auto Auction.

19 Q It shows, in care of Triangle Auto
20 Auction --

21 A In care of Triangle Auto Auction.

22 Q -- does it not, Incorporated?

23 A Triangle Auto Auction.

24 Q Route 177?

25 A Route 177, Christiansburg at one p.m.

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1 Q All right. And dated the 21st of
2 December?

3 A Yes, sir.

4 Q And each of the three are dated the same?

5 A Yes, sir.

6 MR. MULLEN: No objection.
7

8 BY MR. JOHNSON:

9 Q All right, sir. Now, what, if anything,
10 happened after that, by that I mean, what was done
11 about the -- of course, you were recognized I believe
12 to appear in the Montgomery County --

13 A Yes, sir.

14 Q -- General District Court on the -- on
15 February the 8th?

16 A Yes, sir.

17 Q Is that right?

18 A Yes, sir.

19 Q What happened then on the 7th --

20 A That's when I made --

21 Q -- of February?

22 A That's when I made the payment to
23 Triangle Auto Auction. I sent a representative from my
24 company up there to pay them off in full and which I
25 believe kind of corresponds with the time that I

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1 predicted to begin with that I would pay them, you
2 know, even though it ended up it was the day before
3 court, it's just the way that the dates worked out. I
4 did pay them on time, I was not late. I did exactly
5 what I said I was going to do.

6 Q All right, sir. I'll show you a document
7 with a copy of a cashier's check on the front of it and
8 then a handwritten document, all of which I marked
9 Plaintiff's Exhibit No. 9 and ask you is the top
10 document the copy of the check?

11 A Uh-huh.

12 Q The customer's copy of a cashier's check
13 that you sent in settlement of all of the account
14 except for the interest?

15 A Yes, sir.

16 Q What's the amount of that?

17 A Eleven thousand nine hundred and sixty-
18 six dollars.

19 Q And what's the date of the check?

20 A February the 7th, 1985.

21 Q All right. Now, the underlying document
22 there, the handwritten document, what is that?

23 A It says, to whom it may concern, this is
24 to verify that I have on the date delivered cashier's
25 check ten four ninety-eight payable through the

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1 Community Bank of Forest -- that's where I got the
2 cashier's check -- P. O. Box 195, Forest, Virginia and
3 received the following titles from Triangle Auto
4 Auction February the 7, 1985. And it list the titles
5 that I gave them for collateral.

6 Q That lists five vehicle titles, does it
7 not?

8 A Yes, sir.

9 Q What does it say then below that?

10 A It said, received eleven thousand nine
11 hundred and sixty-six dollars from Mr. Cash and Mr.
12 Cash must be aware -- I really can't hardly read that
13 -- separate billing of interest due will be forwarded
14 under separate course or --

15 Q In other words --

16 A -- something of that relationship.
17 Anyway Mr. Lancour --

18 Q Who signed it?

19 A Eugene R. Lancour, Manager, Triangle Auto
20 Auction.

21 Q Now, Mr. Cash, just so there will be no
22 misunderstanding about his, on the document that you
23 identified as being sent at the time of the titles by
24 Federal Express, that document lists six vehicles as
25 being sent at that time, I believe. And this for the

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1 record is on Exhibit 8, this lists six vehicles, a 1971
2 International road tractor, a 1978 Dodge Challenger,
3 1979 Mustang, 1977 Toyota Landcruiser, 1980 Mazda, 1979
4 Pontiac.

5 A Uh-huh.

6 Q Six vehicles, and you've already
7 identified that as what you sent?

8 A Yes.

9 Q This receipt by Mr. Lancour for the
10 titles only lists five vehicles.

11 A Right.

12 Q And I don't want the jury to
13 misunderstand, the Mazda is not listed on there.

14 A No, it's not listed.

15 Q But let me ask you, did you not receive
16 the Mazda title back?

17 A No, I received the Mazda title back.

18 Q It was just left off of this?

19 A It was left off the list.

20 Q You delivered six and you got back six
21 titles?

22 A Yes.

23 Q This just says five, right?

24 A Right.

25 Q So this document just left off the Mazda?

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1 A Right.

2 Q In other words, you're not due a Mazda
3 title is what I'm saying?

4 A No.

5 Q So if I understand your testimony at this
6 point correctly, you sent the titles and when you got
7 it back you got the correct titles?

8 A Yes, sir.

9 Q You got all six titles although it wasn't
10 shown on there?

11 A Yes, sir.

12 Q And you paid -- you had paid, as I
13 understand it, two thousand four hundred and fifty-
14 seven dollars on the Ramcharger sold by them?

15 A Yes, sir.

16 Q Two thousand on the cashier's check?

17 A Yes, sir.

18 Q And this check for sixteen thousand four
19 hundred -- for eleven thousand five hundred and sixty-
20 six dollars?

21 A Yes, sir.

22 Q A total of sixteen thousand four hundred
23 twenty-three dollars which was the total amount of the
24 original check?

25 A Right, yes, sir.

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1 Q All right. Now, did you go to Montgomery
2 County on the 8th day of February?

3 A Yes, sir.

4 Q And I believe by that time you had
5 employed me as your attorney?

6 A Yes, sir.

7 Q And did I accompany you and your father
8 up there?

9 A Yes, sir.

10 Q At the time there was a discussion, was
11 there not?

12 A I believe so.

13 Q But I believe you were not present at
14 this discussion, I was present?

15 A No, I don't believe I was present at the
16 time.

17 Q Of course, the court and the
18 commonwealth's attorney were advised that everything had
19 been paid except the request for interest on there and
20 everything had been paid and the cases -- charges were
21 dismissed?

22 A Yes, sir.

23 Q And the judge announced they were
24 dismissed, is that right?

25 A Yes, sir.

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1 Q All right. Now then, after that did you
2 get a statement from Radford Auto Auction,
3 Incorporated -- And I believe you already said you
4 understand that's another name for Triangle?

5 A Yes, sir.

6 Q -- stating what the payments had been and
7 the fact that they claimed that four hundred thirty-
8 eight dollars and seventy-four cents interest was still
9 due?

10 A Yes, sir.

11 Q Is this the document I've marked
12 Plaintiff's Exhibit 10?

13 A Yes, sir, yes, sir, it is.

14 MR. MULLEN: No objection, Your Honor.

15 (Whereupon the document was marked
16 Plaintiff's Exhibit No. 10.)
17

18 BY MR. JOHNSON:

19 Q As soon as -- after you received that did
20 you then, since you said I was representing you at
21 the time, did you at that time arrange to pay the four
22 hundred and thirty-eight dollars and seventy-four
23 cents?

24 A Yes, sir, I did.

25 Q Okay. And I believe it was sent through

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1 my office?

2 A Yes, sir, your firm paid it and I
3 reimbursed you for it.

4 Q All right, sir. Is this the receipt from
5 Mr. Lancour stating that the interest was now fully
6 paid, this letter to you?

7 A Yes, sir.

8 MR. MULLEN: No objection, Your Honor.
9

10 BY MR. JOHNSON:

11 Q I believe he says that this satisfies all
12 your obligations to the auction, is that correct?

13 A Yes, sir.

14 Q All right, sir. Now, as a part of --

15 MR. JOHNSON: Judge, was that last one
16 Exhibit 12?

17 THE COURT: The last one was 11.
18

19 BY MR. JOHNSON:

20 Q Mr. Cash --

21 MR. JOHNSON: This is out of order, Your
22 Honor, I'll put on 12 in just a minute, if I
23 may.
24
25

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1 BY MR. JOHNSON:

2 Q I'll show you a document and ask you can
3 you identify that?

4 A Yes, sir, I can.

5 Q What is that?

6 A It's a letter from High Point Auto
7 Auction.

8 MR. MULLEN: Your Honor, I would move to
9 exclude this document and any testimony
10 pertaining to it. It's clearly hearsay.

11 MR. JOHNSON: If Your Honor please, we
12 would like to be heard on that. We think
13 unquestionably it's proper in evidence at
14 this time.

15 THE COURT: Do we need to take this up
16 out of the presence of the jury, do you think?

17 MR. MULLEN: I think that would be
18 advisable.

19 MR. JOHNSON: Either way the Court
20 prefers.

21 THE COURT: Whatever you want to do. I'll
22 take it up in their presence if nobody cares.

23 MR. MULLEN: That's fine.

24 THE COURT: Go ahead and make the
25 objection.

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MR. MULLEN: It is hearsay.

THE COURT: Why is it not hearsay?

MR. JOHNSON: Your Honor, we are offering it to show that he received this letter. We're not offering it for the purpose of showing the truth or falsity of any statements on it.

THE COURT: Is it to explain something he may have done in response to it regardless of whether or not it was true?

MR. JOHNSON: Yes, sir.

THE COURT: Why would that be hearsay?

MR. MULLEN: The law requires the document be authenticated by the person who sent it and I object to its introduction.

MR. JOHNSON: If Your Honor please, I have the authorities here that I can cite to the Court, but I'm sure Your Honor is familiar with them. It's admissible because it explains his being unable to go to auctions anymore that he's told that he can't come to the High Point Auto Auction, it explains his verbal act in not going --

THE COURT: If he explains that he received it and so forth and relied upon it or did whatever he did in response to it, then I

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1 think it's not hearsay testimony, not put in
2 to show that what it says is true and then, of
3 course, his testimony would -- if he does
4 testify to how he received it, would take care
5 of that, so in effect I'll overrule your
6 objection.

7 MR. MULLEN: Exception.

8 MR. JOHNSON: Just for the record, Your
9 Honor, I would like to point out also Mr.
10 Mullen in his opening said that the letter,
11 speaking of this, that the evidence would show
12 that the letter did not tell him that he
13 could not attend the auction, but only that he
14 must use cash, that is not in this letter.
15 This letter forbids him attending the
16 auctions. So I think his opening statement
17 this certainly has opened the door.

18 THE COURT: I thought there was some
19 reference previous made to it, but for the
20 reasons stated I'm going to overrule the
21 objection.

22
23 BY MR. JOHNSON:

24 Q Is this the letter that you received?
25 It's dated the 31st of January of '85?

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1 A Yes, sir, it is.

2 Q And I believe it was sent to you
3 certified?

4 A Yes, sir.

5 Q And do you recall it shows 2/2/85, is
6 that the date that you received it, the 2nd of
7 February?

8 A Yes, sir.

9 Q Would you read the letter?

10 A It says that this is to inform you --

11 Q I think the heading is --

12 A High Point Auto Auction, High Point,
13 North Carolina, January 31st, Danny's Auto Sales and
14 Service, 2100 Twelfth Street, Lynchburg, Virginia.

15 Dear Mr. Cash, this is to inform you that you
16 are no longer an authorized dealer at High Point Auto
17 Auction. This means that you will not be permitted to
18 buy nor sell automobiles at the auction in the future.
19 I'm sure you understand the reasons for us having to
20 take this action.

21 Q When the -- as a result you did receive
22 this letter?

23 A Sir?

24 Q You did receive this letter on February
25 2nd?

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1 A Yes, sir.

2 Q As a result of this letter have you
3 attempted to attend the auction at High Point?

4 A Since I have gotten the letter?

5 Q Since you got this letter?

6 A No, it says now or in the future. From
7 what the letter says I can't ever go back.

8 Q And it shows no time limit?

9 A No.

10 Q Do you know whether or not to your
11 knowledge in the trade whether or not they are working
12 arrangements between Triangle Auto Auction and
13 Statesville and High Point and so forth?

14 A I would imagine --

15 MR. MULLEN: Your Honor, I would object
16 to any testimony that comes because of something
17 he imagined.

18 THE COURT: Right. He has to testify
19 from his knowledge.
20

21 BY MR. JOHNSON:

22 Q Not what you imagined, what, if anything,
23 do you know about that from your experience?

24 A No, I don't.

25 Q Okay. All right, sir.

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1 MR. JOHNSON: Your Honor, we would like
2 to introduce this as Plaintiff's Exhibit 13.

3 THE COURT: Mark it Plaintiff's
4 Exhibit 13 subject to the defendant's
5 objection previously stated.

6 MR. JOHNSON: Yes, sir.

7 THE COURT: And I'm admitting that letter
8 for the reasons stated, not to prove that what
9 it says is true in the letter, but for the
10 reason I already stated that he, according to
11 his testimony, did or did not do certain
12 things in response to the letter.

13 MR. JOHNSON: Yes, sir. Your Honor, I
14 think possibly we ought to approach the
15 bench on this.

16 (Whereupon an off-the-record
17 discussion was had between counsel
18 and the Court.)
19

20 THE COURT: Neither party is objecting
21 then, is that correct?

22 MR. MULLEN: That's correct.

23 THE COURT: All right. Then that is
24 Exhibit No. --

25 MR. JOHNSON: 14.

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1 THE COURT: No objections?

2 MR. MULLEN: No.

3 THE COURT: Okay.

4

5 BY MR. JOHNSON:

6 Q Mr. Cash, is this the letter you got from
7 Statesville Auto Auction?

8 A Yes, sir.

9 Q All right, sir. What's the date of that
10 and I believe it's marked Plaintiff's Exhibit No. 14?

11 A Yes, yes, it is, February the 17th, 1985,
12 Danny's Auto Sales, P. O. Box 2501, Lynchburg,
13 Virginia.

14 Dear Mr. Cash: We have been advised by our
15 insurance company, Auction Insurance Agency of Alabama
16 that they are no longer in the position to insure your
17 transactions. If you have any questions concerning the
18 above please contact Auction Insurance Agency of
19 Alabama, 2130 Highland Avenue, Birmingham, Alabama.
20 Until we receive word from this insurance agency we
21 will not be able to transact business.

22 Q All right, sir. And that is dated
23 February the 7th, some five or six days after the other
24 High Point letter?

25 A Yes, sir.

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1 MR. JOHNSON: We would like to introduce
2 this.

3 MR. MULLEN: No objection, Your Honor.

4 THE COURT: Mark it 14 then.
5

6 BY MR. JOHNSON:

7 Q Mr. Cash, had you had any problem of this
8 type with these other auction people at all prior to
9 this?

10 A No.

11 Q Had you had any -- do you of your own
12 knowledge know of any reason why these actions would
13 have been taken?

14 A Well, an auction of somewhere had to have
15 contacted the insurance company --

16 MR. MULLEN: Your Honor, objection.
17

18 A -- and the insurance company called --

19 THE COURT: Wait just a minute.

20 State your objection.

21 MR. MULLEN: It's pure speculation, unless
22 he can say who or what he's not entitled
23 to testify to that, it's his speculative
24 opinion.

25 MR. JOHNSON: I think I can ask him, if

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1 Your Honor please, what his inference is
2 from this letter, what he took to be the
3 meaning of this letter including the
4 connection between the two.

5 THE COURT: State your question,
6 your specific question.

7 Don't answer it yet.

8 THE WITNESS: Okay.

9
10 BY MR. JOHNSON:

11 Q What was your -- well, you said you had
12 had no problem with this company or with High Point?

13 A Right.

14 Q Now, what, if any reason do you know of
15 other than the thing we're here for today that would
16 have given them cause for this, them or their insurance
17 company?

18 MR. JOHNSON: That's my question, Your
19 Honor.

20 THE COURT: I would allow it if you say,
21 do you know of any reason.

22
23 BY MR. JOHNSON:

24 Q Do you know of any reason other than the
25 thing that happened at Triangle that this company would

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1 have had for terminating your right to deal there?

2 A No, sir.

3 Q Now, I'm not going to ask you to tell
4 what happened because I don't think you were there, but
5 did you about this same time send a Mr. Lonnie Morris
6 to the Fredericksburg auction?

7 A Yes, sir, I did.

8 Q You did not go with him?

9 A No, sir.

10 Q When he left your lot what did he take?

11 A He took the truck that I transport cars
12 on and two automobiles up there to be sold.

13 Q To be sold?

14 A Uh-huh.

15 Q When he came back had those cars been
16 sold up there?

17 A No, sir, they hadn't.

18 Q I'm not going to ask you what he told you
19 because he's here to testify.

20 A Uh-huh.

21 Q But were you or were you not from that
22 time on able to deal at Fredericksburg?

23 A No. I was told -- I guess I can say
24 this -- I was told by phone conversation after he got
25 back that I could not come up there and deal.

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1 Q You had a phone conversation with
2 Fredericksburg?

3 A Yes, sir.

4 Q Was this somebody connected with
5 Fredericksburg?

6 A Yes.

7 Q Were you given a reason by that person?

8 MR. MULLEN: Your Honor, clearly this
9 line of testimony is hearsay and I object for
10 that reason.

11 MR. JOHNSON: He couldn't object to the
12 statement that he received a call on that and
13 now I want to show what the call --

14 MR. MULLEN: I'm going to object to what
15 was said in the call because the person that
16 said it allegedly is not here to testify.

17 THE COURT: Let me ask you this: Why
18 are you offering the evidence, for what
19 purpose?

20 MR. JOHNSON: To show that he has not
21 been permitted to deal at Fredericksburg.

22 THE COURT: For what it says is true?

23 MR. JOHNSON: Well, no, sir, that what he
24 says is true that he got -- his employee came
25 back and he realized the cars had not been

1 sold as sent up and then this telephone call,
2 the fact that he was told he couldn't deal
3 there.

4 THE COURT: The objection, I take it, is
5 to what was said in the telephone call, is
6 that right?

7 MR. MULLEN: That's correct.

8 THE COURT: Why are you offering that
9 testimony?

10 MR. JOHNSON: To show that he was told
11 at that time not to come up there in addition
12 to what --

13 THE COURT: Why is that relevant?

14 MR. JOHNSON: Because as a result of that
15 he has not gone to there. Now, I don't care
16 whether the auction people told him the truth
17 or not. If they made a statement, don't come
18 up here, as a result of that his action --

19 THE COURT: The same as the ruling with
20 reference to the letter, which was marked
21 Plaintiff's No. 13, not receiving it to prove
22 what it says is true, but merely to explain,
23 if it does and the jury should find so, why he
24 may or may not have done something.
25

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1 BY MR. JOHNSON:

2 Q As a result of what your employee told
3 you and what you learned in the telephone call with
4 somebody from Fredericksburg, did you or did you not
5 attempt to attend that auction any further?

6 A No.

7 Q Now, Mr. Cash, when you were unable to
8 attend these auctions what recourse did that leave you
9 for operating as a wholesaler buying and selling at
10 auctions for resale on your lot and to dealers and all,
11 how did it affect you, if at all?

12 A It left me very little recourse. When
13 you're operating and you got it established to where
14 sixty to seventy percent or maybe more of your income
15 is based on wholesale and you're cut out of the
16 wholesale business or where you can't attend there, you
17 have no reason to go to a new car dealer and buy his
18 trade-ins and transport them, you know, plan to take
19 them to an auction because you can't do that, you know,
20 and you can make good money doing it.

21 Q How did this affect you in addition to
22 your financial losses you are referring to, how did it
23 affect you, the fact of being arrested, taken up to
24 court and so forth?

25 A The fact of being arrested and taken to

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1 court, I mean, I've been in Lynchburg all my life, and
2 to be taken into a police station where half of
3 everybody down there knows me and fingerprinted and
4 arrested, you know, that was a lot of embarrassment on
5 that part. I'm sure I can't name anybody down there
6 that ever said anything, but I'm sure that some people
7 talked about it and it made it hard, you know, the
8 embarrassment.

9 Q How did it affect you?

10 A Emotionally a lot.

11 MR. MULLEN: Object, Your Honor, he's
12 getting too far off of speculating on what
13 other people thought or said. Unless he
14 knows, he cannot testify to that.

15 THE COURT: I sustain that part of it.

16 The jury disregard any answer that
17 responded to speculation as to what others
18 thought and felt.

19 MR. JOHNSON: My present question, if it's
20 permissible, Judge, is how did it affect him.

21 THE COURT: Well, I understood your
22 question. His answer went beyond that and
23 there was an objection and I sustained it.
24
25

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1 BY MR. JOHNSON:

2 Q How did that affect you?

3 A It affected me bad. I mean, I never had
4 anything but a speeding ticket and not but one or two
5 of those, and to be arrested on something like that
6 when I had a good meaningful agreement as to what I was
7 going to do, you know, and to pay the debt that I did
8 owe, not meaning to do anything wrong to anybody
9 because to my knowledge I never have. And the fact of
10 going down there and being arrested it bothered me a
11 lot, because I wasn't raised up in that kind of a
12 family that went to jail and stayed in trouble and
13 stuff. I was raised in a business atmosphere and
14 that's the way I tried to conduct myself.

15 Q Now, there's been some mention of some
16 returned checks since then, there have been some, have
17 there not?

18 A Sure, there have.

19 Q And in your business since you got in
20 this jam and had to spend all of this money?

21 A Right.

22 Q Have every one of those check been made
23 good?

24 A Yes, they would come back and immediately
25 I would take care of it. I have never had a problem to

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1 my knowledge of anything that related to this. If it
2 happened my immediate reaction was, take care of it,
3 and I did.

4 Q Were there or were there not some drafts,
5 not checks, but bank drafts that you had given like a
6 year in advance for insurance premiums and so forth
7 that were not honored after this, because of this?

8 A You mean like my life insurance or
9 something like that?

10 Q Yes.

11 A Yes, sir, there were.

12 Q I believe Kelly White is here to testify
13 they were made good to him?

14 A I'm sure he will testify to that.

15 Q All right, sir. Now, the matter I want
16 to ask you to explain to the jury, please, sir, you
17 said that you and Mr. Sale had an understanding that
18 you were going to send the titles, that you sent them,
19 and that Mr. Lancour or Mr. Sale one called you the
20 next day and first there was some question about more
21 titles and then you agreed that was enough to cover it
22 and you thought this thing had been worked out?

23 A Uh-huh.

24 Q If that had not been worked out at that
25 time, if he had not asked you to send the titles and

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1 you sent them, could you or could you not have made
2 some other arrangements for taking care of this
3 balance of maybe fourteen thousand or something as it
4 was at that time?

5 A Well, after we had made the agreement
6 that's when I -- after this problem had been solved as
7 far as I was concerned by sending the monies and the
8 titles, I then talked to my father and told him about
9 the situation I was in, I would guess I could go back
10 and say, because at that time he offered to give me the
11 money to go ahead and take care of it, and I told him
12 that I had already made an agreement.

13 Q Meaning the agreement you had with Mr.
14 Lancour and Mr. Sale?

15 A The agreement with the titles. And I had
16 given him the money, so I didn't have any reason at
17 that given period of time to borrow from him. And my
18 answer to him was that I would take care of it myself,
19 it was my business, it wasn't anything that he was
20 supposed to take care of, it was my debt and I would
21 pay it.

22 Q Now, I'm not going to ask you for
23 particulars, but have there been any statements or
24 whatnot, discussions generally made to you about these
25 bad charges and so forth?

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1 A They haven't come directly to me, but I'm
2 sure it's around somewhere, I mean --

3 MR. MULLEN: Objection.

4 THE COURT: Sustained.

5

6 BY MR. JOHNSON:

7 Q We're not looking for --

8 A No, there hasn't.

9 Q Now, I believe you already stated you
10 employed me to represent you in the Montgomery County
11 proceeding?

12 A Yes, sir, I did.

13 Q And I believe that -- or would you please
14 tell me, could you identify this statement or bill?

15 A This is a bill from Johnson and
16 Cunningham made out to Mr. Danny Cash, 2100 Twelfth
17 Street for professional services rendered, Joseph R.
18 Johnson, Jr., fee.

19 Q Does it show what the services were?

20 A Yes, it's for representation in
21 Montgomery General District Court.

22 Q What's the amount?

23 A In the amount of fifteen hundred dollars.

24 Q This was a statement, was that paid?

25 A Yes, sir.

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1 Q And I believe you already said that as
2 far as that interest, that you paid that money to our
3 office?

4 A And you took care of it for me, yes, sir.

5 Q And you sent us a check?

6 A Yes.

7 Q So there is no charge there as far as my
8 office, but only the interest that you have already
9 testified you paid to Triangle?

10 A Yes, sir.

11 THE COURT: Mr. Mullen, do you object to
12 that?

13 MR. MULLEN: No, sir.

14 (Whereupon statement was admitted in
15 evidence as Plaintiff's Exhibit 15.)
16

17 BY MR. JOHNSON:

18 Q There has been some question referring to
19 counsel's, Mr. Mullen's, statement in opening argument
20 as I heard it that Mr. Lancour or Triangle Auto Auction
21 could not use or negotiate these titles. I understand
22 you heard him make that statement?

23 A Yes, sir, I did.

24 Q Would you explain that, in other words,
25 if they were going to be held as security and you said

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1 that was your agreement with Mr. Sale?

2 A Yes, sir.

3 Q How was it going to be security if they
4 couldn't negotiate the titles themselves?

5 A Well, I couldn't do anything with those
6 titles. Those titles -- on the face of a title when an
7 individual gets it put into his name, of course, his
8 name goes on the face of the title. An automobile
9 dealer does not have to do that, it's reassigned on the
10 back.

11 Had I wanted to take one of those titles
12 that I had sent him, even though I had the vehicle
13 sitting on my lot, and go to Division of Motor Vehicles
14 and get a title, it would almost be impossible and then
15 it would be an act of fraud and it would be against the
16 law to do that. I would have to go back through DMV,
17 find out who that vehicle was registered to, the last
18 time that his name was put on the face of the title,
19 and then I would have to go to that individual, take
20 him to the Division of Motor Vehicles, and get me a
21 title. I mean, it would be a long, illegal process.

22 Q Well, any individual who had disposed of
23 the car, but whose name it was still titled in because
24 it had never been put in a dealer's name, still in his
25 name, he would not agree to go to DMV, would be no

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1 reason for him to?

2 A Be no reason for him to unless I told him
3 some form of lie, you know, something off the wall, it
4 would be illegal. I mean, if I did that, I mean, you
5 just don't do that, period.

6 Q Do I understand that an automobile
7 dealer, contrary to an individual like myself, when he
8 buys a car or trades, he doesn't title that in his name
9 as such?

10 A The automobile dealer?

11 Q Yes.

12 A No, sir.

13 Q He has a place on the back, or it used to
14 be on the back, where he assigned that title?

15 A Some titles have Section A and Section B.
16 If they are full then you have a Virginia reassignment
17 for whichever state you're in and that's where your name
18 is applied.

19 Q Now, you brought back these vehicles
20 that you had purchased and put them on the lot and so
21 forth?

22 A Yes, sir.

23 Q And then when you sent him titles to
24 other vehicles --

25 A Yes, sir.

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1 Q -- could you then sell those vehicles
2 after you have sent --

3 Those vehicles were sitting on
4 your lot, right?

5 A Uh-huh.

6 Q -- the six titles that you sent him?

7 A Right.

8 Q They were sitting on your lot. Could you
9 then sell them if he had the titles to them?

10 A A customer comes in and wants to buy a
11 car, I would have to make some form of agreement and go
12 to him and get a title and bring it back, but I'm sure
13 I would have had to give him the money.

14 Q Do I understand then by holding the
15 titles he effectively kept you from being able legally
16 to sell those cars?

17 A Sure.

18 Q You cannot, under the Virginia law you
19 cannot sell an automobile, a dealer or otherwise,
20 without being able to deliver a title?

21 A Right.

22 Q So you could not do that, so that was the
23 security that he had?

24 A Right.

25 Q Now, on the other hand, by having the

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1 title could he sell those cars if he had that title or
2 could he simply hold them to guarantee that you were
3 going to pay him?

