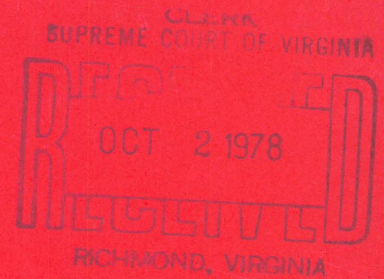


219 VA 671



IN THE
Supreme Court of Virginia

AT RICHMOND

RECORD NO. 78-0511

JAMES J. REESE,
Appellant,

v.

COMMONWEALTH OF VIRGINIA,
Appellee.

JOINT APPENDIX

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

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

TABLE OF CONTENTS

	<u>Page</u>
Indictment	1
Grand Jury Return	2
Warrant	3
Order of Trial & Conviction	4
Notice of Appeal	6
Assignments of Error	7
Entire Transcript of the Proceedings on the 13th day January 1978	8

Docket File

COMMONWEALTH OF VIRGINIA

v.

JAMES J. REESE

INDICTMENT

JANUARY Term, 19... 78

GRAND LARCENY

A TRUE BILL

August E. Capozzi
Foreman.

Witnesses:

Sgt. Chambers

VERDICT

he jury, find the defendant

Foreman..

p. d.

Fine \$.....

Clerk \$.....

Com. Atty.

Witnesses

Sgt.

Court Reporter.

Atty. (Appt.)

Jury

D. M. V.

Abstracts

Warrant

Municipal Ct. Fee.

Atty. (Lower Ct.).

Total Costs \$.....

Total Fine & Costs \$.....

2839B

IN THE CIRCUIT COURT OF THE CITY OF PORTSMOUTH:

The Grand Jury charges that: on or about September 17

P. 7Z in the City of Portsmouth James J. Reese did steal two Firestone Tires
valued at \$155.00 or more, having a value of approximately \$110.00 belonging
to Firestone Tire & Rubber Company,

Felony

Commonwealth of Virginia

City of Portsmouth

To any Police Officer of the City of Portsmouth or any other Authorized Officer:

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

James Junious Reese

Accused

632 Lancer Dr. Ports, Va.

Last Known Address

and to bring him (her) before the Portsmouth General District Court to answer a charge that on or about

9/17/77

19

, he (she) committed an offense in this City, in violation

of Section 18.2-95 of the Code of Virginia, in that he (she) did unlawfully and feloniously

steal two Firestone tires GR-70x-15 white walls value \$ 110.00

~~belonging to Firestone Tire & Rubber Co. located 901 Frederick~~
Blvd. Portsmouth, Va.

POC 901 Frederick Blvd. Ports, Va.

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

I, George W. Cooper, Magistrate for the City of Portsmouth have found

probable cause to believe the accused committed the offense.

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

Witnesses:

George W. Cooper
Magistrate for the City of Portsmouth

☐ Additional Witnesses on Reverse Side

Felony

77-907

The Commonwealth

vs.

James Junious Reese

632 Lancer Dr. Portsmouth,

N M DOB 1/13/37

(Description)

Docket No. _____

Executed by arresting the within named

accused this Sept. 26 day of

Sept. 1977

Time 1:25 P.

Det. J. C. Turner P. O.

Det. P. M. Duckwall P. O.

Complainant Notified? _____

City Cost 10.00

Richard L. Linn, Jr. P. D.

NOV 19 1977

19

\$ _____

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

COMMONWEALTH OF VIRGINIA

v.

JAMES J. REESE

)

)

)

Upon an Indictment for Grand
Larceny
Criminal Docket No. 28896 -
January term, 1978

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

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

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

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

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

VIRGINIA: IN THE CIRCUIT COURT FOR THE CITY OF PORTSMOUTH

COMMONWEALTH OF VIRGINIA

vs.

NOTICE OF APPEAL AND
ASSIGNMENTS OF ERROR

JAMES REESE

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

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

ASSIGNMENTS OF ERROR

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

A transcript is to be hereafter filed.

