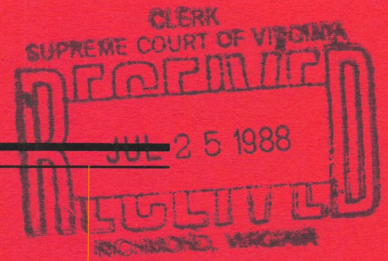


238Va183



---

IN THE  
**Supreme Court of Virginia**  
AT RICHMOND

---

RECORD NO. 870591

---

TRIANGLE AUTO AUCTION, INC.,

Appellant,

v.

DANIEL F. CASH,

Appellee.

---

APPENDIX  
VOLUME II

---

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



## TABLE OF CONTENTS

	<u>Appendix Page</u>
Motion for Judgment filed 5/6/86 .....	1
Motion to Elect filed 5/21/86 .....	5
Plea of the Statute of Limitations filed 5/21/86 .....	6
Answer filed 5/21/86 .....	8
Request for Admissions filed 5/21/86 .....	12
Response to Request for Admissions filed 6/3/86 .....	14
Interrogatories filed 10/6/86 .....	15
Motion in Limine filed 11/12/86 .....	18
Motion for Summary Judgment filed 11/12/86 .....	20
Transcript of Proceedings heard before the Honorable Richard Miller on 11/13/86 .....	23
Testimony of Daniel F. Cash .....	70
Testimony of Steven T. Hamlet .....	176
Testimony of Ernest W. Wommack .....	185
Testimony of Lonnie S. Morris .....	212
Testimony of Kelly R. White .....	219
Testimony of Ernest Mitchell .....	229
Testimony of Eugene Wingfield .....	233
Testimony of D. F. McCullough .....	241
Testimony of Robert H. Cash .....	245
Testimony of Darlene Cash .....	259
Jury Sworn 11/13/86 .....	282
Order entered 11/13/86 .....	283
Jury Instructions - Given .....	284

Jury Instructions - Refused .....	301
Jury Instructions - Withdrawn .....	305
Transcript of Proceedings heard before the Honorable Richard Miller on 11/14/86 .....	307
Testimony of Eugene Lancour .....	309
Testimony of Frank Sale .....	361
Testimony of Daniel F. Cash .....	379
Testimony of Phillip Keith .....	396
Oath of Court Reporter dated 11/14/86 .....	509
Jury Verdict filed 11/14/86 .....	510
Order entered 11/14/86 .....	511
Brief in Support of Motion to Set Aside Verdict filed 12/5/86 .....	512
Letter from Attorney Mullen to Judge Miller dated 12/16/86 .....	535
Letter from Judge Miller to Counsel dated 1/20/87 .....	536
Plaintiff's Brief in Opposition to Defendant's Motion to Set Aside Verdict filed 2/4/87 .....	537
Letter from Attorney Mullen to Judge Miller, with enclosure, dated 2/16/87 .....	562
Letter from Attorney Johnson to Judge Miller dated 2/20/87 .....	568
Opinion Letter dated 2/20/87 .....	570
Judgment Order entered 3/9/87 .....	574
Notice of Appeal filed 4/3/87 .....	576
Notice filed 4/9/87 .....	578
Notice dated 4/27/87 .....	579
Assignments of Error .....	580

Exhibits

Plaintiff's No.

1 - Drafts .....	582
2 - Contract dated 11/29/84 .....	584
3 - Letter from Triangle Auto Auction, Inc. to Danny's Auto Sales dated 12/4/84 .....	586
4 - Letter from Triangle Auto Auction, Inc. to Danny's Auto Sales dated 12/6/84 .....	588
5 - Letter from Triangle Auto Auction, Inc. to Danny's Auto Sales dated 12/12/84 .....	590
6 - Federal Express Receipt .....	592
7 - Conditions of Release and Recognizance .....	593
8 - Letter from Daniel Cash to Mr. Lancour dated 12/28/84 .....	601
9 - Letter from Triangle Auto Auction, Inc. undated .....	604
10 - Letter from Triangle Auto Auction, Inc. to Danny Cash undated .....	605
11 - Letter from Triangle Auto Auction, Inc. dated 2/27/85 .....	606
12 - Invoice from Johnson & Cunningham dated 1/30/85 .....	607
13 - Letter from Mike Slay to Robert Cash dated 1/31/85 .....	608
14 - Letter from Larry S. Hedrick to Danny's Auto Sales dated 2/7/85 .....	610
15 - Bookkeeping Pages .....	611

Defendant's No.

1 - Check Stubs .....	615
2 - Bank Statement 10/26/84 .....	692
3 - Bank Statement 11/26/84 .....	696
4 - Bank Statement 12/26/84 .....	702



Page 4

5 - Bank Statement 1/26/85 .....	706
6 - Bank Statement Community Bank of Forest .....	715
7 - Notice Posted in Commonwealth Attorney's Office .....	716

1 purchased from Triangle.

2 A No, sir, it makes no difference. The  
3 titles to the cars that he sent us he had the cars, we  
4 had the titles. The titles were in Danny's Auto Sales'  
5 name, he had the cars, he could sell them. It makes no  
6 difference, he could sell them title attached.