4 A He would have to -- you know, on the back
5 of those titles I could have signed it down in the
6 section where I put my dealer license number and signed
7 the title out leaving him an open title, leaving
8 anybody who picked up that title to put it in their
9 name, that could have been. I won't say definitely
10 that I did that, but --

11 Q Do you know whether you did or not?
12 That's what you call a dealer's reassignment, isn't it?

13 A Yes.

14 Q Do you know whether you gave him a
15 reassignment or not?

16 A I don't remember if I did or not.

17 Q So you can't say?

18 A I'm not going to say definitely I did.

19 Q Did he ask you for a reassignment, did he
20 call you the next day or say, you haven't sent me an
21 assignment?

22 A The only thing that anybody disagreed
23 with me on, and that was straightened out very quickly
24 over a conversation over the phone, is the fact that he
25 didn't think the cars were worth as much as I did. And

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1 I explained to him that I thought that -- not that I
2 thought, excuse me, that this was the money that I had
3 in the automobiles and it was more than I owed him and
4 that he would be paid, and so he accepted them. Nothing
5 at that time was said, these titles are no good, I'm
6 going to send them back to you. Nobody sent them back
7 to me, they kept them.

8 Q And then when it was paid they did send
9 them back?

10 A Sure.

11 Q And then and only then did you dispose
12 of those cars?

13 A Yes, sir.

14 Q And so until that time those cars were
15 sitting on your lot and you couldn't sell them?

16 A Right.

17 Q All right. Now, you said that you, in
18 that discussion you told him you were sure these cars
19 were worth more than you owed. What value -- and you say
20 you don't have a copy of that statement you sent him
21 listing the value -- what total value on those cars was
22 there at that time?

23 A As well as I remember it was in excess of
24 twenty thousand dollars, it was twenty-some odd thousand
25 dollars. I sent a copy, if I recall correctly, and

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1 listed the cars and put what I had in them. Now,
2 this is not what the cars were worth out of an NADA
3 book or retail value, this is the money that I had in
4 these cars.

5 Q The wholesale value?

6 A Yes. This was my money regardless of
7 whether it would be wholesale. And, of course, when I
8 have got money in a car it's in wholesale figures, most
9 dealers are like that. It's not that I went and took
10 my figures and jacked them up in a retail book and
11 said, this is what they are worth, that's what I had in
12 them and it more than justified what I owed them.

13 Q Do I understand you correctly because
14 this is all new to me, too, do I understand you
15 correctly that those cars, the titles to which you had
16 sent to him, had to sit on your lot until after this
17 thing was finally settled and whatnot?

18 A Yes, sir.

19 Q Because he had the titles and you
20 couldn't use those to get up the money with which to
21 pay him?

22 A Right. I guess it's something probably
23 could have been arranged if an individual came in there
24 and said, look, I'll buy the car and I'll go ahead and
25 pay you for it, I don't have to have the title right

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1 now. In my past dealings it doesn't work a lot like
2 that.

3 You take them to an auction and sell them
4 title attached, you don't get cash money at that time,
5 you get a draft, that draft is no good until the
6 auction received the title, you can't cash the draft.

7 Q I wanted to ask you about that. Mr.
8 Mullen indicated in his opening statement that the --
9 Triangle had to put out their money and so forth and
10 that when someone sold their car at the auction they
11 got their money immediately, is that correct?

12 A You get a draft or an envelop draft, I
13 forget right off which one they give, and they might
14 give either one, I don't know, but, say, an auction
15 when you sell a car title attached, the way the
16 procedure works is you have no title, you sell that
17 automobile, the auction gives you a draft or a title
18 attached check. Okay?

19 That check cannot be cashed unless you present
20 the title to the bank and let them send it to their
21 bank, and they call the auction and say, we've got the
22 title down here, this is the serial number, and you
23 issued this check, do you want to pay it. You can't
24 just walk in and cash it. The title has got to be
25 given to an auction or it's got to be sent with the

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1 draft back through the bank system.

2 Q So on these particular cars that we're
3 talking about, did they have to pay out their money at
4 that time?

5 A If the cars were sold titled attached, I
6 don't remember, I would say they did, yes. If I
7 received the titles then they did, yes.

8 THE COURT: Before we get started, let me
9 see the lawyers just a second here.

10 (Whereupon an off-the-record
11 discussion was had between the
12 Court and counsel.)

13
14 THE COURT: Members of the jury, we're
15 going to recess for lunch now before we
16 do the cross examination of this witness and
17 so I'll ask for you to come back not later
18 than one-thirty. Of course, do not discuss
19 the case even among yourselves or with anyone
20 while you're on recess. Come back and get
21 back here at one-thirty if you can and we'll
22 start up at that time.

23 (After a lunch recess was taken
24 the jury returned to the courtroom
25 and the proceeding continued as

1 follows:)

2
3 CROSS EXAMINATION

4 BY MR. MULLEN:

5 Q Mr. Cash, you kept your own checkbook
6 balance, did you not?

7 A Yes, sir, I did.

8 Q Previously introduced into evidence have
9 been three bad checks that you passed at Triangle Auto
10 Auction, is that correct?

11 A Yes, sir.

12 Q Do these stubs reflect the checkbook out
13 of which you wrote those checks? Do these check stubs
14 reflect the checkbook out of which you wrote the
15 checks?

16 A Yes, sir.

17 Q Did you keep a running balance in this
18 account?

19 A You mean like from here to here to here?

20 Q Sure, showing how much money you had in
21 the account?

22 A No, you can see in there that I didn't.

23 Q And it was your account and it was your
24 responsibility to do that, was it not?

25 A Sure, yes, sir.

1 Q In October of 1984 were you actually
2 running in the red in your checking account?

3 A I would have to look at the stubs and
4 see.

5 Q Would you look at one dated 10-3 of '84
6 and --

7 A No, I was showing a balance. After my
8 accountant went back and redid them, yes, I was.

9 Q So the balance shown in your checkbook
10 was wrong?

11 A Yes.

12 Q You were actually in the red when it
13 shows to be in the black?

14 A Yes, sir.

15 Q On this page of checks for October 4, do
16 you show any balance at all in the account --

17 A No, sir.

18 Q -- where you kept a record?

19 A No, sir.

20 Q On the page for October 5th, 1984, do you
21 show any correct balance?

22 A I show the balance that I had.

23 Q But that balance was incorrect?

24 A Later found out it was incorrect, yes,
25 sir.

1 Q Is it fair to say that throughout these
2 fifty or sixty pages of checkbook stubs that you did
3 not adequately and properly keep a running balance in
4 your checkbook?

5 A Check after check after check, no, I
6 didn't, maybe figure a balance and go two checks and
7 subtract or whatever and then put the balance, that's
8 the way I did it.

9 Q All right, sir.

10 MR. MULLEN: Your Honor, we'd like to
11 introduce these as our Exhibit No. 1.

12 THE COURT: Any objection?

13 MR. JOHNSON: No, sir, Your Honor. Mr.
14 Mullen asked me if he could borrow them a
15 a minute to question him. I didn't know he was
16 going to put them in evidence. We want
17 the opportunity to makes copies of them if
18 they are in evidence.

19 THE COURT: I'll mark them as Defendant's
20 Exhibit No. 1.

21 (Whereupon the check stubs were
22 admitted in evidence as Defendant's
23 Exhibit No. 1.)
24
25

1 BY MR. MULLEN:

2 Q In October of 1984 you were actually
3 overdrawn in that account, weren't you, Mr. Cash?

4 A That's what the records indicate, yes,
5 sir.

6 Q And in November of 1984 you were actually
7 drawn -- overdrawn in that account approximately
8 thirty-four thousand dollars according to your
9 bookkeeper, is that correct?

10 A It's true, but I didn't know that in
11 November.

12 Q You went to Triangle Auto Auction on
13 November the 12th and passed a check for nine thousand
14 seven hundred and eighty-eight dollars and got some
15 cars in exchange for it, didn't you?

16 A Yes, sir.

17 Q You went to Triangle Auto Auction on
18 November 19th and passed a bad check for three thousand
19 and eight dollars and got a car or cars for that,
20 didn't you?

21 A Yes, sir.

22 Q You went to Triangle Auto Auction on
23 November 26th and passed a bad check for thirty-five
24 hundred fifty-five dollars and got a car for that,
25 didn't you?

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1 A Yes, sir.

2 Q Is it fair to say that over a period of
3 several months before you went to Triangle Auto Auction
4 and passed these bad checks that you did not maintain a
5 balance in your checkbook, at least a running balance?

6 A Well, you're saying a running balance,
7 that means check -- balance after check, balance after
8 check, balance after check?

9 Q That's correct.

10 A I could have had a balance and skipped
11 two checks and put a balance.

12 Q That's correct. You did not do that, did
13 you?

14 A We --

15 Q You did not maintain a balance after you
16 wrote each check, did you?

17 A No, I might go two checks and then put a
18 balance.

19 Q Or several checks?

20 A The records of that will show.

21 Q In early November of 1984 you got several
22 overdraft notices from your bank and you just didn't
23 believe them, did you?

24 A No, I didn't.

25 Q No, you didn't or, no, you didn't believe

1 them?

2 A I don't remember getting them and if I
3 had I wouldn't have believed it.

4 Q Have you not previously testified that
5 you actually received overdraft notices and trashed
6 them, threw them in the trash?

7 MR. JOHNSON: Where are you
8 referring to, Mr. Mullen?

9 MR. MULLEN: From the discussions that
10 were had --

11 THE WITNESS: I think I said if I did get
12 them I put them in the trash, I didn't still
13 have them because I think you asked me if I
14 did still have them.

15 MR. JOHNSON: Your Honor, I would like to
16 know where he is referring to him testifying
17 he threw these notices in the trash. I have
18 no knowledge of that.

19

20 BY MR. MULLEN:

21 Q Did you get them and throw them in the
22 trash?

23 MR. JOHNSON: I object.

24 THE COURT: What's your objection?

25 MR. JOHNSON: He asked: Have you

1 previously testified that you got overdraft
2 notices and threw them in the trash.

3 THE COURT: Give him a more definite
4 warning of the question as to where you
5 think he testified --

6
7 BY MR. MULLEN:

8 Q Have you ever testified that you received
9 overdraft notices and trashed them?

10 A I don't remember. You asked me at one
11 period of time if I got them and if I still had them
12 and I told you if I did get them, I didn't say whether
13 I did get them or not, that I did put them in the trash
14 that I didn't still have them.

15 Q The error or errors that were made in
16 your checkbook, you actually made them, but you blamed
17 your bookkeeper for making them, have you not?

18 A I actually made them as I was going
19 along, yes, but my bookkeeper, once he told me what my
20 overdrawn balance was, I didn't believe him and we had,
21 you know, discussion of it and so forth.

22 Q At the time you went to Triangle
23 Automobile Auction in late November of '84 you were not
24 in financial difficulty and could have borrowed the
25 money to pay those checks thereafter, couldn't you?

1 A To a certain point, yes, I could have,
2 but when I was asked -- if you're asking at what period
3 of time. I mean, right off of the bat?

4 Q Before December --

5 A After we made the agreement or what?

6 Q Before December 21 of 1984 you could have
7 borrowed the money and paid those checks in full
8 totally, completely, couldn't you?

9 A I later found out that I could after we
10 had made an agreement on the titles and the collateral.

11 Q As a matter of fact you were asked by
12 Gene Lancour on more than one occasion and by Frank
13 Sale on more than one occasion to get the money and pay
14 the checks off, weren't you?

15 A Oh, they told me to get the money from
16 anywhere I could to pay it off, sure, and I told them
17 that I would. And I did.

18 Q Gene Lancour never mentioned criminal
19 prosecution when he asked you to pay, did he, not one
20 way or the other?

21 A I don't remember. Now, I stand to be
22 corrected on that. I don't know if -- I know I was
23 told that I could -- would be arrested after I had
24 given them the collateral and after I had given them
25 the titles, but I don't believe that I stated to you

1 whether he did or not before.

2 Q All right, sir. In a separate
3 conversation after the third check bounced Frank Sale
4 told you he wanted some assurance that he was going to
5 get paid, didn't he?

6 A Yes, sir.

7 Q He never mentioned, this is Frank Sale
8 from Triangle Auto Auction, nor did Gene Lancour ever
9 mention dropping criminal charges if you gave
10 collateral, did they?

11 A Dropping?

12 Q Yes.

13 MR. JOHNSON: Your Honor, we would object
14 to that because the evidence is there were no
15 criminal charges pending then, he couldn't
16 have mentioned dropping it when he gave
17 collateral. When he gave collateral the
18 warrants hadn't even been issued.

19 MR. MULLEN: The whole thrust of this
20 case is malicious abuse of process of the
21 criminal process in the courts in Montgomery
22 County. Now, Triangle never even had a
23 conversation with Mr. Cash as to what they
24 would or would not do as far as the criminal
25 process is concerned. This is proper

1 testimony.

2 THE COURT: Do you think that there is
3 evidence that there were criminal charges
4 prior to December the 21st?

5 MR. MULLEN: No.

6 THE COURT: Well, I thought your
7 question predated that?

8 MR. MULLEN: I'm saying -- my question --
9 let me rephrase my question.

10 THE COURT: Rephrase it.

11

12 BY MR. MULLEN:

13 Q Before Triangle took out the warrants for
14 your arrest on December 21, 1984, there was never a
15 conversation between you and Mr. Lancour or Mr. Sale
16 that they either would or would not prosecute you
17 criminally for the bad checks, was it?

18 A I'm not going to say definitely because
19 I really don't remember. I know that I was told that
20 I would be after I had made the collateral. I know I
21 was told that I would be put in jail then.

22 Q After you had sent the collateral?

23 A After I had sent the collateral.

24 Q So neither representative, Lancour or
25 Sale, from Triangle ever told you that they would not

1 prosecute you after you sent the collateral, did they?

2 A Told me they would not prosecute me? For
3 some reason you're confusing me.

4 Q They had initiated criminal prosecution?

5 A Uh-huh.

6 Q You had sent the collateral four days
7 before that, the so-called collateral four days before?

8 A Four days before I was prosecuted?

9 Q Four days before they took out the
10 warrant?

11 A I think that was the last payment, wasn't
12 it, the last two thousand dollars? I think the twenty-
13 four hundred fifty-seven dollars had been there a long
14 time before this. I stand to be corrected, but the
15 date is there.

16 Q You sent titles to six cars to Triangle
17 on December 17th, correct?

18 A Uh-huh.

19 Q Federal Express?

20 A Right.

21 Q On December 21 Triangle took out warrants
22 alleging grand larceny by bad checks, correct?

23 A Yes.

24 Q Those warrants were not served until the
25 31st of December, correct?

1 A I believe that's correct.

2 Q From December 21 until December 31 did
3 you ever have a conversation with Sale or Lancour that
4 they would drop the charges if you would pay?

5 A No. After I gave the twenty-four hundred
6 and fifty-seven dollars and then I gave the titles,
7 that's when I was told -- and then sent two thousand
8 more dollars, that's when I was told that I was going
9 to be put in jail. And nobody ever called me up and
10 said, since we've got this -- because, you know, and I
11 assumed that the agreement was that this was the way it
12 was going to be until I paid them.

13 Q You made that assumption, did Mr. Lancour
14 ever tell you that he agreed with that?

15 A That he agreed that he wouldn't put me in
16 jail?

17 Q Yes.

18 A Huh-uh.

19 Q Did Mr. Sale?

20 A Not to my knowledge.

21 Q There was never then any tie-in between
22 the payment and the criminal prosecution, was there?

23 A There was no reason for me to ask whether
24 or not you're going to put me in jail. I had -- you
25 know, he had called me and asked me for the collateral

1 to justify this debt and that's what I gave him.

2 Q We're going to get to the collateral in a
3 minute.

4 A Okay.

5 Q There was never any agreement tied to any
6 agreement to drop or to continue the prosecution tied
7 to the collateral issue, was there?

8 A It -- the conversation never got that
9 far.

10 Q That's what I wanted to know.

11 A Right.

12 Q Now, you never actually titled the cars,
13 the six titles that you sent to Triangle on February --
14 on December 17, you never actually titled those cars in
15 Triangle's name, did you?

16 A Like I told you in the deposition, I
17 don't remember.

18 Q You never signed a reassignment to
19 Triangle, did you?

20 A Just like I told you before, I don't
21 remember.

22 Q So if their testimony were to be that you
23 never signed the titles over to them and you never
24 signed a reassignment over to them, you wouldn't
25 dispute that, would you?

1 A I don't know if I would or not.

2 Q Well, you don't remember.

3 A That's true. I might not get up here and
4 dispute it, in my own mind I might dispute it.

5 Q There was never an agreement between you
6 and Triangle that the titles you sent would serve as
7 payment for the bad checks, was it?

8 A There was -- repeat that, please, now.

9 Q There was never an agreement between you
10 and Triangle Auto Auction that the six titles you sent
11 them December 17th would serve as payment for the bad
12 checks, was there?

13 A It wouldn't serve as payment off in full
14 and then say you don't owe us anymore money, but it was
15 held as collateral to justify the debt. That's the
16 reason Mr. Sale asked for it.

17 Q So the answer to my question is no, they
18 were not to serve as payment, right?

19 A Well, it would be a form of partial
20 payment, I would think. It was justifying the debt at
21 that given period of time until I did pay it off and
22 that's what he had asked for.

23 As far as I guess to answer your question
24 and to say I'm going to give you these titles and I
25 don't owe you anymore, no, it didn't work like that.

1 Q Thank you. You finally paid those bad
2 checks off on February the 7th, 1985, the day before
3 your trial was commenced, did you not?

4 A Yes, sir, I did.

5 Q Now, you have never gotten medical or
6 psychiatric help for any mental condition that you
7 allege Triangle caused, have you?

8 A No.

9 Q Going back one step with reference to the
10 criminal charges, Mr. Lancour told you that whether he
11 got car titles or not, whether he had car titles or
12 not, he was going to get a warrant for you anyway,
13 didn't he, warrant or warrants?

14 A I don't remember, I don't remember. And I
15 think I told you that I don't remember if he threatened
16 to put me in jail before I gave him the titles. I know
17 he threatened to put me in jail after I had given him
18 the money and the titles, but I stand to be corrected,
19 and I'm sure you can, if I'm wrong.

20 Q Page 98, let me read you a question, and
21 if you would, read the answer to the question that I
22 asked you on March 11, 1986 when you were testifying
23 under oath.

24 THE COURT: You should ask him if he made
25 that statement.

1 MR. MULLEN: Right, sir.

2

3 BY MR. MULLEN:

4 Q Do you know -- the question: Do you know
5 when you talked to Frank Sale, how long after the
6 conversation with Gene Lancour in late November of '84?

7 Your answer: It was going -- after all three
8 checks came back is when Mr. Sale called me because he
9 made the statement saying that once I started writing
10 them I kept on writing them as if to say that I meant
11 to do it. And, of course, I was being told that I was
12 going to be arrested.

13 Question: Who told you that?

14 Answer: Mr. Lancour told me that he was
15 going to get a warrant out for me even after -- before
16 and after I had sent collateral, titles, and money --
17 well, collateral is the titles.

18 A Uh-huh.

19 Q Was that your answer?

20 A Yes, sir, if you have it there. But I
21 think it's going to be somewhat in the form of, you
22 know, if we can't do something about this problem,
23 they're going to send me down and I might have to get a
24 warrant out for you. And then we did something about the
25 problem and then I was definitely told that they was going

1 to get a warrant out for me.

2 Q That is not what this deposition said, is
3 it?

4 A Well, I guess that's the way it should be
5 said.

6 Q It is possible for you even today to deal
7 in cash and hard titles at certain automobile auctions,
8 is it not, Fredericksburg, for instance?

9 A No.

10 Q No?

11 A No, sir.

12 Q Your man who will testify later wasn't
13 told that if he had the car titles --

14 A Fredericksburg, you're right, yes, sir.
15 I stand to be corrected there. Statesville and High
16 Point, no, they said now or in the future.

17 Q It is not convenient for you to deal in
18 cash at auto auctions, though, is it?

19 A No.

20 Q You personally have never been barred
21 from doing business at any auto auction by Triangle
22 Auto Auction Company, have you?

23 A Over the telephone I was, yes, sir.

24 Q By Triangle Auto Auction?

25 A Oh, you're saying by Triangle Auction?

1 Q Yes.

2 A Have I been barred from them?

3 Q Yes.

4 A No.

5 Q From them or any other auction?

6 A Over the telephone I was barred from
7 Fredericksburg, sure.

8 Q But not by Triangle Auto Auction, by
9 Fredericksburg, right?

10 A Right.

11 Q Even if you have been curtailed as far as
12 dealing in checks at certain auto auctions, you do not
13 yourself know who or what is the source of that being
14 barred, do you?

15 A No, but I never got a letter until this
16 problem occurred.

17 Q And you never had an agreement with
18 Triangle to finance your purchases for five days,
19 thirty days, forty-five days or any other time, did
20 you?

21 A No, sir.

22 Q With reference to the charges themselves,
23 when your case came to trial in Montgomery County on
24 February the 8th, the commonwealth's attorney is the
25 one who asked the judge to drop the charges, is he not?

1 A I don't know, because if I recall
2 correctly, I think Mr. Johnson and yourself, didn't you
3 go back in a room somewhere and I don't believe I was
4 with you and discuss something? I stand to be
5 corrected on that. I can't say that the commonwealth
6 attorney suggested it. I think it was some
7 conversation before it ever went before the judge.

8 MR. MULLEN: Page 115.

9 MR. JOHNSON: Of the same deposition?
10

11 BY MR. MULLEN:

12 Q My question, and tell me if this was your
13 answer: Do you have any idea whose idea it was not to
14 prosecute the bad check charges against you, do you
15 know personally who made the decision not to prosecute
16 you after you paid the checks off?

17 Your answer: As far as I was concerned I
18 was going to be prosecuted unless the judge had seen
19 fit that I not be prosecuted. Now, I stand to be
20 corrected, but that's the way I understand it. I don't
21 think --

22 Question: Do you know whose decision it was
23 to dismiss the charges against you?

24 Answer: I believe it was the judge's, I
25 think. I stand to be corrected.

1 MR. JOHNSON: Now, if Your Honor please,
2 we would like to state that there is no
3 difference in that and what he has just
4 testified to. It's not proper cross
5 examination is our objection.

6 THE COURT: What you should use
7 depositions is to ask the witness if he
8 made the statement. If he says, no, then
9 you can read the answer -- give him a
10 warning question and read him the answer.
11 And then if he denies it, then you can put
12 on evidence to the contrary.

13 If he says that he did, admits it, you
14 can't go any further.

15 MR. MULLEN: I'll try to do that, Your
16 Honor.

17
18 BY MR. MULLEN:

19 Q After -- let's see, you wrote many bad
20 checks out of your account with First Virginia Bank for
21 which I just had the check stubs after you received
22 notice of the bad checks that you had written to
23 Triangle, correct?

24 A I would have to look back through the
25 check stubs. I know I had an overdrawn balance of more

1 than what I owed you. So I guess that answers your
2 question.

3 Q From early November, specifically the
4 12th of November of 1984, until January 19th of 1985
5 you continued to write bad checks out of that account,
6 did you not?

7 A I don't remember, it's in the record.

8 Q Mr. Cash, let me show you what appears to
9 be your bank statement for First Virginia Bank on which
10 these bad checks were drawn for October 26, 1984
11 covering most of the month of October. Would that
12 represent such a statement?

13 A Yes, sir, I believe it does.

14 Q Would you look down the list of checks
15 that were drawn on that account and tell me if there
16 are any return check charges?

17 A Yes, sir.

18 Q How many total?

19 A Five, but that doesn't necessarily mean
20 it was five checks.

21 Q I see.

22 A Am I correct on that?

23 Q I can't testify.

24 MR. MULLEN: We'd like to introduce this
25 as our exhibit, the next number I believe is

1 No. 2, Your Honor.

2 THE COURT: It will be marked as such.

3 (Whereupon the bank statement was
4 admitted in evidence as Defendant's
5 Exhibit No. 2.)

6
7 BY MR. MULLEN:

8 Q Now, let me show you what appears to be a
9 First Virginia Bank statement dated November 26, 1984,
10 is that such a statement?

11 A Yes, sir, November 26th, right.

12 Q Would you look down the list of checks
13 there and tell me if there are any return check
14 charges and, if so, how many?

15 THE COURT: Mr. Mullen, I'd like for you
16 when you tender exhibits to mark them as you
17 want them marked and I'll initial them as
18 such.

19 MR. MULLEN: All right, sir.

20 THE COURT: Are you offering this as
21 Defendant's No. 2?

22 MR. MULLEN: Yes, sir.

23 THE COURT: Any objection to that?

24 MR. JOHNSON: No, sir, Your Honor.

25 A I think I count six. I may have missed

1 some, but do you want me to recount them?

2

3 BY MR. MULLEN:

4 Q Six is what you see?

5 A Yes.

6 Q That's fine.

7 A I could have missed some.

8 MR. MULLEN: I believe this would be
9 Defendant's Exhibit No. 3, Your Honor.

10 THE COURT: Yes, sir.

11 MR. MULLEN: I'd like to show these to
12 the jury all at once.

13 MR. JOHNSON: We have no objection.

14 THE COURT: All right. I'll mark No. 3
15 as such.

16 (Whereupon the bank statement was
17 admitted in evidence as Defendant's
18 Exhibit No. 3.)

19

20 BY MR. MULLEN:

21 Q Mr. Cash, I show you another bank
22 statement for First Virginia Bank dated December 26th,
23 1984 and ask you if that's an account statement on the
24 same checking account?

25 A Yes, sir.

1 Q Would you tell me how many returned check
2 charges there are on that statement to the best of your
3 ability?

4 A Five.

5 MR. MULLEN: We would introduce this as
6 our Exhibit No. 4, Your Honor.

7 THE COURT: Okay.

8 (Whereupon the bank statement was
9 admitted in evidence as Defendant's
10 Exhibit No. 4.)

11
12 BY MR. MULLEN:

13 Q And finally, Mr. Cash, I show you a
14 statement on the same account for January 25th, 1985
15 and ask you if that is such a statement?

16 A Yes, sir.

17 Q And would you count the number of
18 returned check charges on that statement?

19 A I've got ten. I might be wrong, but --

20 MR. MULLEN: Your Honor, we would offer
21 this as Exhibit No. 5.

22 THE COURT: All right, sir.

23 (Whereupon statement was admitted
24 in evidence as Defendant's Exhibit
25 No. 5.)

1 BY MR. MULLEN:

2 Q Mr. Cash, I believe it was on or about
3 January 29 of 1985 you finally closed that account,
4 didn't you?

5 A Yes, sir.

6 Q And you opened an account with a
7 different bank, the Community Bank of Forest?

8 A Yes, sir.

9 Q The initial deposit in that account was
10 twenty-one thousand nine hundred eight dollars and
11 sixty-two cents?

12 A If that's what it shows, I don't know
13 right in my head right off.

14 Q Mr. Cash, would these be your check stubs
15 for the Community Bank of Forest account?

16 A Yes, sir, I believe they are.

17 Q Would you tell us if check number one-o-
18 one would have been the first check that you wrote out
19 of that account or do you know?

20 A If it starts with number one-o-one, that
21 would be the first check.

22 Q What is the beginning balance that you
23 show on those check stubs?

24 A Twenty-one thousand nine hundred and
25 eight dollars and sixty-two cents.

1 Q Thank you.

2 MR. MULLEN: Your Honor, we would
3 introduce this as No. 6.

4 MR. JOHNSON: No objection.

5 THE COURT: Okay.

6 (Whereupon bank statement was
7 admitted in evidence as
8 Defendant's Exhibit No. 6.)
9

10 BY MR. MULLEN:

11 Q You have issued even into 1986 several
12 bad checks from either one or more of your checking
13 accounts, have you not?

14 A Are you speaking of on the testimony
15 my insurance agent gave?

16 Q Yes.

17 A As a draft that came back?

18 Q Drafts are one thing, checks are another.
19 You've issued some bad checks in 1986, haven't you?

20 A I think I had a check returned on my
21 insurance.

22 Q All right, sir. Now, going back to your
23 problems with Triangle Auto Auction, other than the
24 fact that you might have lost some money, you could
25 have sold the cars that you bought at that auction

1 within the five day notice period specified in their
2 letter to you, could you not?

3 A At that given period of time, no. The
4 car business was at a slack time and I explained that
5 to Mr. Sale, that's the reason I asked for the thirty
6 days.