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

JAMES REESE

By

Richard N. Levin

Of Counsel

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

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

Richard N. Levin

N. MARCUS & LEVIN
ATTORNEYS AT LAW
PORTSMOUTH, VA

FILED
JAN 23 1978
CLERK OF COURT
PORTSMOUTH, VA

Rec'd 2/10/78
Wmmy

VIRGINIA: IN THE CIRCUIT COURT OF THE CITY OF PORTSMOUTH

COMMONWEALTH OF VIRGINIA

VS.

JAMES J. REESE

INDICTMENT #28,896

Nothing in
the transcript
to say someone
called the
up. twice.

TRANSCRIPT

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

* * * * *

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

RICHARD N. LEVIN, ESQ.
Counsel for the Defendant

(Court reporter sworn)

Reported by Faye B. Chapman

I N D E X

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

* * * * *

MOTION to sequester witnesses	Page 4
MOTION to strike	37
MOTION to strike, renewed	39

* * * * *

1 THE COURT: How old is your client,

2 Mr. Levin?

3 MR. LEVIN: Forty-one, Your Honor.

4 THE COURT: And date of birth?

5 MR. LEVIN: Today, Your Honor.

6 THE COURT: Today?

7 MR. LEVIN: Forty-one today.

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

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

14 THE COURT: Is the defense ready to proceed?

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

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

20 Oh, yes, swear the court
21 reporter.

22 (Court reporter sworn).

23 (Defendant arraigned on Indictment #28,896).

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

1 THE DEFENDANT: Not guilty.

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

4 THE DEFENDANT: Court.

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

7 MR. WEAVER: Commonwealth waives trial by
8 jury.

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

13 (Witnesses and defendant sworn).

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

16 THE COURT: Very well. Motion to sequester
17 granted.

18 Are you sending the Commonwealth's
19 witnesses upstairs?

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

23 (Witnesses leave courtroom).

24 * * * * *

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

* * * * *

DIRECT EXAMINATION

EXAMINED BY MR. WEAVER:

Q Would you state your name, sir.

A Charles A. Wooldridge.

Q Where are you employed, sir?

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

Q Is that in the City of Portsmouth?

A That's correct, sir.

Q Were you employed there September 17, DA Te
1977?

A Yes, I was.

Q Have you ever seen the defendant before?

A I wouldn't recognize him, no.

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

A That's correct, sir.

MR. WEAVER:

Q Did anything happen at your Firestone

Store on this day, sir?

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

Q Did the representative arrive to pick up the tires?

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

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

A No, sir.

Q Did you look for these tires, sir?

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

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

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

MR. WEAVER:

Q What was the value of these tires, sir?

A Wholesale value, approximately \$110.00.

Q What type of tires were they?

1 A It was a radial tire, whitewall
2 radials.

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

5 A No, sir, together.

6 MR. WEAVER:

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

9 A No, sir.

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

12 CROSS EXAMINATION

13 EXAMINED BY MR. LEVIN:

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

16 A That's correct, sir.

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

19 A That's correct.

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

1 A Well, I stated they were \$55.00 each.

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

3 A This was a steel radial tire.

4 Q Made by whom?

5 A Firestone Tire and Rubber Company.

6 Q And the serial number? -

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

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

9 A Sir, we go by size.

10 Q And you pulled these tires?

11 A Yes, sir.

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

14 A Yes, I did.

15 Q How many tires do you have there?

16 A I'd say about 2,000 tires.

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

19 A Only one, Firestone.

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

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

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

*He said
serial
numbers
to identify
the tires
so no
way to tell
if they
belonged
to which
Firestone
store.*

1 your cost value?

2 A We looked it up at the time, sir.

3 Q Who looked it up?

4 A My office and credit man and myself.

5 Q Did you look it up?

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

8 Q So the cost was \$55.00 on each tire?

9 A That's correct.

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

12 A No, I did not.

13 Q Were you still the manager at the time?

14 A Yes.

15 Q Of that store and still are on this day?

16 A That's correct.

17 Q And so if your manager indicated in
18 lower court -

19 MR. WEAVER: Objection, Your Honor.

20 He can ask him -

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

23 THE COURT: Let Mr. Weaver make his
24 objection.

25 MR. WEAVER: Your Honor, the manager

is not on the stand to testify.

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

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

MR. LEVIN:

Q Let me ask you something -

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

MR. LEVIN:

Q Was the number of the tire GR-15?

A GR-70x15.