7 Q Okay. Do you have those titles with you?

8 A No, sir, he has them all.

9 MR. JOHNSON: That's all.

10 THE COURT: Thank you. You may step  
11 down.

12 (Whereupon the witness stood aside.)

13 THE COURT: Call your next witness.

14 MR. MULLEN: Frank Sale.

15

16 The witness, FRANK SALE, having been first  
17 duly sworn, was examined and testified on his oath as  
18 follows:

19

20 DIRECT EXAMINATION

21 BY MR. MULLEN:

22 Q What is your name and occupation, sir?

23 A Frank Sale, I'm in the automobile auction  
24 business.

25 Q And in answering my questions, please

1 look toward the jury.

2 A Okay.

3 Q How long have you been associated with  
4 Triangle Auto auction in Radford?

5 A Nine years, a little over.

6 Q And tell us when that business started  
7 and when it moved to Radford.

8 A It started in 1977.

9 Q Where was that?

10 A Christiansburg.

11 Q When did it move to Radford?

12 A 1978 -- wait -- I believe.

13 Q Would you tell the jury whether your auto  
14 auction has any policy regarding prosecution of  
15 individuals who give that auto auction bad checks?

16 A I can hardly hear you, sir.

17 Q Would you tell the jury what policy, if  
18 any, your automobile auction has with reference to  
19 prosecuting people who give it bad checks?

20 A Yes, sir, we prosecute everybody that  
21 gives us a bad check.

22 Q And who is the author of that policy, who  
23 originated it?

24 A Well, we -- the commonwealth attorney, we  
25 asked him what to do and he said prosecute the people



1 that give us bad checks.

2 Q Did you as an individual within Triangle  
3 Auto Auction ever have any conversations with the  
4 commonwealth's attorney regarding how to go about  
5 prosecuting a person who gives a bad check?

6 A Yes, sir.

7 Q And when would those conversations have  
8 been?

9 A Over a period of -- since we started, I  
10 guess, probably --

11 Q Can you tell the jury the gist of the  
12 conversations that you had with the commonwealth's  
13 attorney?

14 A Well, one time we went to the  
15 magistrate's office to get a warrant and they had a  
16 sign posted to go to the commonwealth attorney.

17 Q And did you do that?

18 A Yes, sir, sure. And he advised us how to  
19 go about it.

20 Q What did he tell you?

21 A He told us to get a criminal warrant.

22 Q What's the reason behind this policy?

23 A To prosecute and try to keep people from  
24 giving bad checks.

25 Q Did you --

1           A     Discourage them.

2           Q     Did you authorize Gene Lancour on behalf  
3 of the auto auction to secure criminal warrants against  
4 Mr. Cash for three bad checks the auto auction  
5 received?

6           A     Yes, sir.

7           Q     What was your reason for doing that?

8           A     To prosecute him.

9           Q     Did you have any conversations before the  
10 issuance of those warrants with Mr. Cash regarding the  
11 checks?

12          A     Yes, sir, called him and tried to collect  
13 them, tried to get him to pay us.

14          Q     Would you tell the jury about those  
15 conversations and what Mr. Cash told you?

16          A     Well, I called him on numerous occasions  
17 and he would just say, well, I'll pay you one of these  
18 days or something.

19          Q     Did you make any specific agreement with  
20 him not to prosecute if he would pay you?

21          A     No.

22          Q     Did you make any agreement with him to  
23 extend him credit, auto auction credit for any length  
24 of time for him to pay those checks?

25          A     No, sir, we operate a cash business.

1           Q     Did you make any agreement with him to  
2 accept and not to prosecute if he sent you six car  
3 titles or any other car titles?

4           A     No, sir.

5           Q     Did you make any agreement with him not  
6 to prosecute him if he sent you part payment?

7           A     No, sir.

8           Q     What was your motive on behalf of the  
9 auction in going forward with the criminal prosecution  
10 of Mr. Cash?

11          A     Well, I'd like to prosecute him for  
12 giving bad checks.

13          Q     How many times would you say you talked  
14 with him?

15          A     Probably as many as four or five.

16          Q     Over what period of time?

17          A     Two or three weeks.

18               MR. JOHNSON: Over what?

19               THE WITNESS: Two or three weeks,  
20 probably, a couple of weeks, maybe.

21  
22 BY MR. MULLEN:

23          Q     In those conversations did you ever  
24 threaten him?

25          A     No.



1           Q     Did you ever tell him that if he sent  
2 titles or if he sent cash or if he sent payment that  
3 prosecution would be dropped?

4           A     No.

5           Q     Did you ever hold the titles that he sent  
6 as collateral for his payment of the balance that he  
7 still owed Triangle?

8           A     He sent me a few titles, five or six, but  
9 they were just titles, they weren't reassigned to us or  
10 anybody, so therefore I didn't consider them  
11 collateral. They weren't reassigned or anything.

12          Q     Did he send you anything with his  
13 signature on it which would authorize you to use those  
14 titles in any way?