7 Q There were automobile auctions --

8 A Sure, there were.

9 Q -- in operation, weren't there?

10 A Yes, sir.

11 Q You could have taken those cars to those
12 auctions and sold them, but you probably would have
13 lost money, wouldn't you?

14 A I lost money when I sold cars to pay
15 them.

16 Q You could have taken those cars to auto
17 auctions and sold them before December 21?

18 A I did take some of the cars to the
19 automobile auctions and sell them, I just didn't do it
20 in five days.

21 Q The main reason you didn't is because the
22 market was down and you didn't want to lose anymore
23 money?

24 A At that point I didn't really care how
25 much money I lost, I wanted to get as much as I could

1 for them because the more I got, the more I would have
2 to give him. I asked him for thirty days and he agreed
3 upon thirty days, thirty or forty-five days.

4 Q Are you saying that either Mr. Sale or
5 Mr. Lancour agreed to wait thirty to forty-five days
6 for their money from you?

7 A That was what I was telling them the
8 whole period of time.

9 Q That's not my question. My question is:
10 Are you saying that they ever agreed to what you asked?

11 A That was my agreement that they agreed to
12 it.

13 Q My specific question is: Did Mr. Lancour
14 agree to thirty to forty-five days for you to pay?

15 A Yes, sir.

16 Q Did Mr. Sale agree to give you thirty to
17 forty-five days to pay?

18 A Well, let me put it to you like this: I
19 told him I needed thirty to forty-five days, he said he
20 needed collateral until I could pay it in thirty days
21 and so I guess that's agreeing.

22 Q Did either of them specifically say yes?

23 MR. JOHNSON: Now, if Your Honor please,
24 I think he's explained that, what his
25 understanding was. To have an agreement you

1 don't have to specifically --

2 THE COURT: Well, I'll let him ask the
3 last question since that has not been
4 specifically answered to my recollection.

5 Do you know the question?

6 THE WITNESS: Ask it again, please.

7
8 BY MR. MULLEN:

9 Q Did Mr. Lancour ever agree to give you
10 thirty to forty-five days to pay?

11 THE COURT: Wait a minute now,
12 specifically agree.

13
14 BY MR. MULLEN:

15 Q Specifically agree?

16 A I guess I would have to say, yes, I guess
17 he did because I asked him for it and gave him the
18 titles and told him that's when I would pay him. So I
19 guess in a matter of speaking he did agree.

20 Q Mr. Sale likewise?

21 A Mr. Sale is the one that made that
22 agreement. I'm sorry, you may have said Mr. Lancour,
23 but I'm sorry, Mr. Sale is the one that made that
24 agreement. Mr. Sale is the one that made the agreement
25 on the titles.

1 Q I believe you run a car auction here in
2 Lynchburg now, do you not?

3 A Yes, sir.

4 Q Part owner in that auction?

5 A Yes, sir.

6 Q In that auto auction that you presently
7 run you don't finance other dealers' purchases, do you?

8 A No, sir.

9 Q You don't expect to take bad checks in
10 the operation of your auction, do you?

11 A No, I don't expect to, but anytime you're
12 in a business for some given period of time you're
13 going to get one.

14 Q You testified earlier in this court today
15 that you didn't know what the problem was when the
16 three bad checks were returned, correct?

17 A Well, I testified I think to say that I
18 had messed up the -- the balance was off in my checking
19 account, that I was showing a balance, but it wasn't a
20 true balance.

21 Q Did you testify earlier that you would do
22 whatever was possible to get the money to Triangle Auto
23 Auction for the bad checks?

24 A Yes, sir.

25 Q But you did not sell those cars within

1 the notice period of five days specified in the letter,
2 did you?

3 A I sent them money before I ever got the
4 first letter.

5 Q But not all of it, did you?

6 A No, I didn't send them all, no, but I
7 made an effort before I got the first letter and paid,
8 so I guess that's showing that I had a good intention.

9 Q Now, with reference to the car titles
10 that you sent by Federal Express to Triangle Auto
11 Auction.

12 A Yes, sir.

13 Q It would have been fraud for you to have
14 applied to the Division of Motor Vehicles for a
15 duplicate title, wouldn't it?

16 A Sure.

17 Q But if you had wanted to commit a fraud,
18 you could have done that, couldn't you?

19 A Sitting here now saying it, yes, it never
20 came across my mind to do such a thing.

21 MR. JOHNSON: Judge, I object. I can't
22 imagine a question asking somebody if they
23 wanted to commit a criminal act could they do
24 it. I mean, you might as well ask if
25 he could commit murder would he do it. That's

1 an improper question.

2 THE COURT: Why would that be relevant?

3 MR. MULLEN: It would be a proper
4 question, Your Honor because there is no
5 difference between that and giving a bad
6 check and not paying within five days. Either
7 one is a fraud.

8 THE COURT: The problem with it is that
9 it's going to lead to collateral issues and
10 may tend to confuse the trier of fact, so I
11 sustain the objection for that reason.

12 MR. MULLEN: I withdraw the question.

13 THE COURT: Yes, sir.

14

15 BY MR. MULLEN:

16 Q So far as you know you never signed
17 anything to Triangle Auto Auction when you sent them
18 the titles which would enable them to either market the
19 cars or get a lien on the titles, did you?

20 A I told you I didn't know, I didn't
21 remember.

22 Q If you had wanted to within the five day
23 notice period specified in the letter from Triangle to
24 you, you could have borrowed enough money from your
25 father to pay those checks off, couldn't you?

1 A It's possible, but at that time I didn't
2 know it. I felt it was my problem, I would take care
3 of it myself.

4 Q You didn't ask him, did you?

5 A I asked him after we had the agreement
6 and it was offered, but I had an agreement, I had no
7 reason to borrow it. I would raise it myself, and I
8 did.

9 A Now, did I understand your testimony
10 correctly on direct examination that Mr. Sale never
11 said what he would do or what he wouldn't do with
12 reference to the titles or with reference to criminal
13 prosecution?

14 A What do you mean, in what way?

15 Q You say he talked to you several times on
16 the telephone saying, pay these checks, I can't afford
17 to operate this way.

18 And I thought you said on direct examination,
19 but I stand to be corrected, everything was like we
20 agreed upon, Mr. Sale never said what he would do or
21 not do, were you -- did you make that statement and
22 were you referring to criminal prosecution?

23 A Well, I was under the impression that he
24 wouldn't because I felt he didn't have any reason to
25 put me in jail. Everything had been justified, you

1 know, I say justified. I guess that's the wrong
2 terminology, the collateral had been put up for the
3 debt and payments had been made.

4 Q May I show you your Exhibit No. 5 and ask
5 you to read the part under the law of the State of
6 Virginia down through one eight three?

7 A Starting where now, under the law of the
8 State of Virginia, the issuance of a bad check is prima
9 facie evidence of intent and knowledge to defraud the
10 persons to whom the check is given. When the amount is
11 over two hundred dollars or more, the person making,
12 drawing, uttering, or delivering a check are guilty of
13 a felony.

14 Under the law in the State of Virginia
15 in order to prosecute you for the issuance of a bad
16 check we are required to give a notice by mail with
17 return receipt in order to secure the necessary warrant
18 for prosecution.

19 This letter is your notification that you
20 have five -- and it's got the letter five -- days from the
21 date of this letter within which to pay by cash or
22 certified or cashier's funds the above amount to
23 Triangle Auto Auction, Incorporated. If you do not,
24 then the necessary warrants will be secured for your
25 prosecution.

DANIEL F. CASH - CROSS/REDIRECT

1 Q You received this letter and two others
2 just like it, didn't you?

3 A After I made a payment, yes, sir.

4 Q And you did not completely pay the checks
5 that are outlined in each of these letters within the
6 time specified in the letters, did you?

7 A I don't believe so.

8 MR. MULLEN: That's all the questions I
9 have.

10 MR. JOHNSON: Just one or two very
11 briefly, Judge.

12

13

14

REDIRECT EXAMINATION

15 BY MR. JOHNSON:

16 Q Mr. Cash, I understand as Mr. Mullen has
17 just asked you, that certified letter, the last
18 certified letter you got was, the record shows December
19 12th that it was mailed, you got it on the following
20 day, December 13th?

21 A Yes, sir.

22 Q December the 17th, which would be four
23 days later, is when as a result, and within the five
24 days, as a result of the telephone conversation you
25 mailed six titles by Federal Express to Triangle?

1 A Yes, sir.

2 Q Within five days of the time you had
3 gotten that letter?

4 A Yes, sir, that was for collateral to
5 justify the debt.

6 Q Who first mentioned, in the telephone call
7 between you and Mr. Sale, who first mentioned sending
8 titles?

9 A He asked for the titles, he asked me how
10 many cars I had on my lot that I had titles to, and I
11 gave him a figure of somewhere in the area of thirty or
12 thirty-five. And he said, well, pick me out some titles
13 so I feel like I can justify the debt that you owe me
14 and I'll have something. And I said, I'll be glad to,
15 sir.

16 Q Have something to guarantee the debt?

17 A It was kind of a guarantee in the sense
18 that the money that he had out he was going to have
19 something for it. It was just collateral I guess is
20 the word to use.

21 Q Now, you've been asked many times about
22 whether he specifically said I won't do anything.
23 What did you understand when he asked you to send him
24 enough titles and when you sent them, what was your
25 understanding about whether or not he intended to go

1 along with your thirty or forty-five days?

2 A Well, after I had given him the money
3 before I had ever received any of these notices and
4 then I gave him the titles and then I sent him some
5 more money, I was under the impression we had an
6 agreement and I was to pay off at such and such a date,
7 that was the impression that I was under. I later
8 found out that it won't going to work like that.

9 Q All these checks that you were asked
10 about I believe they started in October and continued
11 in November, December, and part of January, that he's
12 asked you about. And that's when you said your bank
13 balance was fouled up, that's your very first
14 testimony?

15 A Yes, sir.

16 Q And you hadn't had any problems before
17 that?

18 A No, sir, not to my knowledge.

19 Q Then he asked you about some further
20 checks continuing this thing of trying to get out of
21 this loss up here, he asked you about some other
22 checks. Have they all been paid?

23 A Sure, I never had any problem with a
24 check other than with these people.

25 Q Have you -- when you said that you had

1 some returned, are some of those showing a check going
2 through twice, in other words --

3 A Some of them are and some of them were
4 just maybe had gone through once and the individual
5 would call me and I would say just keep it right there,
6 I'll come over and give it to you, it's beaten my
7 deposit to the bank or something to that nature.

8 Q And he asked you about a check in '86
9 and you said it was insurance. Wasn't that a draft
10 check that had been posted sometime previously to be
11 deposited --

12 A That was a draft that comes out of your
13 checking account each month automatically.

14 Q By signing a bunch of them two or three
15 years in advance?

16 A It's an automatic thing to cover life
17 insurance. But as my insurance agent can tell you there
18 was no problem there and that is the first that it had
19 ever happened.

20 Q One final question: You told Mr. Mullen
21 you never signed any dealer's authorization or anything
22 to enable Triangle to sell these cars, the six titles
23 that you sent, you said so far as you knew you didn't
24 recall doing so, but you couldn't say for sure?

25 A Yes, sir.

1 Q After you sent those titles in any event
2 in that conversation a day after or the day he asked
3 for the titles, did Mr. Sale ask you to send any
4 authorization or did he later contact you and say, hey,
5 you failed to send authorizations?

6 A No. The only part that we had of any
7 dispute and it wasn't anything that had to do with the
8 reassignment or is the title open where I can do
9 something with it, the only dispute we ever had was the
10 value of the automobiles and then we went over that and
11 got it straight and they were accepted. I would
12 imagine if he thought the titles wouldn't do him any
13 good he would have sent them back to me.

14 MR. MULLEN: Objection.

15 THE COURT: Any other questions?

16 MR. MULLEN: Yes, one or two.

17 THE COURT: Can't go any further than
18 that, so I'll allow you to ask a couple.
19
20

21 RE CROSS EXAMINATION

22 BY MR. MULLEN:

23 Q Since the non-sufficient funds checks to
24 Triangle have you given any non-sufficient funds checks
25 to anyone else?

1 A I think my insurance agent has gotten
2 one.

3 Q Now, you're talking about drafts?

4 A (Affirmative nod.)

5 Q My question is about checks?

6 A I don't remember. I'm not going to say
7 yes or no. It possibly could be one that he got.

8 Q When you testified on deposition October
9 31 in answer to that same question, did you say, I've
10 had a couple returned, but I've had no problem, it was
11 just like a credit hadn't gotten into my account.

12 A If that's what I said, that's what I
13 said.

14 MR. MULLEN: That's all.

15 MR. JOHNSON: No further questions,
16 Judge.

17 (Whereupon the witness stood aside.)

18
19 THE COURT: Next witness.

20 MR. JOHNSON: Mr. Steven Hamlet.
21
22
23
24
25

STEVEN T. HAMLET - DIRECT

1 The witness, STEVEN TAYLOR HAMLET, having
2 been first duly sworn, was examined and testified on
3 his oath as follows:

4
5 DIRECT EXAMINATION

6 BY MR. JOHNSON:

7 Q State your name and where you live,
8 please, sir.

9 A Steven Taylor Hamlet, Number Two
10 Westdale Drive, Lynchburg.

11 Q Mr. Hamlet, did you -- first of all, are
12 you related or kin to Mr. Cash?

13 A No, sir.

14 Q Have you worked for him in the past?

15 A Yes, sir.

16 Q Do you remember about when the times --
17 you don't work for him now?

18 A No, sir.

19 Q When did you work for him?

20 A I started in the last part of '83, worked
21 all of '84, and the first part of '85.

22 Q So you were employed by him then both
23 before and after October, November, and December and
24 the first part of '85, '84 and '85?

25 A Yes, sir.

1 Q Where are you working now?

2 A I work at Alternate Choice Auto Sales,
3 Madison Heights.

4 Q And you left Mr. Cash's employ about
5 when?

6 A It was around April of '85.

7 Q Of '85?

8 A Yes, sir.

9 Q What did you do for him?

10 A I bought and sold cars.

11 Q That was your full employment, buying and
12 selling?

13 A Right.

14 Q Were you or were you not sort of a
15 specialist on wholesaling?

16 A Wholesaling is mostly what I did, yes.

17 Q In other words, that would be buying and
18 selling particularly at auctions, buying at
19 auctions, and coming back and sell them to dealers
20 here?

21 A Buying from dealers and selling at
22 auctions.

23 Q Now, do you know whether or not -- well,
24 first of all, were you with Danny Cash when he went up
25 to Triangle in November? I believe he made three trips

1 up there in November and bought one or more cars each
2 time, were you with him when he went up there and
3 bought cars?

4 A I went to the auctions with him, yes,
5 sir.

6 Q At Radford?

7 A Yes, sir.

8 Q Do you know whether you were right there
9 with him when he gave the check or were you just
10 present when he was there?

11 A I was present at the auction. When he
12 wrote the checks at the window most of the time I
13 wasn't there. I was probably out loading cars.

14 Q There's a window there at the auction?

15 A Like a cashier's window.

16 Q And you knew he was giving checks for
17 what he bought?

18 A Yes.

19 Q Had you been with him on previous
20 occasions up there to do it while you've been employed?

21 A Yes, sir.

22 Q Had there ever been a problem to the best
23 of your knowledge with him prior to --

24 A No, sir.

25 Q On this particular day did you have any

1 knowledge of any sort of at that time about any mistake
2 in his bookkeeping or checkbook or anything?

3 A No, sir, I didn't keep up with his
4 checkbook.

5 Q And nothing was said by him to you
6 showing any knowledge of that at that time?

7 A No, sir.

8 Q Now, when -- after you came back from
9 those, do you recall any telephone calls being --
10 coming into Danny Cash's business from Triangle?

11 A I remember, you know, the phone calls
12 coming in from Triangle.

13 Q Calling him?

14 A Yes.

15 Q Now, you were not actually on the line
16 party to those telephone calls?

17 A No, I just answered the phone calls at
18 the office.

19 Q And do you know who this would have been
20 calling, Mr. Lancour, Mr. Sale, or who?

21 A I believe it was a couple of calls. It
22 might have been one or the other, I'm not sure which
23 time, which one, or whatever.

24 Q Were you there at a time when some
25 conversation took place about titles on the telephone?

1 A I remember a conversation about some
2 titles being sent back to the auction on some cars on
3 the lot as --

4 Q Now, let me ask you about that. Was that
5 a telephone call, that one that you heard part of,
6 was that a call that came into Danny Cash's or a call
7 from Danny Cash's to Triangle?

8 A A call that came in.

9 Q Who answered the phone for that call?

10 A I did.

11 Q And do you know who was calling?

12 A I believe it was Mr. Lancour.

13 Q Did the person say who they wanted to
14 speak to?

15 A Yes.

16 Q Who did they want to speak to?

17 A Danny Cash.

18 Q Did you call Danny to the phone?

19 A Yes, sir.

20 Q Now, what, if anything, did you hear to
21 the best of your recollection from Danny Cash's side
22 of the conversation?

23 A The best I recollect he said, do you want
24 titles to cars to cover the checks, and -- well, he
25 said, I'll send those on to you.

1 Q Was there -- I mean, was that said right
2 along, was there a delay between those as if they were
3 talking back and forth?

4 A As if they were talking back and forth.
5 I couldn't hear but one side of the conversation.

6 Q Was anything said about, well, what do
7 you want in the way of security or anything like that?

8 A The word security -- and he was talking
9 about sending titles and money as security, you know,
10 for something.

11 Q And you --

12 A At the time I didn't know it was about
13 the checks and then I found out afterwards it was
14 checks.

15 Q And you understood him to say that, you
16 want titles to cover the cars, the checks?

17 A Right.

18 Q Titles to the cars?

19 A (Affirmative nod.)

20 Q And did you understand him to say that he
21 would send the titles?

22 A Would send the titles, yes.

23 Q Now, do you know whether or not he sent
24 titles by Federal Express right away, that day or the
25 next day?

1 A Yes, sir, he did it right away.

2 Q Now, after this mix-up about the -- you
3 know, you've been told now it's a mix-up in his bank
4 account that caused all of this thing?

5 A Right.

6 Q Now, after that and after these checks
7 and all with Triangle and that conversation and
8 everything, were you able to continue buying and
9 selling at auctions for him?

10 A After the mix-up in the checkbook?

11 Q Uh-huh.

12 A I stayed there and worked. The
13 atmosphere around where I bought, like I would go to
14 dealers around Lynchburg and buy cars, the atmosphere
15 of the dealers had changed whereas it was like they
16 didn't want me to buy cars from them.

17 Q Did they tell you why?

18 A The managers that I dealt with didn't
19 tell me why, some of the salesmen mentioned something
20 about the check thing.

21 Q About this check at Triangle and for that
22 reason they didn't want to --

23 A (Affirmative nod.)

24 Q Why did you -- did you leave Danny
25 voluntarily?

1 A Yes.

2 Q Why did you leave?

3 A Well, it had gotten to the point where I
4 couldn't buy the cars and then I couldn't take them to
5 the auctions and that was the basis of my salary, so I
6 had to go somewhere, you know, where I could do that.

7 Q All right. After hearing these comments
8 and so forth and having to leave, what did you do,
9 where did you go to work?

10 A I went to work at Lynchburg Kawasaki
11 after I left Danny.

12 Q That's sort of right down the street?

13 A Just right down the street.

14 Q Right down Twelfth Street from Danny?

15 A About three blocks.

16 Q Did you then have any trouble buying and
17 selling to these dealers and so forth after you went
18 there?

19 A No, sir.

20 Q Not at all?

21 A That's still what I do now.

22 MR. JOHNSON: All right. Answer Mr.
23 Mullen.

24

25

CROSS EXAMINATION

BY MR. MULLEN:

Q Mr. Hamlet, you worked 1983, all of 1984, and until April of '85 for Mr. Cash?

A The last part of '83, all of '84, and I believe it was April of '85.

Q During the time that you worked for him, did his sales volume of cars drop?

A Did his -- the retail volume didn't drop any, but the wholesale came to pretty much of a screeching halt. I mean, the lot was still there operating on a retail basis, but the wholesale, you know, changed dramatically.

Q You don't have any idea to what extent it changed, do you?

A Changed to where I had to leave, I couldn't make any money. I was making good money, you know, before that.

Q You don't of your own knowledge know what caused that, do you? Do you -- you have an opinion but you don't know for certain, do you?

A What caused the drop?

Q Yes.

A Because I couldn't get people's --

Q I understand that's why you left.

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1 A Yes.

2 MR. MULLEN: That's all.

3 MR. JOHNSON: May he be excused, Your
4 Honor?

5 MR. MULLEN: No objection.

6 THE COURT: You're excused.

7 (Whereupon the witness stood aside.)
8

9 MR. JOHNSON: Ernest Wommack.
10

11 The witness, ERNEST WILLIAM WOMMACK, having
12 been first duly sworn, was examined and testified on
13 his oath as follows:
14

15 DIRECT EXAMINATION

16 BY MR. JOHNSON:

17 Q Please state your name and where you
18 live, sir.

19 A Ernest William Wommack, Evington,
20 Virginia.

21 Q And are you in business?

22 A Yes, sir, I am.

23 Q What business are you in?

24 A Accounting, Wommack's Bookkeeping
25 Service.

1 Q And for how long have you operated that
2 business?

3 A Twenty-five years.

4 Q For twenty-five years?

5 A (Affirmative nod.)

6 Q Continuously up until the present time?

7 A Yes, sir.

8 Q All right. You live in Evington, is that
9 also your office?

10 A I live there plus my office is in
11 Evington in my home, yes, sir.

12 Q And has it been for the entire time?

13 A No, sir.

14 Q I believe you previously had an office in
15 Lynchburg?

16 A Yes, sir, in the Allied Arts Building.

17 Q Now you operate out of your home?

18 A Yes, sir.

19 Q During this twenty-five years, have you
20 done bookkeeping and accounting for various clients?

21 A Yes, sir.

22 Q Did you do this type of work for Mr.
23 Cash?

24 A Yes, sir.

25 Q For what period, sir?

1 A From 1980 to present.

2 Q Now, do you know of anything particularly
3 about October or November of 1984 that happened in
4 regard to Danny Cash's bank book, checkbook?

5 A Yes, sir.

6 Q Just describe that to the jury, if you
7 would.

8 A Well, it was in November of '84 and I
9 found an overdraft for October, which was also done at
10 the latter part of November. I picked up November
11 around the first or second of December and worked that
12 to find the complete overdraft.

13 Q Now, let me -- maybe that's not exactly
14 clear. Did I understand you to say that you did or
15 didn't do a reconciliation of the account during
16 October?

17 A No, sir, that was done the latter part of
18 November.

19 Q The last of November?

20 A (Affirmative nod.)

21 Q So I assume you reconciled October and
22 November both at that time?

23 A October then I went into November which
24 is around the first of December, yes, sir.

25 Q So you did both months at one time?

1 A Yes, sir.

2 Q So in other words there hadn't been any
3 reconciled bank statement from sometime first part of
4 October until the end of November?

5 A Except for September, yes, sir.

6 Q Oh, September, but not October and
7 November?

8 A Yes, sir.

9 Q All right. And now is that when you
10 found that there was a problem, an overdraft?

11 A Yes, sir.

12 Q Do you recall who actually mentioned that
13 first, did you mention that first to Danny Cash or did
14 he mention to you that he had gotten a call from Mr.
15 Lancour first?

16 A It was the latter part of November I got
17 a call from Mr. Cash which in turn we went in and
18 reconciled the account and I advised Mr. Cash then of
19 the circumstances of his account.

20 Q When he called you the last of November
21 was the reason he was calling that he had heard from
22 Mr. Lancour about these checks, is that what he called
23 to ask about?

24 A He had a bank problem.

25 Q So he called to ask about it and that's

1 when you went ahead and reconciled the account?

2 A Yes, sir.

3 Q What had happened with October, you just
4 hadn't had a chance to do it or had you normally just
5 reconciled every two months?

6 A No, sir. I pick it up on a monthly
7 basis, but it was the latter part of October -- I mean,
8 November when I got around to working October, which
9 automatically went into December.

10 Q So you really just hadn't had a chance to
11 do it during that time?

12 A Yes, sir.

13 Q Picked it up then?

14 A (Affirmative nod.)

15 Q Now, what did you find had happened when
16 you went back and checked the books then after he asked
17 you to do so?

18 A At that point I found out of the
19 discrepancy within the checkbook itself that Mr. Cash
20 had made in his adding and subtraction.

21 Q Can you explain what he had done, what do
22 you mean by discrepancy in adding and subtraction?

23 A Well, in one instance instead of
24 deducting, I believe, an eleven thousand dollar check
25 he added the check instead which started the whole

1 problem which was shortly within the first few days of
2 October 1984.

3 Q In other words, when he wrote the check
4 according to the bank thing instead of showing that as
5 a debit, writing it off as a check, he showed it in
6 effect as a deposit?

7 A Yes, sir.

8 Q That was the effect of what he had done?

9 A Yes, sir.

10 Q So that's -- I'm not an accountant, but
11 would that double the mistake?

12 A The eleven thousand automatically became
13 twenty-two thousand.

14 Q Twenty-two thousand, okay. Because it
15 wasn't shown as a debit and was shown as a credit, so
16 it's doubled?

17 A Yes, sir.

18 Q Now, was that the only mistake?

19 A There were others, but I don't have the
20 records here before me.

21 Q Up until that time -- and I believe you
22 said that was the last of October that that was done?

23 A The last of October -- no, sir, it was in
24 November, the last of November.

25 Q That that balance has been shown -- no,

1 that you reconciled it. But when did he make this
2 mistake in his bookkeeping?

3 A Around the first of October.

4 Q The first of October?

5 A Yes, sir.

6 Q Until this thing came up about the check
7 to Triangle and so forth, had he been in good or bad
8 shape or what business-wise?

9 A Excellent shape.

10 Q Was he operating in the black and so
11 forth?

12 A Yes, sir, he was.

13 Q Was that true on up until this mistake in
14 the checkbook?

15 A Yes, sir.

16 Q All right. Now, when did you tell Danny
17 Cash about the mistake that you had found that you said
18 you located in the first part of December?

19 A Between the 10th and 15th of December.

20 Q Of December?

21 A Yes, sir.

22 Q You told him that the report he had
23 gotten from Mr. Lancour about the checks was correct?

24 A The checks were still outstanding, yes,
25 sir.

1 Q Now, do you know from your keeping his
2 books and records, do you know how often he or his
3 people would go to auctions on the average?

4 A No, sir, I can't answer that, but it was
5 quite often.

6 Q Would it be more than once a week, for
7 instance?

8 A Yes, sir.

9 Q And was it pretty regular?

10 A Yes, sir.

11 Q Now, since then from having kept his
12 books and all, have they gone to auctions and so forth?

13 A No, sir.

14 Q You're familiar with the fact of this
15 thing of telling him that he couldn't come to auctions
16 and so forth, you knew that?

17 A Just by conversation, yes, sir.

18 Q But from the time you've known that he
19 hadn't been able to go, has he?

20 A No, sir, he hasn't.

21 Q Had there been any problem with checks,
22 returned checks and so forth that you know of before
23 the Triangle check situation?

24 A No, sir.

25 Q None at all?

1 A No, sir.

2 Q Now, there has been, without going into
3 detail, there have been some problems or were I believe
4 as you went over in my office yesterday and previously,
5 I think, with Mr. Mullen, not involved up here, right
6 across the way, that here have been some returned
7 checks since the Triangle thing while it was being
8 straightened out?

9 A Yes, sir.

10 Q In October and November, December, first
11 part of January?

12 A Yes, sir.

13 Q To your knowledge are all checks that
14 have been returned and so forth been made good?

15 A Yes, sir.

16 Q To your knowledge has anybody else
17 attempted to prosecute Mr. Cash for any of these?

18 A No, sir.

19 Q To your knowledge are a number of these
20 things that are shown there as returned checks are they
21 actually drafts that are drawn back on insurance
22 company funds and so forth, you know, signed ahead of
23 time, deposited with the bank like maybe twelve months
24 at a time and then they come in, without new checks
25 being written?