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

A They can fit Oldsmobiles, Buicks -

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

A No, not necessarily.

Q Would they fit a Chevrolet?

A They could, very easily.

The type
of tire flaid
was taken
GR-70x15
used only
for and
Olds & Buick

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

A Yes, they do.

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

A No, we do not.

Q Then what is the point of the serial
number?

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

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

A No, we do not.

Q Why is that, sir?

A They record them when they sell them.

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

A We go by size, not serial numbers.

Q How many of these tires did you have?

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

Q Now, when you went to check your

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

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

4 A No, sir.

5 Q No? You just - Just the cost of the
6 tire and so that's the only inventory check you have.

7 Well, if I may be so curious, how do you check inventory?

8 A By size.

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

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

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

17 * * * * *

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

19 * * * * *

20 LONNIE SIMS, Witness
21 called by the Common-
22 wealth, having been
23 first duly sworn, was
24 examined and testified
25 as follows:

* * * * *

DIRECT EXAMINATION

EXAMINED BY MR. WEAVER:

Q State your name, please, sir.

A Lonnie Sims.

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

A Firestone Tire and Rubber Company.

Q Where is it located?

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

Q Have you ever seen the defendant before?

A Yes.

Q Where did you see him?

A At the place I worked, Firestone.

Q What day was this?

A I don't know the exact date but it was
in September. *DON'T KNOW EXACT DATE;*

Q What if anything happened that day
concerning this defendant?

A Say that again, please.

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

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

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

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

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

13 MR. WEAVER: Yes, sir.

14 Q What time -

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

20 MR. WEAVER:

21 Q Do you recall the time of day, sir?

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

24 THE COURT: During the day?

25 A During the day, yes.

1 MR. WEAVER:

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

4 A It was in the service area.

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

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

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

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

15 Q Where did he go with the tires?

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

18 THE COURT: How many tires did he
19 have?

20 A Two.

21 THE COURT: How was he carrying
22 them?

23 A He was carrying one under each
24 arm.

25 MR. WEAVER:

*First
Saw He
35
feet
from
himself*

*Saw
1
Carry
out
2 tires*

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

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

6 Q What type of car was this?

7 A Appeared to have been about a '73 or
8 '74 Chevrolet Monte Carlo.

9 Q Do you recall the color of the car?

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

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

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

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

19 A No.

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

23 A Not at this time, no, sir.

24 MR. WEAVER:

23

25 Q After you saw him put the tires in

1 the car, what did he do then?

2 A He left then.

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

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

7 MR. WEAVER:

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

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

13 Q Is this when he got his car aligned?

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

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

19 A Was he in the car, you say?

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

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

25 THE COURT: What I'm asking you is 24

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

4 A Yes.

5 THE COURT: The tires in?

6 A Yes.

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

9 CROSS EXAMINATION

10 EXAMINED BY MR. LEVIN:

11 Q Your job capacity at Firestone is what?

12 A It's auto brake and front end mechanic.

13 Q And you were working that day?

14 A Yes.

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

17 A Just one.

18 Q Who?

19 A His name was Raymond Elliott.

20 Q Does he still work there?

21 A Yes, sir.

22 Q And is his bay next to your bay?

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

25 Q Well, now, as you face Firestone and

1 look into Firestone, how many bays are there?

2 A It's seven bays.

3 Q Seven bays?

4 A Right.

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

7 A At which angle -

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

11 A Further end.

12 Q Which way?

13 A Left.

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

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

18 Q Where was this other fellow at, which
19 bay?

20 A He was the next bay to me.

21 Q So you all were next door to each other?

22 A Right.

23 Q Does any of your job capacity include
24 fixing tires?

25 A Yes, occasionally I fix tires.

*all the
workmen
and there
were
only 2
very
near
to each
other
in the
bays
at
Firestone*

Q If you're not busy?

A Right.

Q Was this a busy day?

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

Q What was this fellow's name again?

A Who?

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

A Raymond Elliott.

Q Does he still work at Firestone?

A Yes.

THE COURT: Are you a mechanic?

A Yes, sir.

MR. LEVIN:

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

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

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

A No, sir.