1 A Some have been returned, but it's not
2 part of the returned checks, no, sir.

3 Q They wouldn't be a part of the returned
4 checks?

5 A No, sir.

6 Q They just wouldn't be honored?

7 A Yes, sir.

8 Q Let me ask you: Now, at my request did
9 you formally -- well, first, at Mr. -- correct me if
10 I'm wrong, David, but I believe Mr. Mullen asked you
11 back at the time of your depositions to formulate a
12 statement of the operations, Danny's Auto Sales, I
13 think that's the fiscal year 1984 and '85, he asked you
14 to formulate that?

15 A Yes, sir.

16 Q Did you do it?

17 A Yes, sir.

18 Q Let me ask you if you can identify this,
19 sir?

20 A Yes, sir, it's a copy of my worksheet.

21 Q Is that what you prepared and furnished
22 to Mr. Mullen?

23 A Yes, sir.

24 Q And we've marked this Plaintiff's Exhibit
25 A and I think this just shows your name and address

1 down here on this card, that is your normal business
2 card?

3 A Yes, sir.

4 MR. MULLEN: Your Honor, I will object to
5 the introduction of that exhibit unless it
6 can be shown by a preponderance of the
7 evidence that Triangle is responsible for
8 the reduction in sales.

9 THE COURT: Well, I'll admit it at this
10 time subject to that, of course, the plaintiff
11 has not concluded his case.

12 (Whereupon the worksheet was
13 admitted in evidence as
14 Plaintiff's Exhibit No. 15.)
15

16 BY MR. JOHNSON:

17 Q Now, Mr. Mullen, can you tell me whether
18 or not, first of all talking about the gross sales,
19 gross profit, and net profit for the years '83, '84 and
20 the first nine months of '86, does this or does this
21 not correctly summarize the figures shown on the
22 document we've just put in evidence here?

23 A Yes, sir, it does.

24 Q Let me give you -- well, just ask you to
25 explain this to the jury because somebody on the jury

1 might not know anymore about accounting than I do and I
2 sure need explanations. So tell me, what is this
3 figure up here, what is gross sales?

4 A Gross sales are the total sales for the
5 fiscal year.

6 Q Would that -- would that include both
7 wholesale and retail, the gross sales?

8 A Yes, sir, it would, but I had it broken
9 down for retail and wholesale.

10 Q I was going to ask you that in a minute,
11 but this is the total of both here, is that right?

12 A Yes, sir.

13 Q For the year 1984 what were the total
14 sales of Danny Cash?

15 A For the total sales?

16 Q For the total sales.

17 A For 1984?

18 Q Right.

19 A Nine eighty-one three twenty-five.

20 Q Nine hundred eight-one thousand three
21 hundred and twenty-five?

22 A Yes, sir.

23 Q We've left cents off all the way through,
24 there are some odd cents?

25 A Yes, sir.

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1 Q What is this figure over here for '85?

2 A That's the total sales for 1985.

3 Q That is six hundred sixty-three thousand
4 fifteen dollars?

5 A Yes, sir.

6 Q And it is a difference in this figure,
7 what does this figure represent?

8 A That's the decrease from one year to
9 another.

10 Q In other words, the sales in 19 -- total
11 sales, gross sales --

12 A Yes, sir.

13 Q -- in 1985 were three hundred and
14 eighteen thousand three hundred nine dollars less than
15 they were for '84?

16 A Yes, sir.

17 Q I'll ask you to leave off the last time
18 for right now, '86, but what is the difference between
19 gross profit and gross sales?

20 A The difference would be your cost of
21 sales.

22 Q Is that normally purchases or --

23 A That's your purchases and your beginning
24 inventory.

25 Q What was the gross profit then for the

1 year 1984?

2 A One hundred and eighty thousand three
3 hundred and sixteen dollars.

4 Q And for 1985?

5 A Eighty-five thousand two hundred and
6 ninety-two dollars.

7 Q Now, that's a difference then of what?

8 A Ninety-five thousand twenty-four dollars.

9 Q Do I understand then that according to
10 your figures and as is in here on detail in this sheet
11 but here summarizing the gross profit for '85 was
12 ninety-five thousand twenty-four dollars less than it
13 was for '84?

14 A Yes, sir.

15 Q This figure, net profit, what is that?

16 A The net profit is the operating expenses
17 for the fiscal year deducted from the gross profit.

18 Q Is that the money -- well, it's corrected
19 somewhat here, adjusted, is that the money actually
20 received from the owner from the business in the way of
21 net profit?

22 A That is the bottom line figure.

23 Q The bottom line figure?

24 A Yes, sir.

25 Q And that was what for 1984?

1 A Ninety-five thousand three hundred and
2 twelve dollars.

3 Q And what was it for 1985?

4 A Nineteen hundred and forty-seven dollars
5 deficit.

6 Q That's why it's in the red?

7 A Yes, sir.

8 Q That's the loss, is that right?

9 A Yes, sir.

10 Q Now, what's the difference in those
11 figures, the profit for '84 and the loss for '85,
12 what's the difference?

13 A Ninety-seven thousand two hundred and
14 sixty dollars.

15 Q In other words the profit was ninety-
16 seven thousand two hundred sixty dollars less in '85
17 than it was in '84?

18 A Yes, sir.

19 Q Explain to the jury what these items down
20 here are, I believe you call them adjustments.

21 A That's other income added separate from
22 the operations of the business itself.

23 Q What sort of things is that?

24 A Well, that consists in his case
25 miscellaneous income, interest income, and the

1 classified as dealer reserve income.

2 Q This interest income is like income on
3 vehicles that are --

4 A On his notes receivable, yes, sir.

5 Q And so that's adjusting this net profit
6 and so forth to come up with an actual bottom line net
7 profit after all operations?

8 A Before adjustments, yes, sir.

9 Q This is the adjustment applied, is it?

10 A Yes, sir.

11 Q And the adjustment was what, this figure
12 here?

13 A Seventeen hundred and four dollars.

14 Q For '84?

15 A Yes, sir.

16 Q And that makes then the actual bottom
17 line net profit what in '84?

18 A Ninety-seven thousand sixteen dollars.

19 Q This figure is added to that?

20 A Yes, sir.

21 Q Other income?

22 A Yes, sir.

23 Q What about '85, you had a loss of
24 nineteen forty-seven, what's this?

25 A It's twelve thousand and forty-eight

1 dollars additional income.

2 Q So you add that to -- well, actually
3 adjust it to the nineteen forty-seven, which is a
4 negative figure, and it gives you ten thousand one
5 hundred and one?

6 A Yes, sir.

7 Q Now, why, from the books, why is the
8 figure as small as seventeen hundred and four dollars
9 of other income in '84 and as high as twelve thousand
10 forty-eight in '85?

11 A Due to the fact in 1985 he had more
12 retail sales which he got dealer's reserves on the
13 increase due to the fact that he had more contracts to
14 put into the bank.

15 Q In other words, he was doing this because
16 he couldn't do wholesale?

17 A Yes, sir.

18 Q He had to make it up somehow and that
19 cost him his wholesale sales but he got more interest
20 and all by doing retail?

21 A At the same time, too, he changed banks,
22 that had something to do with it.

23 Q Now, let me ask you this: You mentioned
24 that this figure up here is total wholesale and retail.
25 Can you give -- it's not on here as I understand it,

1 but can you tell me what portion of this was wholesale
2 sales, for '84 his gross wholesale sales?

3 A Six hundred and fifty-nine thousand eight
4 hundred and eighty-one dollars.

5 Q Six fifty-nine, so about three hundred
6 and forty thousand less than this figure?

7 A Three hundred and twenty-one thousand.

8 Q Three twenty-one. All right.

9 And then '85, what was the wholesale?

10 A One hundred and thirty-nine thousand six
11 hundred and eighty dollars.

12 Q So how much did his wholesale -- his
13 wholesale basis gross sales reduced from 1985 to 1984?

14 A Five hundred and twenty thousand two
15 hundred and one dollars.

16 Q Now, the wholesale is what was being done
17 at auction?

18 A Yes, sir.

19 Q So if you just consider the wholesale
20 sales only his loss, a difference there would not be
21 three hundred eighteen, it would be five hundred and
22 forty-seven thousand?

23 A Five hundred and twenty thousand.

24 Q I'm sorry, five hundred and twenty
25 thousand.

1 A Yes, sir.

2 Q Would be the wholesale?

3 A Yes, sir.

4 Q I assume that was brought down somewhat
5 by the amount of the retail sales increasing?

6 A Your retail increased two hundred and
7 eight thousand six hundred and fifty-one dollars.

8 Q So it ends up --

9 A Three hundred and eighteen three-o-nine.

10 Q But when considering just the wholesale
11 business that he didn't have after the very first part
12 of '85, there was a difference of five hundred and some
13 thousand?

14 A Yes, sir, it was.

15 Q Now, as the accountant and bookkeeper for
16 Mr. Cash, is all of this correct to the best of your
17 knowledge?

18 A Yes, sir.

19 Q Of course, you testified at depositions,
20 what, twice?

21 A Yes, sir.

22 Q For Mr. Mullen?

23 A Yes, sir.

24 Q And you furnished him with figures?

25 A Yes, sir.

1 Q Met with him yesterday and so forth at his
2 request, went over things up here with myself and him?

3 A Yes, sir.

4 Q And you have also today given him copies
5 of bank statements and so forth, have you not?

6 A Yes, sir.

7 Q I forgot to ask you about 1986. When
8 this was made up you only had how many months of '86?

9 A Nine months.

10 Q So this figure here represents nine
11 months of 1986, in other words it's not final for the
12 year?

13 A No, sir, it's not.

14 Q That's why it's shown up here January 1st
15 to September 30th?

16 A Yes, sir.

17 Q Do I understand -- you mentioned his
18 fiscal year, in his case the calendar year is the same
19 as fiscal year, he's on a calendar year basis?

20 A Yes, sir.

21 Q So it runs from January 1st to December
22 31st, but nine months would be through September 30th?

23 A Yes, sir.

24 Q All right. Now, for that period you show
25 gross sales of a hundred twenty-nine thousand a hundred

1 and twenty-four for nine months?

2 A Yes, sir.

3 Q You show gross profit thirty-nine
4 thousand six seventy-two and you show net profit
5 twenty-three thousand one hundred twenty-eight?

6 A Yes, sir.

7 Q And from your knowledge of his books, his
8 records and so forth, this figure that now is twenty-
9 three thousand one hundred and twenty-eight from your
10 knowledge of his operations and whatever his books show
11 will you expect -- do you expect that with reasonable
12 certainty do you expect that to be a profit or loss by
13 the time you come to the end of the year?

14 A No, sir, it's definitely going to be a
15 deficit.

16 Q It will be a loss. Why? Why does it
17 show twenty-three thousand and then it will be a loss
18 by the end of the year?

19 A It's before adjustments to be made at the
20 end of the year and lack of records at the present time
21 that have not be applied.

22 Q Is it any question in your mind but what
23 he'll show some loss in net profit for '86, the final
24 year, I mean the end of the year like he did for '85?

25 A It would definitely be a loss, yes, sir.

1 Q From your keeping of his records and your
2 knowledge of the business generally, do you know of any
3 reason or cause from an accounting or business
4 standpoint or whatnot for this reduction in income
5 other than not being able to make wholesale purchase
6 sales?

7 A No, sir. Wholesale is the main problem
8 that he has run into in the last year.

9 Q And that's, in your opinion, that's the
10 cause of this reduction?

11 A Yes, sir, definitely.

12 Q And the wholesale sales depended on going
13 to auctions?

14 A Yes, sir.

15 MR. JOHNSON: Judge, I did put in
16 Exhibit 15, didn't I? Yes, there it is.
17 Answer Mr. Mullen, please.

18
19 CROSS EXAMINATION

20 BY MR. MULLEN:

21 Q Mr. Wommack, you said you had been Mr.
22 Cash's bookkeeper since about 1981 or so?

23 A Yes, sir.

24 Q Let me show you Defendant's Exhibit No.
25 1 and ask you if these are the check stubs for the

1 checking account at First Virginia Bank where he wrote
2 all the bad checks?

3 A Yes, sir.

4 Q Let me show you a figure at the bottom of
5 page check number two three nine nine there appears to
6 be a red figure of thirty-eight thousand thirty dollars
7 and twenty-five cents?

8 A It's thirty-eight thousand fifty dollars
9 and twenty-five cents.

10 Q Fifty dollars and twenty-five cents.
11 That's in red, is that your entry or something else?

12 A That's my entry.

13 Q Is it fair to say then that throughout
14 these check stubs where the red figures are are the
15 figures that you wrote in?

16 A Yes, sir, in this particular case that's
17 where I went over the account with Mr. Cash.

18 Q And the black figures are his?

19 A Yes, sir.

20 Q All right. Mr. Cash's reputation in the
21 business community where he lives and works is good
22 now and has been since early 1984, hasn't it?

23 A As far as I know, sir.

24 Q The errors that were made in his
25 checkbook, the check stubs that I just showed you were

1 made by him and not yourself?

2 A Not by me, no, sir.

3 Q You simply tried to correct them?

4 A I did correct them.

5 Q Now, this chart that Mr. Johnson has
6 asked you some questions about, basically the upshot of
7 the chart is that he sold fewer cars and made less
8 money, right?

9 A His method of selling, yes, sir.

10 Q You said that 1986 was going to turn out
11 to be a loss?

12 A Yes, sir.

13 Q This is November 13th, 1986 which means
14 there's still a month and a half to go, right?

15 A Yes, sir.

16 Q If he sells more cars and increases his
17 profits per car could he not make a profit?

18 A No, sir, I can't see any way possible.

19 Q No way possible to do that?

20 A No, sir.

21 Q Regardless of the number of cars he sold
22 and regardless of profit in the car?

23 A He could sell his inventory now and I
24 doubt very seriously if he would make a profit.

25 Q You of your own knowledge, not what

1 someone else has told you, do not know why his
2 wholesale car sales are down, do you, of your own
3 knowledge?

4 A He did not have wholesale sales, that's
5 all of my knowledge, yes, sir.

6 Q When you and I went over the bank
7 statements yesterday I asked you to count the returned
8 check charges on each of the statements.

9 A Yes, sir.

10 Q Do you remember those figures?

11 A Yes, sir. Ten in October.

12 Q October it was how many?

13 A Ten in October, eight in November, and
14 six in December, and eleven in January.

15 Q And then he closed the account and moved
16 to a different bank?

17 A Moved to a different bank and closed the
18 account, yes, sir.

19 MR. MULLEN: That's all.

20 MR. JOHNSON: I'd like to ask just a few
21 questions, if Your Honor please.

22 REDIRECT EXAMINATION

23 BY MR. JOHNSON:

24 Q There's been some reference earlier today
25

1 in opening statements, as I recall, about some
2 disagreement between you and Danny at one period of
3 time when the error was found in the books?

4 A Yes, sir.

5 Q Am I correct that he -- you pointed out
6 to him it was his error in the balance?

7 A Yes, sir.

8 Q And that it was basically his error and
9 he was complaining because you hadn't reconciled it in
10 October and he didn't know it until December, that's
11 about what the words were about, isn't it?

12 A Well, actually Danny and I never did have
13 words and Danny and I never did have more or less a
14 classified falling out, but after about two weeks of
15 put off I knew that he wanted -- through his statement
16 he wanted to keep everything more or less on a day to
17 day basis. And for nine months I did not know what Mr.
18 Cash's plans were, and then I was called back in to
19 complete this work.

20 Q So that's what it was, it was just a
21 disagreement about --

22 A It was really a misunderstanding.

23 Q And everything is no problem?

24 A No problem, no, sir.

25 Q I don't think I have asked you this, if

1 I have I'll ask counsel to remind me I'm being
2 repetitious, but did I understand you to say that the
3 business was in good shape and in the black and doing
4 well until October or November when this thing happened
5 and that since then it has been going downhill?

6 A Yes, sir.

7 Q And that the incident that took place
8 about the time that it switched from a thriving
9 business to going downhill is when he was arrested and
10 prosecuted or whatnot on these checks?

11 A Yes, sir.

12 THE COURT: Anything else?

13 MR. MULLEN: That's all, Your Honor.

14 THE COURT: Thank you, sir, you may step
15 down.

16 (Whereupon the witness stood aside.)

17
18 THE COURT: We'll take a short recess, so
19 just retire to the jury room and we'll be
20 back in just a few minutes.

21 (Whereupon a brief recess was taken
22 after which the proceedings continued
23 as follows:)
24
25

LONNIE SCOTT MORRIS - DIRECT

1 The witness, LONNIE SCOTT MORRIS, having been
2 first duly sworn, was examined and testified on his
3 oath as follows:

4
5 DIRECT EXAMINATION

6 BY MR. JOHNSON:

7 Q You're Lonnie Scott Morris?

8 A Yes, sir.

9 Q Where do you live?

10 A In Campbell County.

11 Q What's your address?

12 A Lot 132, Mountain Rush Estates.

13 Q Just out of Lynchburg?

14 A Yes, sir.

15 Q Towards Rustburg. What's your age?

16 A Twenty-eight.

17 Q Where are you employed?

18 A Lakeside Motor Cars.

19 Q Did you at some time in the past work for
20 or with Danny Cash?

21 A Yes, sir.

22 Q When did you work for him?

23 A '85 and '86.

24 Q '85 and '86?

25 A Yes, sir.

1 Q Would that have been about March until
2 September, March of '85 to September '86?

3 A Yes, sir.

4 Q What kind of work did you do for him?

5 A General work. I was sales, collections.

6 Q Sales and collections?

7 A (Affirmative nod.)

8 Q Did you have occasion to go to
9 Fredericksburg Auction about December of '85?

10 A Yes, sir.

11 Q Why did you go up there?

12 A To sell cars.

13 Q Did you take cars with you?

14 A Yes, sir.

15 Q How many did you take?

16 A We took two.

17 Q You say, we, did somebody go with you?

18 A Yes, sir.

19 Q Who was that?

20 A A guy that was employed by Danny, Floyd
21 Smith.

22 Q I believe he's not available now or he's
23 somewhere, left the city or something -- oh, he's just
24 the janitor out there, he just rode up with you to
25 help?

1 A Yes, sir.

2 Q Okay. Now, you took the cars up to sell,
3 you took them on a trailer or truck?

4 A On the truck.

5 Q What did you do before you left here to
6 go?

7 A I called up there and made reservations,
8 got my numbers and everything.

9 Q That's the number that they give you and
10 you call ahead of time for the number at the auction?

11 A Yes, sir.

12 Q That means if your number or whatever
13 is thirty-eight or thirty-nine, you're the thirty-
14 eighth or thirty-ninth car sold?

15 A Right, they're reserved for you.

16 Q What did you do when you got there?

17 A Unloaded the cars and went up to --

18 Q You unloaded the cars?

19 A Yes, sir, unloaded them, pulled up to
20 where they put your numbers on them at, and I
21 signed the tickets and everything, and they took the
22 cars and everything. And then I was called down to the
23 office.

24 Q What happened?

25 A The gentleman, I don't remember the man's

1 name, the gentleman in the office there sat me down
2 there and told me he wanted to know if I had the titles
3 to the cars with me, if I had cash to buy cars. I told
4 him I wasn't planning on buying any cars and I didn't
5 have the titles to them, that they would be title
6 attached. And he told me we could not do business that
7 way, we had to have the titles and we had to have cash
8 in order to do business.

9 Q Had he ever told you that before?

10 A No, sir.

11 Q Had anybody said that before December of
12 '85 when you took it, to your knowledge?

13 A No, sir, because I called up there and
14 got the numbers myself.

15 Q And were you operating in the name of
16 Danny Cash Motor Sales?

17 A Danny's Auto Sales.

18 Q Danny's Auto Sales?

19 A Yes, sir.

20 Q So there is no question about what he
21 knew who you were and and where you were from?

22 A No, sir.

23 Q No, sir, that there is no question?

24 A Right, right.

25 Q Did you make some suggestion to him as to

1 who he could call or telephone or something?

2 A Yes, sir, I told him if he had a question
3 on the titles of both cars that -- it was an '80 Datsun
4 and an '81 Honda Prelude, and that both cars were floor
5 planned and he could call Ms. Lynn White at the
6 Community Bank of Forest and verify that we had the
7 titles and they could send a draft down, which the
8 drafts would get our money out -- it would -- when the
9 drafts got there she would send the titles back to
10 them. And he said he couldn't do that.

11 Q And Ms. White is an official employee at
12 the bank, you say?

13 A Yes, sir.

14 Q Now, do you know whether or not as a
15 result of what happened up there and other auctions,
16 what effect did it have on Danny Cash's business?

17 A It had a great deal of effect.

18 Q Like what?

19 A You lose your ability to go to auctions,
20 you lose your ability to buy and sell cars at a, you
21 know, hopefully a low dollar and a high profit, and it
22 affects your dollars that you have coming in. And it
23 not only affects Danny, it affects people that work for
24 him.

25 Q Including yourself?

1 A Right.

2 Q Did it affect your commissions when
3 Danny's business was barred from the auctions?

4 A Yes, sir.

5 Q Did this have anything to do with you
6 leaving?

7 A I left for more money.

8 Q Did it have anything to do with your
9 leaving his employment, the fact that you couldn't
10 really operate as you had?

11 A To an extent, yes, sir.

12 Q I'm not going to ask you to go into any
13 detail as to specific persons, but did you or did you
14 not hear talk after this in the community about Danny
15 having these arrests and warrants and so forth?

16 A Yes, sir, I heard it before I went to
17 work for Danny. I was employed at Lynchburg Ford at
18 the time and it was -- a car lot is just like -- car
19 business is like a grapevine, it's nothing going to
20 happen in the car business that another dealer doesn't
21 hear about.

22 Q So it's right much talk about it?

23 A Yes, sir.

24 Q Did you notice whether or not that
25 affected his business to some extent?

1 A At that time I didn't personally know
2 Danny, so --

3 Q I see.

4 A -- I can't comment.

5 MR. JOHNSON: Answer Mr. Mullen please.

6

7 CROSS EXAMINATION

8 BY MR. MULLEN:

9 Q Mr. Morris, when you went up to
10 Fredericksburg Auto Auction you were told that Danny
11 Cash could deal in cash and titles, COD and titles,
12 right?

13 A Yes, sir.

14 Q So he wasn't barred, he could have dealt
15 in cash on the barrel head and titles?

16 A Yes, sir, that's what I was told.

17 Q You had no problems on behalf of Danny
18 Cash's Auto Sales in making your reservation to sell
19 those cars in Fredericksburg, did you?

20 A No, sir.

21 Q As far as his reputation for business
22 dealings in the community is concerned it's good now
23 and always has been, isn't it?

24 A As far as I'm concerned it's good.

25 MR. MULLEN: That's all the questions

1 I have.

2 MR. JOHNSON: I forgot to ask one
3 question.

4

5 REDIRECT EXAMINATION

6 BY MR. JOHNSON:

7 Q Did you put the cars back on the truck
8 and bring them back to Lynchburg?

9 A Yes, sir, I did.

10 MR. JOHNSON: That's all.

11 May he be excused, Your Honor?

12 MR. MULLEN: I have no objection.

13 THE COURT: Excused.

14 (Whereupon the witness stood aside.)

15

16

17 The witness, KELLY R. WHITE, having been first
18 duly sworn, was examined and testified on his oath as
19 follows:

20

21 DIRECT EXAMINATION

22 BY MR. JOHNSON:

23 Q Please state your name and where you
24 live.

25 A Kelly R. White, 908 Sanhill Drive,

KELLY R. WHITE - DIRECT

1 Lynchburg, Virginia.

2 Q And what is your business or profession,
3 sir?

4 A I own a life insurance agency.

5 Q And have for how long?

6 A Twenty-nine years.

7 Q In Lynchburg the entire time?

8 A Yes, sir.

9 Q What's the name of your agency?

10 A Kelly White Insurance Agency.

11 Q And where is your office?

12 A Fort Early Building.

13 Q Now, are you acquainted with Mr. Danny
14 Cash?

15 A Yes, sir.

16 Q How did you first meet him?

17 A I met Danny when he was about six or
18 eight years old, he lived in the neighborhood and grew
19 up with my son who is the same age as Danny.

20 Q Have you had business dealings with him
21 through the years?

22 A Most of my business dealings with Danny
23 or all of them have been within the last, I'd say, four
24 years.

25 Q Would these involve insurance primarily?

1 A Yes, sir.

2 Q You -- do you have insurance policies
3 covering him?

4 A Yes, sir.

5 Q And his family and so forth?

6 A Yes, sir.

7 Q And for how long have you had those?

8 A Approximately four years.

9 Q Now, do you know whether or not -- well,
10 let me ask you: How often would you see him as a rule
11 or stop by his place, his home, or whatnot, just
12 generally how often?

13 A I didn't understand.

14 Q How often would you see him during this
15 period of time for the last few years, every week,
16 every month, every six months, every year?

17 A Well, I don't collect insurance premiums.
18 When I stopped by to see him I just stopped by to speak,
19 maybe sit down and relax a few minutes, maybe once a
20 month or once every six months, I don't know for sure.

21 Q And how about his home?

22 A I don't think I have been in his home
23 except one time.

24 Q When you stop there do you talk to some
25 of the other employees and him and so forth, just pass

1 the time of day when you stopped on occasion on your
2 business?

3 A Most part I stopped to see Danny.

4 Q To see him?

5 A Uh-huh.

6 Q From your observations prior to October,
7 November of 1984, from your observations was he or was
8 he not operating a successful business?

9 A Prior to '84?

10 Q Yes, sir, prior to October and November
11 of '84?

12 A Prior to October and November of '84 based
13 on information that I have he was operating a very
14 successful business. I base that on the young man has
15 five hundred thousand dollars of life insurance with
16 me, he has his health insurance with me, and I'm not
17 talking about term life insurance, I'm talking about
18 whole life, which is sign of character insofar as I'm
19 concerned.

20 Q Now, of course, did you hear about -- did
21 you know about this situation with these checks at
22 Triangle Auto Auction and criminal warrants being
23 issued and so forth?

24 A Yes, sir.

25 Q What, if anything, did you notice about

1 the effects on his business after those things were
2 done?

3 A Well, I first started noticing it when
4 Danny would come by my office on occasion, well, about
5 once a week or sometimes twice a week, and ask my
6 secretary if she could make some copies for him. And
7 if I wasn't busy I would speak to him and chat with him
8 for a minute, and most of the time I did chat with him.
9 And one day I asked him, what's wrong, Danny, you look
10 upset, is something bothering you? And he proceeded to
11 tell me the story of the checks with the Triangle
12 Auction Company.

13 Q Was that sometime pretty soon after it
14 happened?

15 A I think this was probably the latter part
16 of November, around the first of December.

17 Q All right. Now, did you notice whether
18 or not since then and for some period of time he
19 appeared to continue to be upset or shook up and so
20 forth or what?

21 A He's been fairly upset since this
22 happened. Some of the transactions with me have been
23 upset substantially.

24 Q Was there -- did this five hundred
25 thousand dollar policy, was that on a bank draft?

1 A Yes, sir.

2 Q That's where you sign, the insured signs
3 a number of checks in one stack and gives them to the
4 bank and then the --

5 A No, sir.

6 Q I mean, the company and then the bank
7 -- the company negotiates them like once a month or
8 something?

9 A No, sir.

10 Q You explain it. I shouldn't have tried.

11 A The insurance companies all have what you
12 call bank draft authorizations that he signs
13 authorizing the insurance company to issue a draft on
14 his checking account once a month or twice depending on
15 the situation. It comes in on a certain day of the
16 month, the funds are there, it's drafted on it, if it's
17 not he'll get a letter stating it's insufficient funds.

18 Q So this is something that's done in
19 advance for some period of time?

20 A Yes, sir.

21 Q The authorization?

22 A Yes, sir.

23 Q It's not like writing a check each month?

24 A No, sir.

25 Q They just draft it?

1 A Yes, sir.

2 Q And were there a couple of occasions on
3 that where they were not honored, the drafts were not
4 honored on his account?

5 A There were never any occasions prior to
6 Mr. Cash having this trouble. After this there were
7 numerous occasions and some of them quite current.

8 Q And that's what they were, the drafts
9 were sent in by the company, not honored, the company
10 got in touch with him; were they then made good?

11 A Yes, sir.

12 Q Every one of them?

13 A Yes, sir.

14 Q Do you know of anything like this that
15 we're here about today that happened to him with
16 anybody except Triangle?

17 A You mean people that have checks
18 returned?

19 Q No people who have not been paid or
20 warrants were gotten or anything like that?

21 A No, sir.

22 Q Do you know whether or not from your
23 observations Danny doesn't go to the auctions anymore
24 like he did?

25 A He doesn't go to the auctions insofar as

1 I know except one out on, I guess 29 South right here
2 in Lynchburg. I don't think he goes to auctions to buy
3 cars, although I don't know for sure.

4 Q And one final question: You've known him
5 since he was six or seven?

6 A Yes, sir.

7 Q Has he always been a hard worker?

8 A Well, when my kid was out playing ball or
9 doing whatever in the neighborhood, he used to come
10 home and I would say what have you been doing today, and
11 he said so and so and so, and we were playing ball. And
12 I would say, how about Danny? No, Danny, was down there
13 helping his dad wash his cars and clean his cars and
14 making some money. He's been making money since he was
15 twelve years old, ten years old insofar as I know.

16 Q Has he always been a conscientious and
17 dedicated worker?

18 A One of the most I've ever known for his
19 age.

20 MR. JOHNSON: Thank you. Answer Mr.
21 Mullen.

22
23 CROSS EXAMINATION

24 BY MR. MULLEN:

25 Q Mr. White, you're familiar with the fact

1 that Mr. Cash passed some bad checks to Triangle Auto
2 Auction in Radford in November of 1984?

3 A Yes, sir.

4 Q At that time was this five hundred
5 thousand dollars of whole life insurance enforce?

6 A No, sir, he had a half a million dollar
7 term policy that he converted later, if I recall.

8 Q Was there any cash surrender or cash loan
9 value on that policy at the time he issued the bad
10 checks?

11 A No, sir.

12 Q None at all?

13 A No, sir.

14 Q When he told you about passing those bad
15 checks your advice to him was go out and borrow the
16 money to pay them off, wasn't it?

17 A I think my advice to him was, sitting in
18 my office, I think -- I believe and I'm not -- I may
19 not be a hundred percent accurate, I think Danny told
20 me that he had maybe paid four or five thousand dollars
21 and he owed the balance. And I said, well, Danny, get
22 that money from wherever you can get it and send these
23 people the money. And I believe that statement was
24 made in my office.

25 And I think later on, maybe a month or

1 so later, when I was in Danny's office one day and I
2 don't recall the time, he told me he had been locked
3 up. And I said, for what? And he told me. And I said,
4 well, I believe they violated your rights, maybe you
5 better go see an attorney.

6 Q He said he was locked up, did he say for
7 the bad checks?

8 A Beg your pardon?

9 Q Did he say for the bad checks?

10 A No, sir, he said that someone with
11 Triangle Auction had kept harassing him and telling
12 him they were going to lock him up.

13 Q I see.

14 MR. MULLEN: Thank you, that's all.

15

16 REDIRECT EXAMINATION

17 BY MR. JOHNSON:

18 Q Did he tell you about the fact that he
19 had given titles to Triangle and then they had turned
20 around and gotten a warrant after he gave it to them?

21 A Yes, sir.

22 Q That's what you were referring to about
23 somebody treating him wrong?

24 A Yes, sir.

25 MR. JOHNSON: That's all the questions I

1 have. May he be excused, Your Honor?

2 MR. MULLEN: Fine.

3 THE COURT: Yes, you may be excused.

4 (Whereupon the witness stood aside.)

5
6
7 The witness, ERNEST MITCHELL, having been
8 first duly sworn, was examined and testified on his
9 oath as follows:

10
11 DIRECT EXAMINATION

12 BY MR. JOHNSON:

13 Q Please state your name and where you
14 live, sir.

15 A My name is Ernest Mitchell, I live at 913
16 Sanhill Drive, Lynchburg.

17 Q And are you in business here in
18 Lynchburg?

19 A Yes, I have an insurance agency in Sovran
20 Bank Building.

21 Q That's the American Health Insurance
22 Agency?

23 A Right.

24 Q Are you the sole owner of that business?

25 A Yes.

1 Q And have been for how long?

2 A I beg your pardon?

3 Q Have been for how long?

4 A Thirty-two years.

5 Q Do you know Mr. Danny Cash?

6 A Yes, I know Danny.

7 Q How long have you known Danny?

8 A I've known Danny since he was about --
9 oh, a little tot, I'd say three or four years old.

10 Q Since he was three or four years old, so
11 how did you happen to come to know him?

12 A Danny and his family lived across the
13 street from me.

14 Q And did for a good period of time?

15 A Yes.

16 Q And then since I believe he's moved out
17 into his own place and so forth, have you kept pretty
18 regular contact with him from time to time?

19 A Yes, see him occasionally.

20 Q All right. Let me ask you, Mr. Mitchell:
21 What have you observed since he was a young fellow
22 about whether or not he was an industrious, hard worker?

23 A Danny was a real hard working boy from
24 the time he was big enough to do anything or maybe
25 before he was big enough to do anything. Danny has

1 been a hard worker all of his life to my knowledge.

2 Q And as far as this situation, say, up
3 until this situation occurred with the Triangle checks
4 in October and November, December of 1984, did you know
5 of him ever being in any trouble or problems or
6 anything else?

7 A No, never heard of any adverse
8 conversation of any kind.

9 Q Do you know of any -- of any bad
10 reputation or anything he had in the community prior to
11 that time?

12 A Not at all.

13 Q What did people think of him generally
14 about his truthfulness, honesty?

15 A People in the neighborhood admired Danny
16 for his being so ambitious and just a plain good boy.

17 Q Now, do you -- I don't believe you are
18 really familiar with his business and so forth?

19 A Not at all.

20 Q The details of it?

21 A No.

22 Q Did you know or did you hear about the
23 situation with Triangle checks and the warrants issued
24 against him and so forth?

25 A No.

1 Q Did you hear about it sometime after they
2 had occurred?

3 A Right.

4 Q But not at the time?

5 A No.

6 Q Other than that situation, does he still
7 enjoy a good reputation so far as you know among the
8 neighbors?

9 A So far as I know and certainly in the
10 neighborhood out there.

11 Q Did you or did you not hear the matter of
12 those checks discussed somewhere down the line
13 generally by the public here?

14 A No.

15 Q Was it kind of knowledge or not?

16 A Not at all.

17 Q In the neighborhood it wasn't mentioned?

18 A No.

19 MR. JOHNSON: Answer Mr. Mullen please.
20

21 CROSS EXAMINATION

22 BY MR. MULLEN:

23 Q So Mr. Cash had a good reputation before
24 the bad checks and has had a good reputation after the
25 bad checks, is that what you're saying?

1 A I can't hear you.

2 Q Mr. Cash had a good reputation before he
3 wrote the bad checks and he's had a good one since
4 then?

5 A He's had one all along to my knowledge.

6 MR. MULLEN: That's all.

7 MR. JOHNSON: May he be excused?

8 THE COURT: Yes, sir.

9 (Whereupon the witness stood aside.)

10

11

12 The witness, EUGENE WINGFIELD, having been
13 first duly sworn, was examined and testified on his
14 oath as follows:

15

16

DIRECT EXAMINATION

17

BY MR. JOHNSON:

18

Q You're Eugene Wingfield?

19

A Yes, sir.

20

Q I believe you're employed by the

21

Lynchburg Police Department?

22

A That's correct.

23

Q In what capacity?

24

A Investigator.

25

Q And for how long have you been an

ERNEST WINGFIELD - DIRECT

1 investigator or detective with the Lynchburg Police?

2 A Approximately eight years.

3 Q And how long have you been in the police
4 force altogether?

5 A Twelve years.

6 Q And now, let me ask you: First, where do
7 you live?

8 A I live in the City.

9 Q In the City.

10 Now, are you in any way related by blood
11 or marriage to Danny Cash?

12 A Brother-in-law.

13 Q Brother-in-law. You are married to his --

14 A We married sisters.

15 Q You married sisters. All right.

16 A (Affirmative nod.)

17 Q So I presume you've known him for how
18 long?

19 A Oh, fourteen or fifteen years, I guess.

20 Q Now, are you familiar generally with his
21 business activities?

22 A Yes.

23 Q Do you know whether or not prior to this
24 thing that came up at Triangle Auto Auction, prior to
25 that time do you know whether or not he had a thriving

1 business, a good business?

2 A He seemed to.

3 Q He seemed to?

4 A Yes.

5 Q Since then, since this happened have you
6 noticed a difference in whether he would go to
7 auctions, whether or not he can carry on the way he did
8 before?

9 A From what he says, no, he cannot go.

10 Q And have you noticed that he has not gone
11 since this situation came up to the best of your
12 knowledge?

13 A He's at home just about all the time now
14 where he used to be away a lot at auctions.

15 Q Do you know both from your experience as
16 a Lynchburg citizen and as a member of the police
17 department, do you know of any other problem like this
18 that he had before 1984?

19 A No. We used to socialize a lot together,
20 going out together, and there didn't seem to be any
21 problems at all, and this happened and it practically
22 stopped.

23 Q And other than this matter of these
24 checks to Triangle, do you know of any problem he had
25 with violations of the law or anything of any kind,

1 being charged with it or anything?

2 A Nothing criminal.

3 Q I think he had a traffic ticket or
4 something, maybe two of them I believe?

5 A I wouldn't be familiar with that.

6 Q So you don't know of anything in the way
7 of conflict with the law that he's had --

8 A Nothing.

9 Q -- other than these warrants?

10 A That's right.

11 Q Were you there when he was arrested and
12 so forth on the 31st of December?

13 A No.

14 Q What's his reputation in the community
15 with regard to truthfulness among all of his neighbors
16 and people like yourself and business associates?

17 A As far as I know it's very good.

18 Q Has a reputation of being a truthful man?

19 A Yes, sir.

20 MR. JOHNSON: Answer Mr. Mullen, please.

21

22 CROSS EXAMINATION

23 BY MR. MULLEN:

24 Q Mr. Wingfield, his reputation today is
25 no different from what it was before the bad checks were

1 passed, is it?

2 A No, to the extent of hearing anybody
3 saying he's involved in any criminal activity, no.

4 Q And you don't know anything about any
5 damages that he claims to have suffered because of
6 anything Triangle Auto Auction did?

7 A I don't know anything about personal
8 loss.

9 Q In the course of your investigative
10 duties or your familiarity with the Lynchburg City
11 Police Department, do you know whether it's a practice
12 for a defrauded merchant to secure criminal warrants
13 for bad check passers if the checks aren't paid within
14 the notice period?

15 A I don't work checks directly in what I
16 do, that's not my specialty. Of course, the people
17 that do that work in the same office and just what I
18 hear them talking of it, I believe it's ten days, I
19 believe, after you send a registered letter to this
20 effect.

21 Q And issue a criminal warrant for
22 prosecution?

23 A Yes.

24 MR. MULLEN: Thank you.
25

ERNEST WINGFIELD - REDIRECT

REDIRECT EXAMINATION

1
2 BY MR. JOHNSON:

3 Q In that connection, Mr. Wingfield, from
4 your experience sitting here and since Mr. Mullen asked
5 you about this, do you know of instances where
6 magistrates have issued warrants charging someone with
7 felonies where the person has told that magistrate that
8 they got a bad check but they had been partly paid or
9 given security to guarantee payment and so forth and
10 agreed to accept that, would a check be issued from
11 your experience then if they had done that?

12 A No. From what I do know, I do know for a
13 fact -- of course, we get a lot of phone calls and that's
14 one of the questions we ask them is whether or not they
15 received partial payment or accepted partial payment,
16 and if they have then we inform them at that time that
17 it would no longer be a criminal matter.

18 Q So the warrant would not be issued by the
19 magistrate?

20 A Right.

21 Q And that would be true, would it not, if
22 they had given security like automobile titles or
23 something, your ruling would consider that as a partial
24 or whole payment, is that right?

25 A Yes.

1 MR. JOHNSON: Thank you. May he be
2 excused?

3
4 RECROSS EXAMINATION

5 BY MR. MULLEN:

6 Q You do not take the position then that
7 the crime has been committed if the check has not been
8 fully, completely and totally paid within the notice
9 period?

10 A No, we would take it at that point that
11 some kind of arrangement has been set up for payment and
12 they accepted partial payment and we inform at that
13 time it would be a civil matter, not a criminal matter.

14 Q Are you familiar with Section 18.2-185 of
15 the Code of Virginia?

16 A I can only go by what our commonwealth
17 attorney advises us.

18 Q Let me show you.

19 MR. JOHNSON: If he's asking Mr.
20 Wingfield to interpret the Code, that's the
21 Court's function. We would submit it's not
22 proper for him to go into the technical
23 requirement of the Code with Mr. Wingfield.

24 THE COURT: Is that what you intend
25 to ask him?

1 MR. MULLEN: I intend to ask him if his
2 interpretation of this Code Section would be
3 that it requires complete payment of the
4 entire instrument given him.

5 MR. JOHNSON: If Your Honor please, that
6 Section he's looking at doesn't even apply
7 to this type action, this malicious
8 prosecution action.

9 MR. MULLEN: It says in any civil
10 action and it doesn't restrict to malicious
11 prosecution action. That's a --

12 THE COURT: The problem is in asking
13 him his interpretation of the statute. The
14 statute says what it does regardless of
15 what he says.

16 MR. MULLEN: I'll withdraw the
17 question.

18 That's all.

19 MR. JOHNSON: May he be excused, Your
20 Honor?

21 THE COURT: As far as I'm concerned. Do
22 you need him any further?

23 MR. MULLEN: No.

24 (Whereupon the witness stood aside.)
25

D.F. McCULLOUGH - DIRECT

1 The witness, D. F. MCCULLOUGH, having been
2 first duly sworn, was examined and testified on his
3 oath as follows:

4
5 DIRECT EXAMINATION

6 BY MR. JOHNSON:

7 Q Mr. McCullough, please state your name
8 and where you live.

9 A D. F. McCullough, Route 1, Coleman Falls,
10 Virginia.

11 Q And where are you employed, sir?

12 A Special Agent for the Virginia Alcoholic
13 Beverage Control Board.

14 Q And how long have you been a special
15 ABC agent?

16 A Ten years.

17 Q Do I understand that that's an agency
18 given the authority of enforcing ABC laws over the
19 state?

20 A That's correct.

21 Q And where were you employed prior to
22 going with the ABC board?

23 A Lynchburg Police Department.

24 Q For how long?

25 A Eleven years.

1 Q So altogether you've been in law
2 enforcement for better than twenty years?

3 A That's correct.

4 Q How old are you now, sir?

5 A Forty-eight.

6 Q Now, are you acquainted with Danny Cash,
7 the gentleman to my left?

8 A Yes, I am.

9 Q How long have you known him, sir?

10 A Approximately eighteen years.

11 Q What is his reputation in the community
12 of Lynchburg so far as -- among his friends and
13 associates so far as truthfulness is concerned?

14 A Well, he's always impressed me as a young
15 businessman, I've always kind of looked up to Danny as
16 young of a person as he was and the way he started off
17 in business.

18 Q Has he always been a very diligent worker
19 and so forth, hard worker about his business and all?

20 A Very hard worker.

21 Q Did you know about these felony warrants
22 being issued against him back in the latter part of
23 October, November, December of 1984, did you hear about
24 it?

25 A Yes. He just slightly mentioned it to

1 me.

2 Q Up until that time had you observed
3 whether or not he had a good business or thriving
4 business and so forth?

5 A Yes, sir.

6 Q After that did you notice whether or not
7 his business seemed to slack off or what, just tell the
8 jury what you noticed after these warrants were issued
9 and so forth?

10 A I really couldn't say if his business had
11 slacked off.

12 Q You really haven't had an opportunity to
13 see that?

14 A Right.

15 Q Does he still work as best he can with
16 his business and so forth?

17 A Very hard worker.

18 Q Do you know of any other trouble or
19 anything that he's been in with the law or whatnot
20 other than having these warrants issued against him and
21 then dismissed?

22 A I do not know of any other thing, no.

23 Q Of course, in your experience as a police
24 officer and ABC agent you have a pretty good hold and
25 in touch with such things, do you not?

1 A Yes, sir.

2 MR. JOHNSON: Thank you. Answer Mr.
3 Mullen.

4
5 CROSS EXAMINATION

6 BY MR. MULLEN:

7 Q Mr. McCullough, you know his reputation
8 as of September 1984 was very high?

9 A Yes.

10 Q And it hasn't changed since that time
11 until today, has it?

12 A No, sir.

13 Q It's still very high, isn't it?

14 A Yes, sir.

15 MR. MULLEN: That's all.

16 MR. JOHNSON: May he be excused, Your
17 Honor?

18 THE COURT: Yes, sir.

19 (Whereupon the witness stood aside.)
20
21
22
23
24
25

1 The witness, ROBERT H. CASH, having been first
2 duly sworn, was examined and testified on his oath as
3 follows:

4
5 DIRECT EXAMINATION

6 BY MR. JOHNSON:

7 Q Please state your name and where you
8 live, sir.

9 A Robert H. Cash, 1720 Lakeside Drive.

10 Q Now, Mr. Cash, you've been retired for
11 some time?

12 A Yes.

13 Q And I think partly because of health
14 problems and whatnot?

15 A Yes.

16 Q And I believe that you have some sort of
17 a kind of a speech problem sometimes?

18 A Yes, I had a stroke in 1980.

19 Q Now, if you have any problem or anything
20 just let us know if we need to take a few minutes or
21 something like that, I'm sure the Court and jury will
22 understand.

23 You're the father of Danny Cash, is that
24 correct?

25 A Yes, sir.

1 Q Now, Mr. Cash, you have been in business
2 here in Lynchburg in the past?

3 A For thirty-five years.

4 Q For thirty-five years, what was your
5 business?

6 A Automobile business.

7 Q And I believe you first started out as a
8 used car dealer?

9 A Right.

10 Q And then you became the sole Lincoln
11 Mercury dealer here in Lynchburg?

12 A Lincoln Mercury dealer, yes, sir.

13 Q And I think your place was first over
14 where Hammersley is now, then on Bedford Avenue?

15 A Bedford Avenue.

16 Q And did you sell that business or retire
17 while you were still active or what?

18 A Well, I sold the business then after I
19 had that stroke. I had five places and I let Danny
20 have one of them.

21 Q Let Danny have one. What was the one
22 that you let him have?

23 A The one on Twelfth Street.

24 Q And that was the used car business?

25 A That's right.

1 Q In other words, that wasn't a dealership
2 in the sense of a Lincoln Mercury, it was used cars?

3 A Well, it was the used car lot when I had
4 the Lincoln Mercery on Twelfth Street and after I moved
5 to Bedford Avenue that was the used car lot. And then
6 after I sold it I let Danny have that, that's where I --

7 Q Have the used car lot?

8 A Used car lot, one of the used car lots.

9 Q Had he worked for you before you let him
10 have that?

11 A Yes, sir.

12 Q I believe he worked for you since he was
13 that high, (indicating), had he not, after school and
14 so forth?

15 A Yes.

16 Q I'm not just asking you to brag as we
17 fathers do on our children, but what kind of worker was
18 he even as a young fellow?

19 A The best I had. He knew more of the
20 business than I did.

21 Q Now, let me ask you this: When he took
22 over that business from you, bought it from you in
23 '80, '81, something like that?

24 A Yes, somewhere along there, yes.

25 Q How did he get along with the business

1 from then on up until October, November, December 1984?

2 A He was doing a great job.

3 Q Was the business increasing, growing all
4 along?

5 A Yes, he had increased it from what, you
6 know, I had retired because of my health and he had
7 taken it over and --

8 Q All right, sir. Did -- was a part of
9 that business for him to go to auctions and so forth,
10 was that a part of his operation?

11 A That was an every week thing, two or
12 three auctions.

13 Q Was it a substantial part of his
14 operation to be able to buy and sell at auctions?

15 A Yes, sir.

16 Q And did he do that regularly? I believe
17 you said every week up until the end of '84, first of
18 '85?

19 A Yes, sir.

20 Q What happened then so far as you know?

21 A Well, when I found out about it they
22 charged him for these checks, they had banned him from
23 the auctions as well as me.

24 Q And you, too?

25 A And me, too.

1 Q Had you given any checks that were
2 returned?

3 A No, sir. I've been dealing with them for
4 thirty-five years and never give a check to nobody. In
5 fact, I was in the automobile business before these
6 auctions ever started and I helped organize some of
7 these auctions, and they sent me a letter banning me,
8 too, for what reason, I don't know.

9 Q Did they send you a letter the same time
10 they sent it to Danny?

11 A Yes.

12 Q Had you had any dealings with them to
13 cause them to send that letter?

14 A No, sir.

15 Q Do you know of any reason other than you
16 are a Cash and you were his father and --

17 A Yes, sir, because I was his father,
18 that's the only reason it could have been. Maybe I can
19 explain that to you.

20 Q Yes, I wish you would.

21 A The automobile dealers association, like
22 the National Automobile Dealers Association, we have an
23 association, an automobile association we belong to.

24 MR. MULLEN: I'm going to object on the
25 grounds of relevancy unless he knows the

1 source of his information who could testify
2 directly to it. I'm going to object to that
3 also.

4 THE COURT: What is the question?

5 MR. JOHNSON: The question was: Do you
6 know why you were banned if you had had no
7 dealings with them at all, was it just because
8 you were his father or what.

9 THE COURT: Don't answer.

10 MR. MULLEN: That's not relevant, that's
11 the basis of my objection.

12 THE COURT: Why is that relevant?

13 MR. JOHNSON: I think it goes to show
14 malice and so forth in regards to the action
15 of the -- the reasonable inference is --

16 THE COURT: You anticipate that his
17 answer will be based on his personal
18 knowledge?

19 MR. JOHNSON: Yes, sir, I think so. You
20 are talking about NADA, the National
21 Automobile Dealers Association?

22 THE WITNESS: Yes.

23 MR. JOHNSON: Are you a member of that,
24 or were you?

25 THE WITNESS: Yes, I was.

1 THE COURT: Is his answer going to be
2 related to anything concerning this?

3 THE WITNESS: That's right, that's why
4 I was banned.

5 THE COURT: Wait a minute, it's not time
6 to answer yet.

7 So you anticipate -- do you have any
8 further objection to it?

9 MR. MULLEN: Just that this Mr. Cash,
10 Sr., Mr. Cash is not a part of this action
11 and I don't see how it could possibly be
12 relevant.

13 THE COURT: Well, I can see, I think it
14 may have some probative value, but I don't
15 want to go into it in any great depth, I'll
16 let you ask that one question and answer and
17 then that's it.

18
19 BY MR. JOHNSON:

20 Q Mr. Cash, if you will, Judge Miller wants
21 you to limit your answer to in what way from your
22 knowledge as a member of NADA, in what way were you or
23 what reason were you banned from auctions along with
24 your son?

25 A That's what I was getting --

1 Q That's all he wants you to answer.

2 A They banned me from Fredericksburg Auto
3 Auction, High Point Auto Auction, and Statesville Auto
4 Auction.

5 Q What did NADA have to do with that?

6 A Well, see, the automobile auctions
7 themselves, like Statesville, High Point,
8 Fredericksburg, and Radford, they belong to an
9 organization just like we do in the automobile
10 business. If you get banned from one of them they ban
11 you from the rest of them.

12 Q Automatically?

13 A Automatically.

14 Q I still don't understand why you were
15 included in that?

16 A I don't either.

17 Q Were you listed as a buyer for Danny?

18 A Yes, I had a card to buy for Danny.

19 Q But they banned you from all of them,
20 too?

21 A All of them, too.

22 Q What effect, from your observation what
23 effect did being banned from these auctions have on
24 Danny, his business?

25 A His business, well, he was going to -- he

1 was going to Statesville one day of the week, he was
2 going to High Point, I mean, not every day -- not every
3 week, and Fredericksburg and Radford and a great
4 percentage of his business was the wholesale business,
5 the automobile auction is a wholesale business. You
6 can buy and sell as a dealer.

7 Q Did he have to go to auctions in order to
8 effectively act as a wholesaler?

9 A Yes, I mean that was his means of -- in
10 other words, he would take a load of cars there to --
11 maybe take five cars or either a car carrier, carry
12 eight cars go to maybe High Point on Tuesday when they
13 had the auction there, on Thursday in Statesville, and
14 Fredericksburg I think is on Wednesday now. And he was
15 taking them, he was taking them there, he would take
16 some and sell them and buy some more to bring back to
17 his lot.

18 Q You mentioned carrying eight cars on a
19 carrier.

20 A On his car carrier.

21 Q Did he own a car carrier that would carry
22 eight cars?

23 A Yes.

24 Q And used that going to and from auctions?

25 A He had to sell it, had no more use for it.

1 Q In other words, he had to sell it as
2 well?

3 A He had to get rid of it, he had no use
4 for it. He couldn't go to the auctions. In other
5 words, he lost his supply of wholesale business to the
6 auctions because he was banned and neither could he go
7 and buy it for the supply for his retail business.

8 Q Let me ask you this, Mr. Cash: Other
9 than giving these three checks to Triangle as a result of
10 which these warrants were issued, other than that, do
11 you know of anything that your son, Danny, did that
12 would have caused this being banned from these
13 auctions?

14 A No, sir.

15 Q There's nothing else they would have
16 based this on?

17 A No, sir.

18 Q To your knowledge?

19 A That's right.

20 Q And there is nothing they could base your
21 banning on other than --

22 MR. MULLEN: I object.

23

24 A That's right.

25 MR. MULLEN: The question is what they,

1 someone else could have --

2 MR. JOHNSON: I'll withdraw the question.

3 THE COURT: I sustain it. It's gone far
4 enough now.

5 Anything else?

6 MR. JOHNSON: One other question.

7

8 BY MR. JOHNSON:

9 Q It's been some evidence here that had
10 this agreement that your son said he worked out with
11 Mr. Sale and Mr. Lancour not been agreed to for him --
12 you're familiar with his giving these titles for
13 security to guarantee the payment?

14 A Yes, sir.

15 Q -- that he could have borrowed the money
16 from you to pay this had it been necessary and he not
17 been able to work out the agreement. Is that correct?

18 A Yes, I offered it to him.

19 Q You did offer it to him?

20 A Yes. He said, I've already worked out the
21 agreement, I've got it all worked out.

22 Q With Triangle Auction?

23 A With Triangle Auto Auction. He had given
24 them titles and had sent them some money, told them to
25 sell the car he had up there or truck he had up there.

1 Q Were you as surprised as he was when he
2 found out they issued the warrants after accepting
3 those titles?

4 A Yes, sir.

5 MR. JOHNSON: All right. Thank you.
6

7 CROSS EXAMINATION

8 BY MR. MULLEN:

9 Q Mr. Cash, you said you operated a
10 successful car business for thirty-five years?

11 A That's right.

12 Q You never had to pass bad checks in order
13 to do that, did you?

14 A No, sir.

15 Q Neither you nor to the best of your
16 knowledge your son, Danny Cash, ever received a letter
17 or a phone call from Triangle Auto Auction banning you
18 or him from that auction, did you?

19 A Ask me the question again.

20 Q Neither you nor Danny have ever received
21 a phone call or a letter or any other communication
22 from Triangle Auto Auction telling you you couldn't do
23 business at that auction, have you?

24 A I haven't, I can't speak for Danny, from
25 Triangle Auto Auction.

1 Q And the letters that you are talking
2 about for High Point, Fredericksburg, and Statesville
3 were not from Triangle Auto Auction, were they?