Q And if somebody comes in with problems,

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

3 A Right.

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

6 A No.

7 Q Did you ever do any work on this car?

8 A No, I didn't.

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

12 A Yes, I saw the car.

13 Q Who worked on it?

14 A Raymond Elliott.

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

18 A No, I didn't say anything.

19 Q And did you say anything to Raymond
20 Elliott?

21 A No.

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

24 A No.

25 Q What I'm asking you is there was

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

SA

nothing unusual about him taking these tires, was it?

I mean that happened every day, as a matter of fact, people get tires fixed and put them in the car, is that right?

A But this was not a tire repair.

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

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

Q Car that what?

A The tire had not been mounted.

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

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

Q But it happens, doesn't it?

A It happens, yes.

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

A Yes.

Q How long thereafter?

A It was about three hours.

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

*Sims Mean
Saw the
kind of
work done
on the 50
car.*

*indicates
that people
do get
tires
fixed
put them
in the car*

*didn't bring
it to his
bosses
attention
until
about
3 hrs. after
he would*

1 A No.

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

4 A Not - This was after.

5 Q You talked to him?

6 A After the incident.

7 Q Where did you talk to him?

8 A Well, just in general talking -

9 Q Where?

10 A As he was waiting to get his car
11 aligned.

12 Q At Firestone?

13 A In the building, yes.

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

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

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

22 A No.

23 Q So if it was that unusual to you, my
24 friend, wouldn't you have said something to him? --- 30

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

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

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

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

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

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

8 A Like I say, about -

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

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

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

16 A Right.

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

19 A Yes, I noticed him with the tires.

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

24 A No.

25 Q All you saw was a gentleman with two

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

3 A At that distance, no.

4 MR. LEVIN: That's all I have.

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

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

13 MR. LEVIN:

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

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

21 MR. LEVIN: Thank you very much.

22 REDIRECT EXAMINATION

23 EXAMINED BY MR. WEAVER:

32

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

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

4 You're excused -

5 MR. WEAVER: Just one other question,
6 Judge.

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

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

12 THE COURT: You sure asked that
13 first one.

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

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

18 A No, not to my knowledge, no.

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

21 A Yes.

22 RECROSS EXAMINATION

23 EXAMINED BY MR. LEVIN:

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

1 A No, sir.

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

4 A Yes.

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

7 A No.

8 MR. LEVIN: Fine. That's all.

9 REDIRECT EXAMINATION

10 EXAMINED BY MR. WEAVER:

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

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

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

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

* * * * *

MR. WEAVER: I call Mr. Alvin Williams.

* * * * *

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

* * * * *

DIRECT EXAMINATION

EXAMINED BY MR. WEAVER:

Q State your name, please, sir.

A Alvin Van Williams.

Q Where were you employed on September 17,
1977?

A Firestone Stores, Portsmouth, Virginia.

Q And in what capacity?

A Assistant manager.

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

A Yes, sir, I did.

Q Approximately what time did you see
him?

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

THE COURT: Is that in the morning?

1 A It was Saturday morning,
2 right.

3 MR. WEAVER:

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

6 A Yes, sir.

7 Q What was the nature of the conversation?

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

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

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

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

19 A Yeah.

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

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

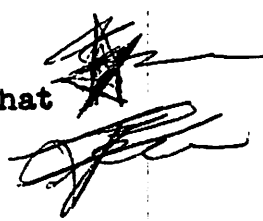
1 THE COURT: He left his car
2 there -

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

5 THE COURT: He did not?

6 A No, sir.

7 MR. WEAVER:

8 Q What kind of car was he driving that
9 day? 

10 A It was a Monte Carlo.

11 Q Do you remember the color?

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

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

16 A Yes, I did.

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

19 A He had his car aligned.

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

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

1 MR. WEAVER:

2 Q Do you all do service orders for tire
3 repairs?

4 A Yes, sir, we do.

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

7 A Not that I know of.

8 Q Did you sell him any tires?

9 A No, sir.

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

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

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

17 CROSS EXAMINATION

18 EXAMINED BY MR. LEVIN:

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

21 A No, sir, I didn't.

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

25 A Yes.

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

3 A Right.

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

7 A Yes.

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

10 A Correct.

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

13 A No, sir.

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

16 A That's correct.

17 Q When he came back, wasn't it around
18 1:00 or 2:00 o'clock that he came back?

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

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

23 A That's correct.

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

1 A Yes.

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

4 A I don't know which one.

5 Q You don't assign the work, then?

6 A No, sir.

7 Q Who assigns that work?

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

11 MR. LEVIN: That's all I have.

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

14 A No, sir.

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

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

20 THE COURT: Well, is that hearsay
21 with you -

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

store.

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

A No, sir.

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

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

THE COURT: All right, sir.

MR. LEVIN:

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

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

Q What does that stock ledger indicate?

A How many tires you have on hand.

Q Are those tires serial numbered?

A Yes, sir, they are.

Q But you don't have them -

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

1 Q When was the last time you inventoried
2 these tires?

3 A The last time?

4 Q Before the tires were missing.

5 A I can't really say.

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

8 A Yes.

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

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

12 Q Twice a month?

13 A Yes.

14 Q Do you know when this happened?

15 A I can't recall.

16 Q Do you know the month?

17 A September.

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

20 A Probably around the middle of the month.

21 Q Is cost also a part of your job?

22 A Yes.

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

25 A Yes.

Q What was that cost?

A It was certainly worth more than
\$100.00 -

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

A Not -

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

A No, sir.

MR. LEVIN: Thank you.

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

A No, sir.

THE COURT: The tires were never
recovered?

A Never recovered.

MR. LEVIN:

Q Was this matter reported to the police?

A Yes, it was.

REDIRECT EXAMINATION

EXAMINED BY MR. WEAVER:

Q When was it reported to the police?

A It was reported that same day, later

1 that evening.

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

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

8 * * * * *

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

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

1 indicated when he left the stand,
2 Your Honor, as a matter of fact
3 there's nothing uncommon for something
4 to be wrong with radial tires and,
5 therefore, if you say reasonable
6 doubt, you must prove this man beyond
7 a reasonable doubt, they're not even
8 close in this case. It's certainly
9 not Mr. Weaver's fault but the evidence
10 isn't there, Your Honor.

11 MR. WEAVER: Judge, I have to disagree with
12 him. Our first witness said he put the
13 tires in the service area. The second
14 witness said he saw this man walking out
15 of the service area with two tires under
16 his arms, went out, put these tires in
17 the car.

18 There's a lot of talk about this
19 man having his car in there and something
20 may be wrong with his tires, but the
21 evidence is the man drove the car away
22 after he put the tires in it, drove the
23 car back, put it up, got it aligned and
24 then he drove away again. Now, if he
25 had something wrong with his tires, I say

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

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

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

14 THE COURT: Overrule the motion.

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

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

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

1 has carried the burden at all, Judge.

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

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

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

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

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

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

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

15 MR. LEVIN: Yes, sir.

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

18 James J. Reese, you having come
19 on for trial this date under Indictment
20 #28,896 wherein you're charged with
21 grand larceny at which time you entered
22 a plea of not guilty and waived trial
23 by jury, the Court after having heard
24 the evidence and considered same thoroughly
25 does find you guilty of grand larceny as

1 charged in the indictment.

2 Mr. Levin, do you have a motion?

3 MR. LEVIN: We waive presentence, Your Honor.

4 THE COURT: Presentence report?

5 MR. LEVIN: We waive it, Your Honor.

6 THE COURT: Waive? Very well.

7 MR. LEVIN: Judge, and I think I should be

8 candid with the Court. The man is on

9 two years probation from the Federal

10 Court for forgery. It was up last

11 month, Judge, but they're holding that

12 up pending the outcome of this matter,

13 Your Honor.

14 THE COURT: Well, I mean I don't have

15 anything to do with that.

16 MR. LEVIN: No, I just thought I should

17 tell the Court because it's not usual

18 to waive a presentence.

19 THE COURT: If he's on two years probation

20 for a charge in Federal Court, which you

21 say -

22 MR. LEVIN: It was over the 20th of December

23 but they held it up pending the outcome

24 of this, Judge.

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

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

3 THE DEFENDANT: No, Your Honor.

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

6 THE DEFENDANT: No.

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

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

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

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

21 SHERIFF FUTRELL: He will stay, Your Honor.

22 MR. LEVIN: Thank you very much, Judge.

23 * * * * *

CLERK'S CERTIFICATE

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

Clerk