4 A No, but it come from the organization that
5 Triangle belongs to.

6 Q Organization what?

7 A That they belong to.

8 Q Now, when you were in the car business
9 would it have been possible for you to take titles that
10 were in someone else's name without a reassignment or
11 without a power of attorney and get a title to the
12 vehicle that that title represented?

13 A I don't follow you. A dealer doesn't
14 have to get a title put in his name.

15 Q He had to have a reassignment, though,
16 doesn't he?

17 A Yes, sir.

18 Q Some signature on a document that gives
19 the title holder the authority to sign his name, right?

20 A You mean like if I was taking a car there
21 to sell it to Bob Properties or Bob Cash Lincoln
22 Mercury?

23 Q Yes.

24 A If I took a car like that belonged to
25 you, is that what you're saying?

1 Q Yes.

2 A Yes, I would have to get a power of
3 attorney from you.

4 Q You would have to have my signature?

5 A (Affirmative nod.)

6 Q And in order to turn that title over to
7 someone else you'd have to give them something with my
8 signature on it followed by something with your
9 signature on it, wouldn't you?

10 A You can't sell nobody's car unless you
11 have the power of attorney.

12 Q Thank you.

13 You can't borrow money on it either
14 unless you have their signature, can you?

15 A You haven't got no title if you haven't
16 got a power of attorney or reassignment.

17 MR. MULLEN: Thank you, sir.

18 THE COURT: Thank you, sir. You may
19 step down.

20 MR. JOHNSON: May he be excused or
21 stay in the courtroom, either one he'd like?

22 THE COURT: Yes.

23 (Whereupon the witness stood aside.)
24
25

DARLENE CASH - DIRECT

1 The witness, DARLENE CASH, having been first
2 duly sworn, was examined and testified on her oath as
3 follows:

4
5 DIRECT EXAMINATION

6 BY MR. JOHNSON:

7 Q What is your name, please?

8 A Darlene Cash.

9 Q And are you related to the gentleman to
10 my left?

11 A I'm his wife.

12 Q How long have the two of you been
13 married, Mrs. Cash?

14 A We've been married six years.

15 Q And I believe you have a child? You live
16 on Burnt Bridge Road here in Lynchburg?

17 A Yes, sir.

18 Q Now, let me ask you just a few questions.
19 I don't believe you are actively engaged in the
20 business, Danny's Auto Sales, yourself?

21 A No, I'm not.

22 Q Did you know directly at the time about
23 these checks to Triangle Auto Auction and so forth, did
24 you have any knowledge of that at the time they were
25 given?

1 A No, sir.

2 Q Did you find out later?

3 A Yes, sir.

4 Q Did you find out before or after the
5 warrants were served on him and he was arrested and so
6 forth?

7 A After.

8 Q After that?

9 A (Affirmative nod.)

10 Q Do you recall them arresting him on
11 December 31st, New Year's Eve?

12 A Yes, sir.

13 Q He was arrested at his place of business,
14 wasn't he?

15 A Yes, sir.

16 Q Now, up until that time do you know of him
17 ever being in any trouble of any kind?

18 A Oh, no.

19 Q None at all. I think maybe he had a
20 couple of speeding tickets way back, other than that,
21 no trouble?

22 A No.

23 Q And since then do you know of any trouble
24 he's been in in regard to any charges or anything since
25 these things happened?

DARLENE CASH - DIRECT

1 A No, sir.

2 Q Now, after he was arrested and all, what,
3 if anything, did you notice about him, about his
4 actions, his demeanor, his appearance, his temperament,
5 and so forth, just explain to the jury as best you can
6 how he acted and so forth after this thing happened?

7 A He had no social life, he didn't want
8 anyone to come over, he still worked as hard, you know,
9 he went to work every day, but when he was at home, he
10 was drawn to himself, sat for hours at the time, you
11 know, with no comment or not saying anything, he was a
12 very upset person.

13 Q What about friends and so forth
14 socializing and all generally? .

15 A No, sir.

16 Q Was there a change in that?

17 A There was no socializing at all.

18 Q Did he work full time and regular even
19 after that, even though he was upset?

20 A Oh, yes, sir.

21 Q Now, of course, you yourself other than
22 maybe talking to Mr. Wommack or your father-in-law,
23 Bob Cash, you really don't have direct knowledge of
24 his business and so forth, he handles that, is that
25 right?

1 A Right.

2 Q Does he usually try to keep you out of it
3 and keep the home one way, the business another?

4 A Well, you know, he doesn't like to get me
5 involved, but when he does have a problem and he needs
6 someone to talk to, then that's when he comes to me.

7 Q Did he talk with you about the problem
8 with Triangle?

9 A Yes, sir, he did.

10 Q And was real upset about it?

11 A Yes, sir.

12 Q Did he tell you, don't go into details,
13 but did he tell you about having made an agreement with
14 them to furnish the titles and all and --

15 A Yes, sir, he did.

16 Q -- then they turned around and got this?

17 A Yes, sir, he did.

18 Q After having made that agreement to give
19 them those titles so that they couldn't lose on this
20 thing and paying some cash and then them going ahead
21 and having him arrested, how did that affect him after
22 he thought he had it worked out and then suddenly he
23 gets arrested on New Year's Eve?

24 A It just upset him more.

25 THE COURT: Mr. Johnson, you're leading

1 the witness every time. I think it puts the
2 other counsel in an embarrassing situation
3 to become a jack in the box, so to speak, to
4 object.

5 MR. JOHNSON: I'm sorry, I guess I was
6 trying to hurry too much and I'm sure I was
7 leading, and I apologize to the Court and
8 counsel.

9
10 BY MR. JOHNSON:

11 Q Can you tell the Court how long this
12 situation continued in regard to the way he appears to
13 be affected?

14 A Two years, he's been going like this for
15 two years.

16 Q One final question: From your knowledge
17 has he gone to auctions lately other than the Lynchburg
18 Auction?

19 A No, sir.

20 MR. JOHNSON: Answer Mr. Mullen.

21 MR. MULLEN: No questions.

22 MR. JOHNSON: May she be excused or stay
23 in the courtroom if possible?

24 (Whereupon the witness stood aside.)
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MR. JOHNSON: The plaintiff rests.

MR. MULLEN: I have some motions, Your Honor.

THE COURT: Members of the jury, we have to take up some things out of your presence, so if you'll retire to your jury room we'll be back in just a few minutes.

(Whereupon the jury left the courtroom.)

MR. MULLEN: If Your Honor please, one preliminary matter, I have filed with the Court, a motion in limine which as I understood the ruling of the Court at the beginning of this trial the Court took under advisement and did not make a ruling. I think it would be moot for the Court to make a ruling now that all of the testimony which I attempted to have excluded by motion in limine has been introduced, but would ask the Court anyway for a ruling on that motion.

THE COURT: Well, go ahead and state what your limine motion was, which evidence specifically.

MR. MULLEN: Specifically I requested

1 that plaintiff's counsel as a part of
2 plaintiff's damages be prohibited from
3 introducing testimony that the plaintiff had
4 been barred from doing business at several
5 automobile auctions because there was nothing
6 to tie that barring if it ever in fact
7 occurred to Triangle Automobile Auction.

8 To allow the jury to hear that testimony
9 allows the jury to speculate that Triangle
10 Auto Auction is the source of that barring.
11 None of the letters, none of the testimony
12 that I was aware of from discovery depositions
13 and the exhibits that I knew would be
14 introduced could in any way tie Triangle Auto
15 Auction to that barring. That was number one.

16 Number two, I asked the Court to direct
17 the plaintiff not to show as a part of his
18 damages reductions in gross revenues for 1985
19 and 1986 compared with prior years. That
20 type of evidence does not mean the test of
21 reasonable certainty and allows the jury to
22 speculate on whether Triangle is responsible
23 when certainly there are a thousand other
24 causes that could have brought about a
25 reduction in gross profits and gross

1 sales, even gross wholesale sales.

2 Thirdly, I knew that from the discovery,
3 which was rather extensive in this case taken
4 on three different occasions, that none of the
5 plaintiff's witnesses would properly testify
6 to any loss of reputation of the plaintiff,
7 and yet plaintiff's counsel has made an effort
8 throughout this trial to show a loss of
9 reputation. I ask that since none of
10 plaintiff's witnesses could so testify that
11 that type of testimony be excluded. That was
12 my motion in limine.

13 THE COURT: Do you want to respond? Any
14 other motion?

15 MR. MULLEN: Yes, I have two if you want
16 to take them all at once.

17 THE COURT: All right. Go ahead and
18 respond to that.

19 MR. JOHNSON: Yes, sir. In regard to the
20 motion in limine in regard to barring or
21 evidence of barring, we have a coincidence in
22 time that suddenly after all these years he's
23 suddenly barred. The documents speak for
24 themselves, Lonnie Morris' testimony speaks
25 for itself, Bob Cash's speaks for itself that

1 he was barred.

2 Bob Cash has tied it in to Triangle
3 saying they are all members of the same
4 organization and his statement was, if you're
5 barred by one they automatically bar you from
6 all.

7 The witnesses have said there was no
8 other reason under the sun to the knowledge of
9 all eight or nine or ten of them that he would
10 have been barred other than the checks and the
11 prosecution and/or the prosecution or the
12 obtaining of the warrants therefor.

13 Bob Cash summed the entire thing up on
14 the basis of the fact that since he had gotten
15 these it had to come from Triangle because he
16 had had no dealings with them and his son had
17 had no problems with them. I think it's more
18 than obvious that a jury can draw a factual
19 conclusion from this that he was barred
20 because of this.

21 As far as the matter of the character,
22 I haven't changed on his good reputation for
23 truthfulness which we claim he did have and
24 still has. What my questions were directed
25 before is, is his being a hard worker, as far

1 as his being diligent, whatnot, in his work
2 and as far as the rumors going around about
3 these checks, that's all, not his general
4 reputation for truthfulness and so forth.

5 So I think the Court quite properly has
6 heard the evidence and it's a jury question as
7 to these matters. It's certainly not a matter
8 for a motion in limine at this time.

9 THE COURT: I'm going to let the jury
10 consider it upon the proper instruction that
11 they can't speculate as to those things.

12 As far as the reputation is concerned, I
13 think that reputation is a part of his claim
14 for damages and he merely put the witnesses on
15 to show that he had a good reputation. It was
16 brought out on cross that his reputation had
17 not, in fact, been damaged as far as they knew
18 in their own mind. So I'm going to let all
19 those things go to the jury and I think it
20 was proper evidence for the jury to have.

21 Any other motions?

22 MR. MULLEN: Yes, Your Honor. I made a
23 motion for summary judgment citing Section
24 18.2-181 through 18.2-185 of the Code of
25 Virginia dealing with the law as it relates to

1 the merchants securing a warrant for someone
2 who issues a bad check. And within Section
3 18.2-185 is an absolute prohibition against
4 prosecuting civilly the merchant that follows
5 the Code Section. I would move the Court for
6 summary judgment at this time in Triangle
7 Auto Auction's favor.

8 THE COURT: Any other motions?

9 MR. MULLEN: I have one more motion and I
10 move to strike the evidence now that the
11 plaintiff has rested. The elements of the
12 tort of abuse of process are that the
13 defendant must have performed an act or acts
14 of the use of the process not proper in the
15 regular prosecution of the proceeding. Or
16 stated another way, that the defendant made an
17 illegal, improper, or perverted use of the
18 process, either warranted or authorized by the
19 process. There's been no evidence, no
20 testimony whatsoever of that in this case.

21 Number two, the defendant must have been
22 shown to have had an ulterior motive or
23 purpose in exercising an illegal, perverted,
24 improper use of the process. There is no
25 evidence of that.

1 And finally, the damage resulted to the
2 plaintiff from the defendant's action. There
3 is certainly no evidence to indicate that
4 anything Triangle Auto Auction did resulted in
5 any damage whatsoever to the plaintiff.

6 Again, I would cite to the Court Section
7 18.2-181 through 18.2-185 of the Code and say
8 that by the evidence adduced by the plaintiff
9 himself Triangle Auto Auction has religiously
10 followed those Code Sections.

11 THE COURT: Do you want to respond?

12 MR. JOHNSON: Just briefly, if Your Honor
13 please, in the Court's opinion letter of
14 August 12th, 1985 Your Honor ruled that the
15 matter of the defendant being conclusively
16 deemed to have acted with reasonable and
17 proper cause under Section 18.2-185, which is
18 the reference he makes.

19 As far as the malicious prosecution allegation
20 count is concerned, however in an action for
21 abuse of process, which is where we're at, the
22 want of probable cause is immaterial. See
23 Volume 14B, Michie's Jurisprudence, then Your
24 Honor quotes this.

25 I think that disposes of the question

1 about the conclusiveness of the motion for
2 summary judgment.

3 As far as the active elements here, there
4 are only two elements required under Virginia
5 law for abuse of process. One, the existence
6 of an ulterior purpose on the part of the
7 defendant. The Court has held specifically
8 that being motivated by desire to collect a
9 debt, in this case checks, rather than to
10 bring someone to justice is an ulterior
11 motive, has been found to be that -- has been
12 affirmed by Sanders versus Mullens and
13 many other cases.

14 The evidence here is overwhelming that
15 these gentleman, Mr. Lancour and Mr.
16 Sale, collected all the cash they could, got
17 the titles they could under an agreement to
18 not do anything, give him thirty to forty-five
19 days. Then after they got all they could by
20 agreement, then even three days after he had
21 gotten six titles which they still haven't
22 denied more than covers his debt, made him
23 secure, he swears out three felony warrants.
24 That's an ulterior motive if we could ever
25 meet one coming down the street, that's it.

1 Secondly, the defendant did enact a use
2 of process not proper in the regular
3 prosecution of the proceedings. That's
4 unquestionable as well. They pursued this
5 thing, the whole act was improper in taking
6 the cash part payment. Mr. Wingfield says the
7 magistrates here will not issue a warrant even
8 on that. It's an act, it's a ulterior motive,
9 it falls within the Code and we submit that
10 the evidence is not only a prima facie case,
11 it's overwhelming, if Your Honor please.

12 THE COURT: It's one of the few areas in
13 the law where you can say, if you don't do
14 something, I'm going to prosecute you. And it
15 seems like that bad checks are -- abuse of
16 process under the bad check statute is almost
17 condoned. However, my feeling is, under the
18 facts in this case it went a little bit beyond
19 that.

20 But what I'm going to do, Mr. Mullen, I'm
21 going to take your last two parts of your
22 motion under advisement and let it go to the
23 jury on that basis before I make any ruling on
24 that. It gives me some concern that you have
25 a statute that almost lets you do what they

1 did, however, my feeling without ruling on it
2 at this point is that on the evidence in the
3 light most favorable to the plaintiff, they
4 may have overstepped their bounds in what they
5 did so as to create a jury issue as to abuse
6 of process beyond what the statute says. I
7 haven't ruled but I will take it under
8 advisement.

9 How many witnesses would you have?

10 MR. MULLEN: Three.

11 THE COURT: How long do you anticipate
12 that will take? It's been a long day and I
13 don't think -- see how we can finish at a
14 reasonable hour this afternoon. I am trying
15 to make arrangements to get some help here in
16 the morning with another case we've got. And
17 I'm considering breaking now to come back
18 tomorrow and start the defendant's evidence.

19 If anybody has any strong feeling against
20 doing that it won't hurt my feelings if you do
21 and I'll stay a little longer. Does either
22 side have any feeling one way or the other?
23 How do you feel, Mr. Mullen?

24 MR. JOHNSON: We don't object. It's so
25 hot in here, and I think the jury will probably

1 be mighty tired and it has been a long day.

2 MR. MULLEN: I would like to finish it,
3 Your Honor, being ninety miles away, but
4 I certainly understand the Court's dilemma and
5 I'll respect the Court's judgment, whatever it
6 is.

7 THE COURT: Well, I feel like in fairness
8 to most everybody, and maybe it's not fair to
9 make you come back, but under the
10 circumstances you are in the case in Lynchburg
11 and you couldn't say that you -- couldn't be
12 heard to say that you didn't know that it
13 might go over an extra day.

14 MR. MULLEN: That's true.

15 THE COURT: I'm going to let them go on
16 home now and come back in the morning at nine-
17 thirty. I even thought about coming back at
18 nine, but that may create some problems, so
19 I'm going to let them go until nine-thirty in
20 the morning.

21 MR. MULLEN: Your Honor, I would like to,
22 since we were going to break and since you
23 have not actually ruled on my motion at this
24 time, counsel has cited the case of Mullens
25 versus Sanders. There's no question --

1 THE COURT: Is that the one like 189 or
2 somewhere along there?

3 MR. MULLEN: 189 or 149.

4 MR. JOHNSON: 189.

5 MR. MULLEN: It's about a 1949 case. 189
6 Va. 624, 1949 case. I have a copy of that
7 that I would like the Court to take and read,
8 if the Court will, as well as some other
9 authorities, copies of which I'll be happy to
10 furnish Mr. Johnson..

11 I would point out to the Court that
12 Mullens versus Sanders is a case in which the
13 plaintiff operated a small coal mine in
14 Dickenson County. He purchased a motor for
15 ninety dollars and gave a partnership check in
16 exchange for it.

17 Sanders, the receiver of the check,
18 deposited the check and it bounced because of
19 improper signature. He personally represented
20 to the drawee bank, it was personally
21 presented thereafter to the drawee bank and
22 it wasn't honored. Sanders consulted the
23 commonwealth's attorney who advised, get a
24 warrant, a criminal warrant.

25 Sanders, a detective deputy, and a

1 Virginia deputy then went to Mullens'
2 residence. Sanders said, I don't want a
3 check, but the money or you go to jail. It
4 was Sunday, the bank was closed, Mullens was
5 arrested.

6 Virginia commonwealth's attorney advised
7 Mullens to pay the check. Mullens offered a
8 check with a proper signature and that was
9 refused. He said, pay the check. He offered
10 another check, Sanders didn't want another
11 check, he already had a bad one.

12 Mullens was arrested and held for
13 issuance of a warrant. The Court concluded
14 that Sanders had an ulterior motive expressed
15 in that case to collect the debt or go to
16 jail, but that is none of the testimony that
17 is expressed here today, not one witness on
18 behalf of the plaintiff has said there is any
19 connection between the collateral, the
20 payment, the checks, or the criminal
21 prosecution. They treated it entirely
22 different and that's why Mullens versus
23 Sanders stands for the proposition that you've
24 got to go beyond the conduct that from the
25 plaintiff's testimony Triangle went. And

1 that's why this evidence ought to be stricken,
2 this jury should not be allowed to consider
3 this case.

4 Thank you.

5 THE COURT: Any further response?

6 MR. JOHNSON: Just Mullens -- this --
7 we're willing to base our case on that, too,
8 because the Court said to sustain an action
9 for abuse of process, proof of malice is not
10 necessary as to the issuance of process, but
11 it is necessary to allege and prove process
12 after being properly sued that was maliciously
13 used or an action of abuse of process is
14 distinguished from the action of malicious
15 prosecution. It is not necessary to prove
16 determination of the proceedings and so forth.
17 We have proved it, it was favorable to the
18 plaintiff here.

19 That was a case that charged false
20 imprisonment, malicious prosecution, abuse of
21 process. That case they decided false
22 imprisonment, malicious prosecution did not
23 apply, but abuse of process did.

24 It's very similar to this and I can read
25 you the statements in there where they are

1 saying ulterior motive includes and was in
2 that case a desire to collect a debt. What
3 could be more manifest from this evidence
4 that's what they were concerned with?

5 THE COURT: Mr. Mullen, I haven't ruled
6 on it, I'll take your motion under advisement.
7 I'll look at that case again and the other
8 cases that may be on point and I'm going to
9 let it go to the jury under advisement, but I
10 am going to let them come back in the morning.

11 Do you have anything you want me to look
12 at?

13 MR. JOHNSON: No, sir, I just had that,
14 too. I do have the other case, the
15 Clingenpeel or Clifford or something case.

16 MR. MULLEN: I have that.

17 MR. JOHNSON: Yes.

18 MR. MULLEN: A copy of that is in there,
19 too.

20 MR. JOHNSON: Is that there, too?

21 MR. MULLEN: Yes.

22 MR. JOHNSON: All right. Those are the
23 cases that I have, Judge.

24 There is a Section in Michie's
25 Jurisprudence --

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MR. MULLEN: That's in there also.

MR. JOHNSON: -- if Your Honor is
interested in it.

Is that too? Section 61 of Process?

MR. MULLEN: Yes. As well as AmJur on
abuse of process.

MR. JOHNSON: Well, you're one up on me
there.

THE COURT: Let's call them back and
recess until nine-thirty in the morning.

(Whereupon the jury entered the
courtroom.)

THE COURT: Members of the jury, as you
can see it's getting late and we've gotten to
the point that the defendant is going to put
on his evidence and so rather than starting up
on that today, I think we're going to recess
until nine-thirty in the morning and come back
at that time ready to go.

I want to caution you not to discuss this
case with anyone as I have before and don't
form any opinion concerning the case or make
any judgment concerning it until you are
actually in the jury room with the entire case

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before you.

So be back in the morning at nine-thirty
ready to go.

(Whereupon court recessed until
nine-thirty November 14, 1986.)

THUS ENDED THE PROCEEDING FOR NOVEMBER 13, 1986.

1 COMMONWEALTH OF VIRGINIA AT LARGE: to-wit,

2 I, Rebecca E. Cochran, Notary Public in and
3 for the Commonwealth of Virginia, do certify that the
4 foregoing proceeding was taken before me on the 13th
5 day of November, 1986, and that the foregoing,
6 transcribed under my direction, represents an accurate
7 transcript of said proceeding to the best of my
8 ability.

9 My commission expires Dec. 30, 1990

10 

11 REBECCA E. COCHRAN

12 Notary Public - Court Reporter

~~Melinda Jenkins~~ Δ # 2
~~Jerry Wilson~~ P # 1
/ Charles Bradley, Jr.
~~Alzeno Chambers~~ Δ # 1
2 Perdeda Collins
3 Beverly Dearing
4 Diane Fanning
5 Alice Harvey
~~Randy Howard~~ Δ # 3
6 Wanda Oden
7 David Rice
~~Ellen Castle~~ P # 2
~~Barbara Donald~~ P # 3

Daniel F. Cash

v.

Triangle Auto Auction, Inc.

Jury Sworn November 13, 1986

Virginia: At Lynchburg Circuit Court, November 13, 1986

Present, the Honorable Richard S. Miller, Judge.

Daniel F. Cash,

Plaintiff,

vs.

Triangle Auto Auction, Inc.,

Defendant.

This day came the plaintiff in his own proper person, and by counsel, and came the defendant by counsel, having heretofore filed its grounds of defense herein, issue is joined, and said parties demanding a jury, there came a jury, to-wit: Charles Bradley, Jr., Perdeda Collins, Beverly Dearing, Diane Fanning, Alice Harvey, Wanda Oden, and David Rice, who were duly summoned, selected, tried and sworn according to law.

The evidence of the plaintiff was presented in full.

Thereupon the defendant, by counsel renewed his previously made motion in limine for reasons stated to the record, which motion the Court doth overrule.

Thereupon the defendant by counsel renewed his previously made motion for summary judgment for reasons stated to the record, which motion the Court doth take under advisement.

Thereupon the defendant, by counsel made a motion to strike the plaintiff's evidence for reasons stated to the record, which motion the Court doth take under advisement.

Thereupon the jury was adjourned until November 14, 1986 at 9:30 o'clock A.M., to which time this case is continued.

283

A Copy, Teste;

Marita E. Sheeder, Clerk.

The Court instructs the jury that the plaintiff, Daniel F. Cash, is not required to prove his case beyond a reasonable doubt, but that the plaintiff is only required to prove his case by a preponderance or greater weight of the evidence in order to entitle him to a verdict against the defendant, Triangle Auto Auction, Inc.

Griffin:
P. 284

The Court instructs the jury that Triangle Auto Auction, Inc. is responsible at law for the acts of its officers, agents, servants or employees when acting within the scope of their employment.

Gwen
R

The Court instructs the jury that you shall find a verdict for the plaintiff, Daniel F. Cash, if you believe from a preponderance or greater weight of the evidence each of the following:

- (1) The existence of an ulterior motive on the part of the defendant such as the collection of a debt, instead of the desire to bring the plaintiff to justice; and
- (2) The defendant did an act in the use of the process not proper in the regular prosecution of the proceeding.

Given
R. S.

The burden is on the plaintiff to prove abuse of process, that is, that the criminal proceeding was instigated by the defendant with an ulterior motive other than that of bringing the plaintiff to justice.

When a party has the burden of proof on an issue, then he must prove that issue by the greater weight of all the evidence. This is sometimes called the preponderance of the evidence. It is that evidence which you find more convincing. The testimony of one witness whom you can believe can be the greater weight of the evidence.

The Court instructs the jury that if the primary motive of the defendant when it ~~was~~ instigated the criminal proceeding was to collect a debt due Triangle Auto Auction, Inc., rather than to punish the plaintiff for his supposed violation of the criminal law, this would be an "ulterior motive" on the part of the defendant, as referred to in the other instructions given you.

Given
R. S.

Malice exists when the controlling motive for instigating criminal proceedings is any reason except a genuine desire to see justice done, to enforce the law or to punish the guilty.

Malice may be inferred from a lack of probable cause.

*Given:
P.S.*

A person instigates criminal proceedings against another
by:

- (1) Bringing the criminal charge; or
- (2) Cooperating actively in bringing the criminal charge.

Given:
RS

Any fact that may be proved by direct evidence may be proved by circumstantial evidence; that is, you may draw all reasonable and legitimate inferences and deductions from the evidence.

Gavin:
H

You are the judges of the facts, the credibility of the witnesses, and the weight of the evidence. You may consider the appearance and manner of the witnesses on the stand, their intelligence, their opportunity for knowing the truth and for having observed the things about which they testified, their interest in the outcome of the case, their bias, and, if any have been shown, their prior inconsistent statements, or whether they have knowingly testified untruthfully as to any material fact in the case.

You may not arbitrarily disregard believable testimony of a witness. However, after you have considered all the evidence in the case, then you may accept or discard all or part of the testimony of a witness as you think proper.

You are entitled to use your common sense in judging any testimony. From these things and all the other circumstances of the case, you may determine which witnesses are more believable and weigh their testimony accordingly.

*Given:
for*

The Court instructs the jury that if you find your verdict for the plaintiff, Daniel F. Cash, then in determining the amount of damages to which he is entitled, you may take into consideration all of the circumstances surrounding the abuse of process by the defendant, and you may take into consideration such of the following elements as you may believe from a preponderance of the evidence resulted from the actions of the defendant:

- (1) Any loss or injury to his business;
- (2) Any embarrassment, humiliation, mental suffering, or insult which he sustained;

~~Any actual, out of pocket losses that were~~ and

- (3) Any actual, out of pocket losses that were caused by the defendant.

And from these, as proven by the evidence, your verdict should be for such sum as will fully and fairly compensate the plaintiff for the damages sustained by him as a result of the abuse of process, not to exceed the sum sued for.

Given
RS

11

11

If you find your verdict for the plaintiff, Daniel F. Cash, you shall award him compensatory damages for the loss or injury he has actually suffered.

294

Green
Jr

If you find that the plaintiff, Daniel F. Cash, is entitled to be compensated for his damages and if you further believe by the greater weight of the evidence that the defendant acted with actual malice in instigating the criminal proceedings against the plaintiff, then you may award punitive damages to the plaintiff to punish the defendant for its actions and to serve as an example to prevent others from acting in a similar way.

Actual malice is a sinister or corrupt motive such as a desire to injure the plaintiff or conscious disregard of the rights of others.

If you award punitive damages, you must state separately in your verdict the amount you allow as compensatory damages, if any, and the amount you allow as punitive damages.

Given:
RH

JURY INSTRUCTIONS

Instruction No. A

Abuse of process consists in the malicious misuse or misapplication of process to accomplish some purpose not warranted or commanded by writ and is malicious perversion of regularly issued process to secure result not lawfully or properly attainable thereunder.

It is not malice for Triangle Auto Auction, Inc. to have instituted the criminal proceedings against Daniel F. Cash for his giving Triangle Auto Auction, Inc. the bad checks if Triangle Auto Auction, Inc. had a genuine desire to see justice done, to enforce the law, or to punish the guilty. It is not malice if any of these were the motives in Triangle Auto Auction, Inc.'s continuing the prosecution of Daniel F. Cash for the giving of those bad checks. The regular legitimate use of the criminal process for the bad checks even with a bad intention on the part of Triangle Auto Auction, Inc. is not malicious abuse of process.

Given:
[Signature]

JURY INSTRUCTIONS

Instruction No. A -1

Abuse of process consists in the malicious misuse or misapplication of process to accomplish some purpose not warranted or commanded by writ and is malicious perversion of regularly issued process to secure result not lawfully or properly attainable thereunder.

It is not malice for Triangle Auto Auction, Inc. to have instituted the criminal proceedings against Daniel F. Cash for his giving Triangle Auto Auction, Inc. the bad checks if Triangle Auto Auction, Inc. had a genuine desire to see justice done, to enforce the law, or to punish the guilty.

Given
RS

15

JURY INSTRUCTIONS

Instruction No. C

The making or delivery of checks returned by the drawee bank for insufficient funds after five days written notice of the return by the holder of the checks and non-payment being made by the maker is prima facie evidence of the intent of the maker to defraud the holder. This is a form of grand larceny, a criminal felony and is prosecutable as such under the law of Virginia.

If you believe that Triangle Auto Auction, Inc.'s motivation in prosecuting Daniel F. Cash for the three bad checks which he gave them was to see justice done, to enforce the law, or to punish the guilty, and for no ulterior motive, then you shall find your verdict in favor of Triangle Auto Auction, Inc. in the lawsuit of Daniel F. Cash v. Triangle Auto Auction, Inc. for abuse of process.

Gwin
R

G

You must not base your verdict in any way upon sympathy, bias, guesswork or speculation. Your verdict must be based solely upon the evidence and instructions of the court.

Given:

JURY INSTRUCTIONS

Instruction No. 5

"Actual malice" is a sinister or corrupt motive such as hatred, personal spite, ill will, or a desire to injure the plaintiff.

Given:

JURY INSTRUCTIONS

Instruction No. B

Even if you find that Triangle Auto Auction, Inc. procured criminal warrants against Daniel F. Cash for the ulterior purpose of enforcing the collection of the debt which Cash owed Triangle, this is not enough for you to find abuse of process because Cash may have violated the criminal laws so as to justify his arrest and prosecution. So long as Triangle merely aided in the prosecution of the criminal proceedings in the regular manner, that is by procuring the warrant in a proper way and by appearing as a witness for the prosecution in the criminal proceedings, it is not liable in an action for abuse of process even though the criminal prosecution may have resulted in the payment of the debt which Cash owed Triangle.

Refused
R. M.

JURY INSTRUCTIONS

Instruction No. E

You shall not consider any prospective profits as an element of damages if you conclude that Daniel F. Cash is entitled to recover from Triangle Auto Auction, Inc. for malicious abuse of process.

Refuse
PS

H

Payment, either in full, or in part of a bad check within the 5 day notice period is not a bar to prosecution.

The crime, if any, is committed at the time the check is drawn.

Refuse
Bar

JURY INSTRUCTIONS

Instruction No. I

If you believe by the preponderance of the evidence that Triangle Auto Auction, Inc. merely aided in the prosecution of the criminal proceedings against Daniel F. Cash in a regular manner by procuring the warrants in a proper way for his arrest and appearing as a witness for the prosecution in such proceedings, Triangle Auto Auction, Inc is not liable for abuse of process.

Refuse
RA

JURY INSTRUCTIONS

Instruction No. D

If you believe from a preponderance of the evidence that Triangle Auto Auction, Inc. made use of the criminal process without any act amounting to misuse or oppression, then Triangle Auto Auction, Inc. is not guilty of an abuse of process even if you further believe that Triangle Auto Auction, Inc. had an ulterior motive in taking such action.

withdrawn

JURY INSTRUCTIONS

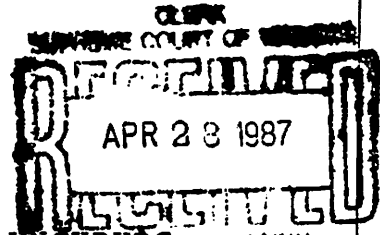
Instruction No. F

The making or delivery of checks returned by the drawee bank for insufficient funds after five days written notice of the return by the holder of the checks and non-payment being made by the maker is prima facie evidence of the intent of the maker to defraud the holder. This is a form of grand larceny, a criminal felony and is prosecutable as such under the law of Virginia.

If you believe that Triangle Auto Auction, Inc.'s motivation in prosecuting Daniel F. Cash for the three bad checks which he gave them was to see justice done, to enforce the law, or to punish the guilty, and for no ulterior motive, then you shall find your verdict in favor of Triangle Auto Auction, Inc. in the lawsuit of Daniel F. Cash v. Triangle Auto Auction, Inc. for abuse of process.

Withdraw

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1 VIRGINIA:

2 IN THE CIRCUIT COURT FOR THE CITY OF LYNCHBURG, VIRGINIA

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4 DANIEL F. CASH,

5 Plaintiff,

6 v.

7 TRIANGLE AUTO AUCTION,

8 Defendant.

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14 TRANSCRIPT OF PROCEEDINGS

15 November 14, 1986 - 9:30 a.m.

16 Before the Honorable Richard Miller, Judge & Jury

17 Day 2 of 2

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21 * * * *

22 EVANS, COCHRAN & HONNICK
23 Reported by: Rebecca E. Cochran
24 302 Meadowridge Drive
25 Lynchburg, Virginia 24503
804-239-2552
804-384-6000

307

FILED IN THE CLERK'S OFFICE OF THE CIR-
CUIT COURT OF THE CITY OF LYNCHBURG

DATE 1-20-87 TIME 8:30 A.M.

TESTE: JUANITA E. SHEILDS, CLERK

BY _____ J. H. DEP. CLK.

1 Appearances: JOSEPH R. JOHNSON, JR., ESQUIRE
Counsel for the Plaintiff

2 DAVID MULLEN, ESQUIRE
3 Counsel for the Defendant

4
5
6 I N D E X

7 EUGENE LANCOUR

8 Direct Examination by Mr. Mullen 258
9 Cross Examination by Mr. Johnson 282
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10 FRANK SALE

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13 DANIEL F. CASH (adverse)

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16 PHILLIP KEITH

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21
22 E x h i b i t s

23 Defendant's Exhibits

24 No. 7 - copy of notice in magistrate's office
25

EUGENE LANCOUR - DIRECT

1 NOVEMBER 14, 1986 - DAY 2 OF PROCEEDINGS WHICH COMMENCED
2 ON NOVEMBER 13, 1986 CONTINUING AS FOLLOWS:
3

4 THE COURT: Both sides ready to call the
5 jury in?

6 MR. MULLEN: Yes, sir.

7 MR. JOHNSON: Yes, sir.

8 THE COURT: Call the jury.

9 (Whereupon the jury entered the
10 courtroom and all were present.)
11

12 The witness, EUGENE LANCOUR, having been first
13 duly sworn, was examined and testified on his oath as
14 follows:
15

16 DIRECT EXAMINATION

17 BY MR. MULLEN:

18 Q State your name and occupation, please.

19 A Eugene Lancour, manager of the Triangle
20 Auto Auction.

21 Q How long have you been manager of
22 Triangle Auto Auction?

23 A Approximately eight years.

24 Q Where is that auction located?

25 A It's located three miles outside of

1 Radford, Virginia on Route 177 South.

2 Q Tell the jury what kind of business
3 Triangle Auto Auction is, what it does.

4 A Triangle Auto Auction is an automobile
5 vehicle auction where dealers come to the sale selling
6 to dealers. We're not open to the public, it's dealers
7 only, auction automobiles, boats, trailers, trucks.

8 Q Tell the jury by what means and methods
9 that a dealer may come to the sale and get his cars
10 sold and how he can buy.

11 A A dealer coming to the sale has to be
12 licensed as an automobile dealer in the State of
13 Virginia or the state in which he is doing business in.
14 He comes to the auction, he has to register showing his
15 business name, location, the dealer number. He will
16 come to the sale and buy cars or bid on cars or offer
17 vehicles for sale that he has an interest in. And
18 that's basically how it works.

19 And in payment for them, he pays by check
20 or cash. We in turn will pay the seller with a
21 Triangle Auto Auction check, and we guarantee the check
22 to the seller from our business.

23 Q So you use Triangle Auto Auction's money
24 to pay the sellers of the vehicles?

25 A Yes, sir.

1 Q Now, explain to the jury what title
2 attached is.

3 A Title attached would be, say, that you
4 own an automobile, you have a lien on it, and the bank
5 is holding the lien, they will hold the title as their
6 secured interest in the car, you make your payments to
7 the bank or the lending institution, they hold the
8 title.

9 You can sell your vehicle -- as a dealer
10 you can sell your vehicle to another dealer or an
11 individual, but you don't have the title in your hand
12 at the time, the bank is holding it.

13 It's basically opposite what one would
14 think. With title attached you would think he had it
15 with him, it's just the opposite. It means that some
16 lending institution or possibly some other dealer is
17 holding the title until he gets paid final for the car.

18 In title attached at an auction means
19 that at the time that the car is sold, the selling
20 representative does not have the title physically with
21 him. It doesn't mean that he can't get it.

22 For Triangle Auto Auction they have
23 fourteen working days to produce the title. If the
24 title is not produced within the fourteen working days,
25 the buyer has the right to return the car to the

1 auction who in turn will return it to the seller.

2 Under these circumstances the man who
3 bought the car is reimbursed, again with Triangle Auto
4 Auction's check, the amount of money that he spent to buy
5 the car. The seller is expected to reimburse the
6 auction the amount of money that we put out as a result
7 of him not turning in the title within the fourteen
8 working days.

9 Q In a title attached sale by a dealer
10 through the auction when does the seller of that car
11 get his money?

12 A The seller of the car will get his money
13 when he turns the title into either the auction itself
14 -- he's paid with a draft.

15 Now, what a draft is, the auction expends
16 no money when the draft is issued. The man buying the
17 vehicle is expected to pay the auction for the car the
18 night that he buys it. The buyer's check is held by us
19 until we receive the title. It's not deposited in the
20 bank until we get the title.

21 The seller will get his money when we
22 have the title. He can bring the title directly to us,
23 we will void the draft and issue him a check. He can
24 take the title and put it in an envelop that is
25 attached to the draft, bring it to his bank, his bank

1 will process it through federal bank channels to our
2 bank.

3 Our bank will advise us that the draft
4 has been received with the title, we will go to our
5 bank, review the title, make sure that it has been
6 reassigned over to the person who has bought the car or
7 the firm, we'll put it that way, and we will authorize
8 the bank to cut a cashier's check, bank draft, however
9 they do it. And they in turn will send this back to the
10 buyer's bank for credit to his account.

11 Now, whether the bank that the purchaser
12 or the buyer will give the man immediate credit is
13 entirely up to them. We have no control over that.
14 Under normal circumstances you can expect it to take
15 ten to fourteen days before a seller will get money
16 into his account if he sells it title attached.

17 Some banks will give them immediate
18 credit and let them spend the money. If they do that,
19 that's entirely up to them. We have no control over
20 how the bank runs the accounts.

21 Q Let's talk about car titles for a moment.
22 How does a person who owns a car and has a car titled
23 in his name transfer that car to someone else?

24 A All right. Normally, there is only two
25 ways that I know of. The person that is listed on the

1 front of the title is the owner of record in the state
2 regardless of whether it's Virginia, West Virginia or
3 Alaska, whoever is on the front of the title is the
4 legal owner of the vehicle.

5 When he sells that vehicle he has to sign
6 away his interest in it. On the reverse of the titles
7 most states have two or three sections, A, B, and C.
8 In the A section, which is the top, the person who is
9 listed on the front or the firm that is on the front
10 has to sign away his interest in Section A.

11 He will turn it over, we will
12 hypothetically say -- we'll use my name as an example
13 -- Gene Lancour is listed on the front of the title as
14 the owner of the car. I will turn the title over, in
15 the top section it has a line that says, signature of
16 seller. On that section I will put Gene Lancour.

17 On the top of Section A is a block that
18 says -- or purchaser. In that section I would put,
19 say, David Mullen Auto Sales, he's a dealer. I will
20 show the mileage on the car at the time that it's sold
21 and David Mullen is then the official/unofficial owner
22 of the vehicle.

23 If David Mullen as an auto sales dealer
24 doesn't do anything more with that title, I could go
25 one day, I could go five years, and as far as the State

1 of Virginia is concerned Gene Lancour owns the car,
2 David Mullen --

3 Q That's the first way, what's the next
4 way?

5 A Well now, David Mullen's name is on the
6 purchaser on the back of my title, he is a car dealer.
7 He takes the car to an auction, we'll say
8 hypothetically, or you come on his lot and you're
9 interested in buying the car. David Mullen Auto Sales
10 can sign away his interest on the Section B, which is
11 on the back of the title, or he can use a Virginia
12 reassignment. He doesn't have to sign the title itself
13 actually.

14 Q What's a Virginia reassignment?

15 A A Virginia reassignment is nothing more
16 than a form devised by the State of Virginia Division
17 of Motor Vehicles allowing a licensed dealer to
18 transfer his interest on that form to another
19 purchaser. An individual like you and I cannot sign a
20 reassignment. You have to be a licensed dealer to use
21 the reassignment.

22 We have had vehicles come through the
23 auction, we have had cars come through with five, six
24 reassignments on them which means they went from dealer
25 to dealer to dealer. Like Mr. Cash was mentioning that

1 he --

2 Q Mr. Lancour, let me ask you: By what
3 means does a person or a dealer establish a lien on the
4 title, give somebody a security interest in it?

5 A There is a section on the reassignment
6 form and there is also a section on the actual title
7 that says lien. If you are holding a lien against the
8 vehicle in that section you will show the amount of the
9 lien, the type of the lien, the date that the lien was
10 established and who is the lienholder.

11 Q In order to get Division of Motor
12 Vehicles to put a lien on the face of a title to a car,
13 who or what has to sign something to start that
14 process?

15 A The seller or the lienholder has to be
16 indicated on there -- on the reassignment form on the
17 title that they hold an interest in the car.

18 Q Is it possible to get Division of Motor
19 Vehicles to put a lien on the title to a car without the
20 record owner having signed a paper to say that's
21 permissible?

22 A No, sir.

23 Q Now, let's get to the situation involving
24 Mr. Cash. Were you present at the automobile auction on
25 the Monday night of November the 12th and the 19th and

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1 the 26th of 1984?

2 A Yes, sir.

3 Q And in the course of your duties as
4 manager that night, did you on behalf of the auto
5 auction receive three checks from Mr. Cash which have
6 been introduced into evidence?

7 A Yes, sir.

8 Q Were these checks returned by the bank,
9 First Virginia Bank in Lynchburg, on which they were
10 drawn marked no sufficient funds?

11 A Yes, sir.

12 Q Were they also marked, please do not
13 present again?

14 A Yes, sir.

15 Q And do not redeposit?

16 A Yes, sir.

17 Q Now, what did you do on behalf of
18 Triangle Auto Auction after you got these bad checks
19 that had bounced?

20 A On behalf of the auction I sent a letter
21 to Danny's Auto Sales showing the check number, the
22 bank that the check was drawn on, the amount of the
23 check advising him that the checks were being returned
24 for insufficient funds, and that under the law of the
25 State of Virginia he had five days to make the checks

1 good. And I sent it to him by certified mail with a
2 receipt request coming back.

3 Q And did you receive back the receipt
4 requested?

5 A Yes, sir.

6 Q Where did you get the language in the
7 letter that you used to notify him that the checks had
8 bounced?

9 A The language was prepared for us by the
10 commonwealth attorney in Montgomery County, his office.

11 Q And the name of the commonwealth
12 attorney who did it?

13 A Mr. Keith, the assistant commonwealth
14 attorney is the one who -- he sat in his office, oh,
15 I'd say probably three or four years ago and typed it
16 up on his typewriter the exact way that it had to be to
17 comply with the intent of the law.

18 Q Now, tell the jury about the
19 conversations that you had with Mr. Keith leading up to
20 his drafting and writing this language in the letter.

21 MR. JOHNSON: If Your Honor please, we
22 would object to that as hearsay.

23 MR. MULLEN: Your Honor, the whole
24 question in this case is motive, and I'm
25 going to show by this testimony and this

1 evidence that they certainly had a proper
2 motive in going about getting these warrants.

3 THE COURT: You're not offering what he
4 said to prove what is true, but to show why
5 he may have done something?

6 MR. MULLEN: Yes, sir.

7 THE COURT: Same movement as I did --

8 MR. JOHNSON: If it's not offered to
9 prove the accuracy of it.

10 THE COURT: It would not be hearsay and
11 I would not receive it to prove that what it
12 says is true.

13

14 A What I did -- we've been in the auction
15 business approximately eight years. I believe we
16 started in June of '77, something like that. And as
17 you grow you become more susceptible to -- I guess you
18 could say getting yourself in trouble. We're a big
19 business, auction businesses are very, very big. I
20 mean, there's auctions that run a thousand cars,
21 eighteen hundred cars during a day.

22 MR. JOHNSON: Your Honor, we would
23 object to this.

24 THE COURT: Let's go to the direct --
25

1 BY MR. MULLEN:

2 Q Tell us about the conversation you had.

3 A The reason I did this was because we
4 would get bad checks.

5 MR. JOHNSON: If Your Honor please, the
6 question was what this conversation was.

7 THE COURT: Stop just a second. Mr.
8 Mullen, let's go to the direct question and
9 answer method rather than a narrative answer.
10 I think we'll get to the point a lot quicker.
11

12 BY MR. MULLEN:

13 Q Did you have any conversations with Mr.
14 Keith regarding part payment, payment on the checks
15 during the notice period? Tell the jury what you were
16 informed about that.

17 A Well, I talked to Mr. Keith on how I
18 could protect the auction's interest when we received
19 bad checks on cars and what I would have to do, how I
20 would do it when a bad check was given to us, and in
21 the process of talking with Mr. Keith he said that
22 there were certain requirements that had to be met and
23 this is when he drafted up the letter that we send out
24 for bad checks.

25 Q What did he tell you about the situation

1 where you received payment or part payment during the
2 time that the notice that you had sent to the person
3 who gave the bad check, what did he tell you about
4 that?

5 A The interpretation that they have, the
6 commonwealth attorney has, is that whether you received
7 a partial payment or anything else in relation to the
8 check, if the check has not been satisfied within the
9 five days, then the probable cause exists that a crime
10 had been committed.

11 Q That's what he told you?

12 A Yes, sir.

13 Q So payment or part payment didn't make
14 any difference?

15 A No, sir.

16 Q Now, in this case involving Mr. Cash on
17 these three bad checks that he gave the auction, did
18 you receive full payment within the notice period?

19 A No, sir.

20 Q Did you receive part payment within the
21 notice period?

22 A I believe you would probably consider the
23 twenty-four hundred dollars on his Ramcharger as a part
24 payment. On the 30th or the 31st of December we
25 received a two thousand dollar cashier's check from Mr.

1 Cash. Other than that, nothing was paid in full until
2 prior to the day going to court.

3 Q Now, on what date did you receive the
4 twenty-four hundred fifty-seven dollars? And tell the
5 jury how you got that money.

6 A Mr. Cash had sold or authorized for us to
7 represent and sell for him a '79 -- '77 Dodge
8 Ramcharger or something like this. And he had the title
9 here in Lynchburg. We sold the car title attached, I
10 believe, on the 29th of November.

11 On the 14th of December I have a note in
12 my records where Mr. Cash authorized us to use the
13 proceeds of this sale against the balance of the
14 returned checks.

15 So on the 14th of November (sic)
16 technically I reduced the amount that was due us by
17 twenty-four hundred and fifty-some dollars based on Mr.
18 Cash's authorization over the phone.

19 Q On what date did you secure the felony
20 warrants against Mr. Cash?

21 A The 21st of December. I think I went up
22 on the 20th and they typed them up on the 21st. I'm
23 not sure.

24 Q Had the notice period specified in your
25 letters expired by that time?

1 A To the best of my knowledge, yes, sir.

2 Q Now, tell the jury about the procedure
3 that you followed in securing these felony warrants.

4 A The procedures that I took the checks, I
5 took the receipts for the certified mail, and a copy of
6 the letter that I had sent to Danny's Auto Sales to the
7 magistrate's office. And in the magistrate's office
8 they have a sign that says anyone who is obtaining a
9 warrant or trying to obtain a warrant for bad checks,
10 that they must see the commonwealth attorney or the
11 assistant commonwealth attorney prior to a warrant
12 being issued.

13 I understand the purpose for this was that,
14 Mr. Keith explained to me, that they are reviewing them
15 to insure that warrants are not issued that should not
16 be issued. Mr. Keith examined my letter, he looked at
17 the checks, I had to show him the receipts for the
18 mail, and he reviewed them and said that based on the
19 information there that I should go ahead and have a
20 warrant issued for the checks.

21 Q I hand you a document and ask you to tell
22 the jury whether this is the notice itself which was
23 posted in the magistrate's office.

24 A Yes, sir, it's up on the wall.

25 MR. JOHNSON: No objection other than,

1 Your Honor, the objection a moment ago, we
2 object to all of this on hearsay, but I
3 believe the Court is admitting it for the
4 purpose of what his motivation was.

5 THE COURT: Do you agree with that?

6 MR. MULLEN: Yes, sir.

7 THE COURT: I'll admit it for that
8 purpose, Defendant's Exhibit 7.

9 (Whereupon the notice was marked
10 as Defendant's Exhibit No. 7.)

11
12 BY MR. MULLEN:

13 Q Mr. Lancour, let me ask you to read this
14 notice to the jury.

15 A The full notice?

16 Q Yes.

17 A The heading of the commonwealth
18 attorney's letterhead. It's dated May 23rd, 1984, it
19 says: The statutory law and the decisions of the
20 Supreme Court relating to prosecution for bad checks
21 require that the commonwealth prove a number of
22 elements beyond a reasonable doubt. This means that
23 the facts need to be fully discussed with the
24 commonwealth attorney or his assistant before a warrant
25 is secured.

1 If it is the desire of the victim to
2 simply recover the amount of the check and/or
3 associated costs, the case will not be treated as a
4 criminal case by the commonwealth attorney.

5 If it is your desire to prosecute the
6 check writer for a criminal act, a prosecutor will be
7 available to represent the commonwealth in the trial of
8 the case. Based upon these guidelines please be
9 advised that the commonwealth attorney's office wishes
10 to be of assistance to you in criminal matters.

11 The following checks cannot be prosecuted
12 criminally: post-dated checks, endorsed checks, two
13 party checks, checks for past due debts, checks which
14 have been held by the payee for payment by agreement,
15 checks where the passer cannot be identified or has not
16 admitted to passing the check, checks received where
17 the payee had agreed to accept bad checks in exchange
18 for a service fee.

19 Q Did these checks fall within any of the
20 seven exceptions listed in the letter?

21 A No, sir.

22 Q Did you receive Cash's Auto Sales or Mr.
23 Cash's six titles to some vehicles which he had on his
24 lot in Lynchburg before you secured these warrants?

25 A Yes, sir.

1 Q Did you receive from Mr. Cash any
2 authorization to put a lien on these vehicles or to
3 sell these vehicles or to otherwise part with these
4 vehicle?

5 A No, sir.

6 Q What was your reason for securing the
7 criminal warrants on Mr. Cash?

8 A It's company policy, sir, that all
9 checks, bad checks, received and not taken care of
10 within the five days required, that warrants are
11 obtained.

12 Q What were you prepared to do or what did
13 you in fact do in relation to these criminal warrants
14 that were issued against Mr. Cash as far as testifying
15 and assisting the Commonwealth is concerned?

16 A We were prepared to prosecute Danny's
17 Auto Sales for the issuance of bad checks in Montgomery
18 County Court.

19 Q Did you do that?

20 A Yes, sir, on the 8th of February.

21 Q Did you receive any money before going to
22 court on the 8th of February?

23 A On the 7th of February we received the
24 balance due.

25 Q And what was the balance due at that

1 time?

2 A I would have to estimate somewhere around
3 eleven or twelve thousand dollars I think it was.

4 Q So as I understand your testimony from
5 November 12th until February the 7th of the following
6 year you had not received --

7 MR. JOHNSON: I object to the question,
8 leading, if Your Honor please.

9 THE COURT: Sustained.

10 MR. MULLEN: I'll withdraw the question.

11

12 BY MR. MULLEN:

13 Q On the morning of February the 8th of
14 1985 tell the jury what you as a representative of
15 Triangle Auto Auction did in relation to the felony
16 charges against Mr. Cash.

17 A I went to the Montgomery County
18 Courthouse where the court was scheduled to be held.

19 Q And?

20 A Prior to Mr. Cash being called to have
21 his case heard, I was asked to go into a small room,
22 basically like we have here across the hall, with Mr.
23 Keith and Mr. Johnson.

24 Mr. Keith asked me, he says, was the --
25 have the checks been paid, and I said, yes, sir, they

1 were paid yesterday. And then with the discussion with
2 Mr. Johnson, with Mr. Keith, the understanding I have
3 is that the commonwealth attorney determined that the
4 recommendation would be made to the judge that the case
5 be dismissed seeing that restitution had been made, as I
6 believe in Montgomery County Court that the court just
7 doesn't prosecute bad --

8 MR. JOHNSON: We object to that.
9

10 A -- check cases once they have been paid.

11 THE COURT: Wait a minute.

12 THE WITNESS: Oh, I'm sorry.

13 MR. JOHNSON: We object to that as either
14 hearsay or opinion or his understanding of
15 what the court does.

16 THE COURT: All right. I think that's
17 right, Mr. Mullen. Won't you have evidence
18 as to what really happened?

19 MR. MULLEN: Yes, I do.

20 THE COURT: So I sustain.
21

22 BY MR. MULLEN:

23 Q Did you dismiss the charges against Mr.
24 Cash?

25 A No, sir.

1 Q Have you had any conversations with the
2 commonwealth's attorney's office regarding dismissing
3 these charges against Mr. Cash?

4 A No, sir.

5 Q Did you at that time have an
6 understanding of whether you had the power to dismiss
7 the charges against Mr. Cash?

8 A I can't dismiss them, sir. Once the
9 warrants have been issued they have to go to court and
10 the court decides whether it's dismissed or not.

11 Q During the period of time from November
12 the 12th, 1984 when the first was -- when the first
13 check was passed and February the 7th of 1985 when the
14 total of eleven thousand and some dollars was paid,
15 whose money was being used or had been used to pay the
16 sellers of the cars that the checks represented?

17 A Triangle Auto Auction's money was.

18 Q Now, explain to the jury the procedure
19 when a bad check comes back to your depositing bank,
20 tell them what happens to your account.

21 A Our account is decreased by the amount of
22 the check. And the night of the sale, we'll say you buy
23 a car, you give us a check, on the night of the sale
24 we take your check, we deposit it into Triangle Auto
25 Auction's account, we pay the seller with a Triangle

1 Auto Auction check. If your check bounces that is not
2 the seller of the vehicle's problem, that is your
3 problem and Triangle Auto Auction's problem.

4 Our account is charged the amount of the
5 bad check. It is up to us to manage our business, get
6 you to pay the check, if possible, and during the
7 period of the, say, November until the 7th of February,
8 Triangle Auto Auction was basically out sixteen
9 thousand dollars, we'll say, less what Mr. Cash
10 authorized us to use the proceeds of one sale and the
11 two thousand he paid us at the end of December.

12 Q Did you ever have an agreement with Mr.
13 Cash not to prosecute him for bad checks that he had
14 given you?

15 A No, sir.

16 Q Did you ever make the receipt of the six
17 titles or the twenty-four hundred dollars or the two
18 thousand dollars from him contingent upon your not
19 prosecuting him?

20 A No, sir.

21 Q Was your motive in securing the criminal
22 warrants against Mr. Cash solely --

23 MR. JOHNSON: If Your Honor please, we
24 object to the question, it's leading. He's
25 not asking him what his motive was, he's

1 suggesting what his motive was.

2 THE COURT: I think your question would
3 suggest an answer and I sustain the leading
4 question objection.

5
6 BY MR. MULLEN:

7 Q Tell the jury every reason why you
8 obtained these felony warrants against Mr. Cash.

9 A The reason I obtained the warrants is
10 it's company policy to obtain a warrant on all bad
11 checks that are not satisfied within the five days.
12 The money would be nice to have, but that was not the
13 reason the warrants were got. A crime had been
14 committed.

15 As I understand the interpretation of the
16 law, within the five days there's no problem. After
17 five days a crime basically has been committed, bad
18 checks were issued.

19 Q Now, let's go to one other area. You've
20 been in the auction business as a manager for eight
21 years you said?

22 A Since the 15th of January, '78.

23 Q Can you tell the jury whether the auction
24 business and the car business in general fluctuates
25 from month to month, from time to time, year to year?

1 A Sir, what a car will bring one night
2 doesn't necessarily mean it will bring it the next.
3 There are many reasons for business to be up, business
4 to be down.

5 We've had cars go through the sale on
6 Monday night where a bid may be one figure and they are
7 not sold. The next week the dealer will run the same
8 car through at our auction, it may bring more money, it
9 may bring less.

10 Whether a man has a buyer in his pocket
11 or a prospect that is interested in that type of car
12 will basically determine how much he'll pay for a car.

13 Our auction has run four hundred cars on
14 a Monday night, we've been down to two hundred and
15 fifty. There are times when the economy is bad, and
16 the last two years the economy basically went sour.
17 Unemployment was high, car business is down. All of
18 the car dealers are down, the auctions were down. The
19 number of cars run through Statesville have been down,
20 they been up and down. Fredericksburg is up and down,
21 Harrisonburg is up and down.

22 They are basically -- just recently here,
23 which really isn't too important, with this two point
24 nine or two interest affects it.

25 Q Let me stop you there and get you onto

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1 another question. Has Triangle Auto auction stopped
2 Mr. Cash from buying or selling cars at any automobile
3 auction anywhere in the United States?

4 A No, sir.

5 MR. MULLEN: That's all the questions.

6 Answer Mr. Johnson.

7

8 CROSS EXAMINATION

9 BY MR. JOHNSON:

10 Q Mr. Lancour, how long have you been in
11 the business?

12 A What do you mean, sir, in the business?

13 Q Automobile business.

14 A I'm not in the automobile business, I
15 just manage the Triangle Auto Auction, sir, and I've
16 done that since the 15th of January, 1978.

17 Q Triangle Auto Auction has something to do
18 with automobiles, doesn't it? It's Triangle Automobile
19 Auction primarily, isn't it?

20 A Triangle Automobile Auction primarily,
21 yes, sir.

22 Q So how long have you been doing it?

23 A Since the 15th of January, '78.

24 Q Seventy what?

25 A Eight, approximately eight years.

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1 Q And you've been manager and are still?

2 A Yes, sir.

3 Q Does Mr. Sale own the company?

4 A It's a corporation. A gentleman by the
5 name of Mr. Galmore is the president, Mr. Sale is the
6 vice president.

7 Q Are they the two owners?

8 A Yes, sir.

9 Q So they are really your superiors as far
10 as direction and control and so forth?

11 A Yes, sir.

12 Q Now, you said you discussed three or four
13 years ago with the commonwealth's attorney the matter
14 of how to proceed on checks that were returned unpaid?

15 A Yes, sir.

16 Q And you say he went over the procedure
17 and he prepared you that form notice?

18 A Yes, sir.

19 Q And you've used that same form on other
20 occasions since then, I suppose?

21 A Yes, sir.

22 Q And you said that he told you that if
23 you sent a five day notice that it wasn't paid within
24 that five days, the obligation, that then there was a
25 presumption that it was given with intent to defraud?

EUGENE LANCOUR - CROSS

1 A This is the guidance that I received from
2 the commonwealth attorney's office, yes, sir.

3 Q Now, may I see the -- let me ask you
4 this: You notice the language on your second
5 paragraph? Of course, this is what you understood to be
6 the requirement before the commonwealth attorney would
7 prosecute a case and that's why it's posted on the
8 wall, is that right?

9 A Yes, sir.

10 Q Okay. The second paragraph, if it is
11 the desire of the victim to simply recover the amount
12 of the check and/or associated costs, the case will
13 not, and not is underlined, be treated as a criminal
14 case by the commonwealth attorney.

15 A Right.

16 Q And you knew from that that if the
17 primary purpose was to recover your money rather than
18 prosecute that it wouldn't be prosecuted?

19 A Yes, sir.

20 Q Now, you notice down here the following
21 checks cannot be prosecuted criminally and then there
22 are seven instances, is that right?

23 A Yes.

24 Q One of those is number five, checks which
25 have been held by the payee -- That would be you, the

EUGENE LANCOUR - CROSS

1 payee, right?

2 A Yes, sir.

3 Q -- for payment by agreement, is that what
4 you understood? If you held a check for payment and so
5 forth rather than entering prosecution they wouldn't
6 prosecute on it?

7 A What do you do with the check, sir?

8 Q I'm asking you is that what you
9 understood. It doesn't matter what I would do with it.
10 Is that what you understood, that if you held a check
11 rather than going ahead to prosecute, if you held it
12 for payment under some kind of agreement, they would
13 not prosecute?

14 A Within the five days I would have
15 classified it as being held for the payment. After
16 five days as being held to take to court when I have to
17 go with the warrant.

18 Q Do you see anything on number five about
19 five days, Mr. Lancour?

20 A No, sir.

21 Q Did you understand and do you understand,
22 you're an intelligent man, that language says, checks
23 have been held by the payee, which would be you,
24 Triangle, for payment by agreement, rather than
25 prosecution having been entered. You know if you held

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1 it under some agreement they would not prosecute?

2 A I had no agreement to hold it.

3 Q Do you know that if you held it under
4 some agreement they would not prosecute from that
5 language?

6 A I don't understand what you're trying to
7 point out.

8 Q The language says that if you held a
9 check, checks which have been held by the payee for
10 agreement -- by agreement, that they would not be
11 prosecuted. If you had held them rather than going
12 ahead and prosecuting at the time, if you held them
13 under some agreement they would not prosecute it?

14 A Yes, but I had no agreement.

15 Q Is that what you understood?

16 A I would say this is what it says, yes.

17 Q All right. Okay. That's all I'm asking
18 you.

19 Now, do you agree that you wrote these
20 certified letters and so forth for the checks -- for
21 the payment of the checks, the three certified letters?

22 A Yes.

23 Q They were written by you?

24 A Yes.

25 Q The last of those letters -- and if you

1 need to refer to the date I think they are right there
2 on the Judge's desk right beside you -- the last
3 certified letter was mailed on December the 12th, is
4 that right?

5 A If that's the date of the letter, yes,
6 sir, I will agree with that.

7 Q Well, I don't want to mislead you, so let
8 me let you look at it.

9 THE COURT: 12-12-85 would be No. 5, I
10 believe.

11 MR. JOHNSON: Yes, sir.
12

13 BY MR. JOHNSON:

14 Q Look at that, please, and see if that
15 wasn't written on December the 12th, 1985?

16 A No, sir, it was written on 12-12-84.

17 Q I'm sorry, '84.

18 A Right.

19 Q December the 12th, '84, is that right?

20 A Yes, sir.

21 Q And does it shows on -- I think the
22 return receipt on there it was received the following
23 day, the 13th, was it not, by Mr. Cash?

24 A I don't have the return receipt, sir. It
25 could be, it was about one day mail time up here to

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1 Lynchburg.

2 Q One day mail time?

3 A Yes.

4 Q Well, it shows that it was mailed by you
5 on the 13th, doesn't it?

6 A Uh-huh.

7 Q The postmark?

8 A Yes.

9 Q So then he probably at normal mailing
10 time from Riner or Radford -- Riner is just out of
11 Radford, isn't it?

12 A Yes, sir.

13 Q He normally would have received it on the
14 14th?

15 A Okay.

16 Q Is that true?

17 A I don't know what day he received it,
18 sir, you have the receipt.

19 Q You said a moment ago, Mr. Lancour,
20 that normally mailing time is one day.

21 A One to two days, right.

22 Q One to two. So either the 14th or 15th?

23 A Uh-huh.

24 Q Is that right?

25 A Yes.

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1 Q Now, either two or three days later then,
2 did you receive these titles from him to secure that
3 debt?

4 A I believe the titles, sir, as I
5 understand it, were not received to secure the debt.
6 The titles were received -- I believe has been
7 testified and shown that they were received somewhere
8 around the 17th of December.

9 Q Somewhere around, I mean was it on the
10 17th?

11 A Well, Danny mailed them on the 17th, we
12 probably got them on the 18th.

13 Q I'll ask you to check and see if that's
14 correct. Haven't you previously admitted that you
15 received them on December 17th, 1984?

16 A I don't know if we admitted receiving
17 them on the 17th or it was testified it was mailed on
18 the 17th.

19 THE COURT: I believe Exhibit 6 refers to
20 that.

21 THE WITNESS: As being mailed on the
22 17th.

23

24 BY MR. JOHNSON:

25 Q Did you also -- it shows that received at

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1 so forth, date, time, et cetera, Federal Express used
2 12-17.

3 A I don't see where it shows on here, sir,
4 when we --

5 Q What does it say right down there?

6 A Well, I don't know what FEC stands for
7 except that I know --

8 Q Federal Express Company.

9 A Okay. That's the time they picked them
10 up from Mr. Cash.

11 Q Did you receive it on the 17th?

12 A I don't know if we got it on the 17th or
13 18th.

14 Q Have you previously admitted that you
15 received them on the 17th?

16 A All right, sir. We got them on the 17th.

17 Q So you're not arguing about that, you did
18 get them on the 17th?

19 A We'll say the 17th, yes, sir.

20 Q Don't we'll say, did you or did you not
21 get them on the 17th? You've previously admitted that,
22 have you not?

23 MR. MULLEN: Your Honor, he already
24 testified he doesn't know.

25 THE COURT: Do you all agree that he

1 got them on the 17th or not?

2 MR. MULLEN: I don't know what day we
3 got them either.

4 THE COURT: Didn't y'all do some
5 discovery about this?

6 MR. JOHNSON: Yes, sir.

7 THE COURT: I would think that would
8 be resolved so that wouldn't be an issue.
9

10 BY MR. JOHNSON:

11 Q Mr. Lancour, were you asked by document
12 requesting admissions that were submitted on July 15th,
13 1985, were you asked to -- one of the questions, please
14 admit that on or about December 17, '84 you received
15 from the plaintiff titles to several vehicles. And
16 your answer was, it is admitted. Is that correct?

17 A If that's in there, yes, sir, we received
18 them on the 17th.

19 Q All right. Now, you were also asked,
20 please admit that it was agreed that these vehicle
21 titles were to be held as collateral for payment of
22 checks. Your answer, request for admission three,
23 which is that admission, is admitted insofar as it
24 alleges that the vehicle titles were, in fact,
25 collateral. Defendant does not admit that the vehicle

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1 titles were, in fact, collateral, only that it was
2 agreed they would be held as collateral.

3 A I myself, sir, don't recall.

4 Q Is that your admission?

5 A If it's in there, yes, sir, it has to be
6 my admission.

7 Q All right. So your admission was that
8 it was agreed that they be held as collateral?

9 A Okay.

10 Q Is that correct?

11 A Yes, sir.

12 Q All right. Now, you do know that the
13 17th or 18th, that would be either two or three days
14 after he received this last certified letter, do you
15 not?

16 A Yes, sir.

17 Q So at least in regard to that letter, the
18 last one, he would be within the five days, wouldn't
19 he?

20 A No, sir.

21 Q He would be -- he wouldn't be within five
22 days of the letter?

23 A The understanding I have from the
24 discussions with the commonwealth attorney is the five
25 days are from the date of the letter, not when

1 received.

2 Q Well, the date of the letter is the 12th.

3 A Right.

4 Q Is that right?

5 A Right.

6 Q And the titles were received on the 17th
7 you said and I think that's five days.

8 A Right, sir.

9 Q It's five days, but you say it's not five
10 days?

11 A No, sir, I would say it's five days.

12 Q All right. Then so you agree it's
13 within five days.

14 Now, were you present when Mr. Sale and
15 Danny Cash had this conversation by telephone?

16 A No, sir, I wasn't. I was in my office
17 which is downstairs. We have a two story building.
18 Mr. Sale was in his office upstairs.

19 Q But you knew about the conversation?

20 A After it took place, yes, sir.

21 Q Did you know, were you informed that Mr.
22 Sale had asked Danny Cash in talking about something
23 that would protect you on your debt, that he asked how
24 many cars you have on your lot?

25 A No, sir.

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1 Q You didn't know that?

2 A No, sir.

3 Q Did you know that he asked can you send
4 me some titles, will you send me some titles to protect
5 us on the debt?

6 A Mr. Sale told me that he was having Danny
7 Cash send us titles.

8 Q That he what?

9 A That he was having Mr. Cash send us
10 titles.

11 Q That he was having Mr. Cash send us
12 titles?

13 A Right. He didn't tell me how many or
14 what they were to or anything else other than he was
15 sending titles.

16 Q But you knew it was for the purpose as
17 you have already admitted as collateral to secure the
18 debt, did you not?

19 A When he told me that, yes, sir.

20 Q And that was right after the conversation
21 took place?

22 A Yes, sir.

23 Q Wasn't it?

24 A Yes, sir.

25 Q So that would have been before the

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1 warrants were issued, a long time --

2 A Yes, sir.

3 Q And did you also know, in fact, I think
4 maybe you did receive yourself, you received the
5 titles, didn't you?

6 A Yes, sir, we received the titles.

7 Q And you agreed you received them on the
8 17th?

9 A Yes, sir.

10 Q And you got the warrants on the 21st?

11 A Yes, sir.

12 Q Which would be four days later?

13 A Yes, sir.

14 Q Now, then at the time that you got the
15 warrants you had received the credit of twenty -- what
16 was it?

17 A Roughly twenty-four fifty something.

18 Q Twenty-four fifty-four from the
19 Ramcharger?

20 A Yes, sir.

21 Q That was credited back even before the
22 certified letters, wasn't it?

23 A No, sir, it was credited back on the
24 14th of December.

25 Q 14th of December, so it was after the

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1 certified letters?

2 A Yes, sir.

3 Q You say the Ramcharger was -- it was
4 sold?

5 A On the 29th of November.

6 Q All right. It was sold in November?

7 A Right.

8 Q So you didn't actually note it on your
9 books as a credit until when?

10 A Until we received a title from Mr. Cash.

11 Q But you had sold it on the --

12 A Title attached on the 29th of November.

13 Q On the 29th of November, so you had sold
14 it before the certified letters?

15 A Sir?

16 Q You had sold it before you sent the
17 certified letters?

18 A Yes, sir.

19 Q But had not collected the money?

20 A Right, sir.

21 Q Or credited it rather?

22 A Well, we hadn't collected it really until
23 we got Mr. Cash's title where we could give it to the
24 buyer.

25 Q You had the vehicle, you sold it, and you

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1 had the bid and so forth and were waiting for the title
2 and then when you got that you credited it?

3 A Well, we got the title, sent it to the
4 buyer, and discussion with Mr. Cash on the 14th of
5 December he said use the money that you're holding down
6 there for me to go against the bad checks.

7 Q And you did that?

8 A Yes, sir.

9 Q Credited it towards that?

10 A Yes, sir, credited it towards the
11 balance.

12 Q Now, in regards the getting or obtaining
13 of the warrants on the 21st, at that time when you got
14 that you had received the credit for the Ramcharger,
15 the twenty-four hundred dollars?

16 A Yes, sir.

17 Q And you had gotten the titles?

18 A Yes, sir.

19 Q All right. And the titles were in your
20 possession?

21 A Yes, sir.

22 Q Now, you said you did not get a
23 reassignment and you didn't get a lien -- lien
24 executed?

25 A No, sir.

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1 Q To your knowledge -- well, first of all,
2 you didn't ask for a reassignment from Mr. Cash, did
3 you?

4 A No, sir.

5 Q You didn't ask for a lien from Mr. Cash,
6 did you?

7 A Pardon me?

8 Q You did not ask for a lien on the titles
9 from Mr. Cash, did you?

10 A No, sir.

11 Q To your knowledge Mr. Sale did not
12 either, did he?

13 A No, sir.

14 Q So Mr. Cash sent what Mr. Sale told you
15 he had requested Mr. Cash to send, the titles?

16 A I would say so, yes, sir.

17 Q Now, you say that you did not have an
18 agreement, neither you nor Mr. -- neither you nor Mr.
19 Sale, not to prosecute if he sent these checks -- these
20 titles?

21 A We did not -- I did not have an agreement
22 with Mr. Cash --

23 Q And neither --

24 A -- not to prosecute.

25 Q And neither did Mr. Sale?

1 A To my knowledge, no, sir.

2 Q What would you say would be the reasons
3 or purpose or understanding or implied agreement
4 resulting from Mr. Sale saying, send me those titles, I
5 have asked Danny Cash to send me those titles, and he
6 sent titles which exceed the amount of the debt? What
7 would be the implied agreement there if it wasn't that
8 that was to avoid prosecution?

9 A I don't know, sir.

10 Q You think he just done it to be Santa
11 Claus or something?

12 A I don't think so, no.

13 Q You would have understood and Mr. Sale
14 understood that that was to secure this debt and that
15 you would ride along with that and allow him reasonable
16 time to pay this money, wasn't it?

17 A No, sir, I don't think so.

18 Q You don't think so.

19 A No, in discussions I had with Mr. Cash
20 over those checks it was brought out to him if warrants
21 were ever obtained we had no way of stopping them from
22 being issued.

23 Q Well, at the time the titles were agreed
24 by Mr. Cash to be sent and at the time they were
25 received on the 17th of December, warrants had not been

1 obtained?

2 A No, sir, they had not been obtained.

3 Q And you didn't give me any other implied
4 agreement from that conversation or understanding from
5 that other than these titles were to be sent and
6 thereby avoid further action, can you?

7 A There was no agreement --

8 Q No, agreement.

9 A -- with Mr. Cash.

10 Q And you do not consider that, his being
11 asked for titles sufficient to cover the debt and them
12 being sent and received, to be an agreement that comes
13 within that notice of an agreement to hold the check
14 and not prosecute on them, you don't consider it that?

15 A No, sir.

16 Q But you can't tell me what kind of
17 agreement it was or why you would have done it
18 otherwise?

19 A I wouldn't have done it.

20 Q You wouldn't have done it. I think we
21 can agree to that. If you had been Mr. Cash you
22 wouldn't have done it, but he did do it.

23 A No, sir, if I had been Mr. Sale.

24 Q Oh, if you had been Mr. Sale you wouldn't
25 have done it?

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1 A No, sir.

2 Q But Mr. Sale is president of the company?

3 A He's the vice president of the company,
4 sir.

5 Q He's your superior?

6 A Yes, sir.

7 Q So he had more right than you did to
8 make agreements?

9 A He can do what he wishes.

10 Q And has the authority to do so?

11 A Yes, sir.

12 Q Now, when you talked with Mr.
13 Keith, assistant commonwealth attorney, not three or
14 four years before, but didn't -- did you say you talked
15 to him again at the time these warrants were issued or
16 not?

17 A Yes, sir, at the time I went to get those
18 warrants I had to go over to his office.

19 Q And you did not tell him, sir, at that
20 time you showed him the copies of the certified mail
21 and, in fact, you had gotten receipts back?

22 A Yes, sir.

23 Q You did not tell him that you had
24 received twenty-four hundred dollars from the
25 Ramcharger and credited it, you did not tell him you or

1 Triangle had received six titles at that time, did you?

2 A No, sir, I didn't.

3 Q Didn't mention it?

4 A No, sir.

5 Q You knew what Mr. Sale had told him and
6 you had gotten the titles and as a result of that
7 you didn't tell Mr. Keith?

8 A No, sir.

9 Q All right, sir. You didn't tell the
10 magistrate, I'm sure, did you?

11 A Sir?

12 Q You didn't tell the magistrate, did you?

13 A The magistrate don't talk to you, they
14 just send you over to the commonwealth attorney's
15 office.

16 Q Well, the magistrate's sign kind of talks
17 to it, doesn't it, when it says you can't hold checks
18 for payment and then after get a warrant. You read
19 that notice, didn't you, you had read that notice many
20 times?

21 A Sir, I knew the notice was there. When I
22 got ready to get them I went directly to Mr. Keith's
23 office.

24 Q All right. You do admit, do you not,
25 that on or about December the 29th, 1984, two days

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1 before Danny was arrested, that you received by
2 certified mail from him a cashier's check for two
3 thousand dollars to be applied on this?

4 A Yes, sir.

5 Q Now, at the time that -- between the time
6 of the checks coming back, say, the first check coming
7 back, between that time and the time that you sent
8 these letters you and/or Mr. Sale had a number of
9 conversations by telephone with Danny Cash, didn't you?

10 A Yes, sir.

11 Q And you were insistent on payment and so
12 forth?

13 A Yes, sir.

14 Q And while you were insistent on payment
15 you were holding the checks, were you not?

16 A Sir?

17 Q While you were insisting on that you were
18 holding these checks rather than seeking any
19 prosecution then, were you not?

20 A I still had the checks, yes, sir.

21 Q And you were calling him, would you
22 agree, at least every day?

23 A No, sir.

24 Q You deny you called every day?

25 A Yes, sir.

1 Q Have you checked your telephone records
2 to see whether you called every day or not?

3 A I didn't check them.

4 Q I mean working days.

5 A I'm talking about working days, yes, sir.
6 I didn't call Mr. Cash every day, I may have talked to
7 him two or three times a week, but I didn't call --

8 Q Two or three times a week?

9 A He'd call me.

10 Q You talked to him like three times a week
11 about collecting the debt?

12 A Yes, sir.

13 Q And took no action to send notice or
14 anything else to him. And you were interested primarily
15 in collecting the debt, weren't you, Mr. Lancour?

16 A Sir, I sent the letters the way they were
17 supposed to be sent, but still had to talk with Mr.
18 Cash.

19 Q Well, you held those checks before you
20 sent the letters, didn't you, for some period of time
21 and called him in between, that was my question.

22 A Yes, sir, I held the checks and I called
23 him.

24 Q Now, you've described, given your account
25 of the meeting up there in the district court and the

1 little room to the left as you face the judge's bench
2 the little room to the left, and you said that you were
3 prepared to prosecute and so forth?

4 A Yes, sir.

5 Q Let me ask you: Were you not asked by
6 Mr. Keith there in my presence and the presence of Mr.
7 Keith, were you not asked by him, Mr. Lancour, you say
8 you've gotten the money, do you want to prosecute? And
9 didn't you say, well, Mr. Keith, I only am interested
10 in my money?

11 A No, sir, I did not, if you recall, you
12 were there.

13 Q I certainly was.

14 A I said, Mr. Keith, I said, whether we
15 prosecute or not is entirely up to the court.

16 Q But you said, my only interest was
17 collecting our money, didn't you?

18 A No, sir.

19 Q He asked now if you were satisfied and
20 you kind of laughed and said, yes, I've got my money
21 and --

22 A He asked me if the checks had been paid,
23 and I said, yes. And he said, what would you say to if
24 the case was dismissed? And I said, whether it is
25 dismissed or not dismissed, sir, is entirely up to the

1 judge, I said, because I don't have the authority to
2 dismiss the case, the warrant was obtained and we're
3 here. I said, if you want to dismiss it, Triangle Auto
4 Auction will go along with it. If you want to prosecute
5 it, we will go along with that. Never did I tell Mr.
6 Keith or you, sir, that I had gotten my money and
7 laughed, because I was not there for my money.

8 Q Did you not say that you would go ahead
9 with whatever he wanted to do, it was up to him, but
10 that you were satisfied, you had gotten your money?

11 A No, sir, I did not say I was satisfied,
12 I said I would go along with what he recommended.

13 Q All right, sir.

14 MR. JOHNSON: Excuse me one second,
15 Judge. I think maybe I'm through.

16 That's all.

17 THE COURT: Any redirect?

18 MR. MULLEN: Just two or three questions,
19 Mr. Lancour.

20
21 REDIRECT EXAMINATION

22 BY MR. MULLEN:

23 Q At the time those three bad checks were
24 passed to Triangle Auto Auction, did you have or anyone
25 else at Triangle have an agreement with Mr. Cash or

1 Cash's Auto Sales to hold those checks for later
2 payment?

3 A No, sir.

4 Q Why did you not tell Mr. Keith, the
5 assistant commonwealth's attorney, before you secured
6 the warrants for Mr. Cash that you had received either
7 titles or partial payment?

8 A Because I had been told by Mr. Keith
9 in the past that partial payments or anything else has
10 no bearing on it once the five days is past.

11 MR. MULLEN: Thank you. That's all.

12

13 RECROSS EXAMINATION

14 BY MR. JOHNSON:

15 Q Mr. Lancour, you didn't tell him about
16 having received either the payments, the partial
17 payments or the titles because you knew if you told him
18 that you had titles -- payment of twenty-four hundred
19 dollars plus titles to secure you in your position they
20 wouldn't issue a criminal warrant, didn't you?

21 A No, sir, that's not true.

22 Q Why didn't you tell him, why didn't you
23 give him a full account?

24 A Because it had no bearing on it, the
25 warrant was still eligible to be issued.

1 Q So then you were relying upon what you
2 thought didn't have any bearing on it?

3 A I was told it didn't have any bearing on
4 it, sir.

5 Q One other thing, you said you wouldn't
6 have done what Mr. Sale did about agreeing to take
7 those titles?

8 A I didn't need them, I got the warrants.

9 Q I said, you said you wouldn't have done
10 what he did in agreeing to take those titles?

11 A I said I wouldn't have got the titles.

12 Q You wouldn't have agreed to it?

13 A Agreeing, sir, has nothing to do with it.
14 I would not have asked Mr. Cash for the titles, sir.

15 Q You're an intelligent man, you know what
16 my question is. You said a moment ago that Mr. Sale
17 did this, but that you wouldn't have done it had it
18 been you.

19 A I would not have asked for the titles,
20 no, sir, I can't do nothing with them.

21 Q And the reason you wouldn't have asked
22 for it because you knew that by doing that he was
23 making an implied agreement to delay a prosecution,
24 take the titles to secure him, and Danny Cash would pay
25 it within thirty to forty-five days?

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1 A No, sir, having the titles doesn't help
2 me a bit, I can't do nothing with Danny Cash's titles.

3 Q But he couldn't do anything with the cars
4 if you had the titles, could he?

5 A He can sell them.

6 Q It would be against the law to sell them.

7 A No, siree, he can sell it title attached,
8 he does it Monday nights at the sale, he buys it title
9 attached.

10 Q He could sell cars in somebody else's
11 name?

12 A They weren't in someone else's name.

13 Q They were still in the name of the
14 original seller?

15 A They were in the name of Danny's Auto
16 Sales, they were reassigned over to him from wherever
17 he purchased them. He got them from Triangle Auto
18 Auction the night of the sale and they were assigned
19 over to Danny's Auto Sales when he gave us his checks.

20 Q All right. If they were signed over to
21 him he could sell those cars?

22 A Yes, sir. He could sell the six cars
23 that he gave --

24 Q He didn't send the titles on those cars,
25 he sent you the titles on other cars, not the ones he