15          A     No, sir.

16          Q     Did he still have the cars that the  
17 titles represented?

18          A     Yes, sir, as far as I know he did.

19          Q     Auto auction didn't have them?

20          A     We didn't have them.

21               MR. MULLEN: Answer Mr. Johnson's  
22 questions.

23

24

25

CROSS EXAMINATION

BY MR. JOHNSON:

Q Mr. Sale, he did send these titles to Triangle Auto Auction after your and his telephone conversation?

A He sent us some titles, yes, sir, but they weren't executed, they weren't transferred.

Q They were not signed in any way by Danny Cash?

A Not as I know of, no, sir.

Q They were in the name of the original owner, I mean, who had sold them to Danny Cash?

A They were in, I guess, still in Mr. Cash's dealership name.

Q Are you sure of that?

A Well, yes.

Q You said, I guess they were.

A Well, I'm sure, because it's against the law for him to have open title.

Q In other words, it would be against the law to send you an open title?

A Yes, sir.

Q And it wasn't the idea that when he paid these checks that then you would send those titles back to him and for that reason they hadn't been

FRANK SALE - CROSS

1 assigned, that was not the understanding?

2 A Ask me again, I didn't quite understand  
3 you, sir.

4 Q Was the understanding that you and he had  
5 on the phone that if he sent these titles to you as open  
6 titles that then when the checks were paid that you  
7 would send the titles back to him?

8 A No, sir.

9 Q Well, why did he send them to you?

10 A I don't know.

11 Q You asked for them, didn't you?

12 A Sure, but I asked for them for  
13 collateral, but he didn't send them as collateral.

14 Q Did you get back in touch with him and  
15 say, hey, I asked for these as collateral --

16 A Yes, I did.

17 Q -- and you didn't --

18 A Yes, sir..

19 Q You did?

20 A Yes, sir. I called him and told him that  
21 he didn't transfer them to us.

22 Q Do you know whey Mr. Lancour would have  
23 stated that nobody asked for a reassignment or nobody  
24 asked for an execution of a lien just a few minutes ago  
25 on that stand?



FRANK SALE - CROSS

1           A     No.

2           Q     You never did call him yourself after  
3 that day you spoke with him about the titles, did you?

4           A     Call him after I asked him to assign  
5 them over to me?

6           Q     Right.

7           A     I probably didn't.

8           Q     So then you didn't ask him for them if  
9 you didn't talk about --

10          A     That's when I asked him to send them I  
11 asked him for them, I sure did.

12          Q     When you --

13          A     As far as I'm concerned that was just  
14 like a blank piece of paper, I couldn't do a thing in  
15 the world, it was his titles not reassigned.

16          Q     Are you saying -- I don't want to  
17 misunderstand you, are you saying that on the 17th of  
18 December when you asked him to send titles you asked  
19 him to send an assignment with them?

20          A     Sure.

21          Q     You did?

22          A     Sure.

23          Q     All right. You didn't get an assignment  
24 when you received them on that same day, did you, the  
25 17th?

FRANK SALE - CROSS

- 1           A     I don't remember the exact day, but I --
- 2           Q     Well, the Federal Express shows they were
- 3 delivered.
- 4           A     Okay.
- 5           Q     You didn't -- when you saw -- you saw
- 6 them come in, didn't you?
- 7           A     I saw them.
- 8           Q     Okay.
- 9           A     I may not have signed for them, I don't
- 10 remember that.
- 11          Q     But anyhow, you did not get in touch with
- 12 him and ask for an assignment or lien or anything, did
- 13 you, at that time after you got them?
- 14          A     I believe I did, I believe I called him.
- 15          Q     You just told me a minute ago you didn't
- 16 call him or contact him after you asked him for the
- 17 titles. Now you're saying you believe you did?
- 18          A     Well, I either did or asked somebody to,
- 19 I think.
- 20          Q     That would have been Mr. Lancour,
- 21 wouldn't it?
- 22          A     Probably.
- 23          Q     So if he just testified nobody asked for
- 24 an assignment or a lien, then nobody did?
- 25          A     Well, okay, if that's what he said.

FRANK SALE - CROSS

1 Q You held them?

2 A If that's what he said, I'm sure he's  
3 telling the truth.

4 Q And held them until February the 7th when  
5 the checks were paid?

6 A Whenever, I don't know.

7 Q And returned them on the 7th to Mr.  
8 McBride when he delivered the cashier's check for the  
9 eleven thousand some dollars?

10 A Probably so.

11 Q All right, sir. You agree you're the one  
12 who asked for the titles?

13 A I believe I did, yes, sir.

14 Q Did you ask him --

15 A I asked him for the money is what I  
16 was asking for, asked him for money several times and  
17 finally he wouldn't send anything and I asked him for  
18 titles or some kind of collateral, but I never did get  
19 it.

20 Q You said over a period of two to three  
21 weeks that you talked to him four or five times on the  
22 phone asking for the money?

23 A Yes, sir.

24 Q And you're saying that on those occasions  
25 he said he wasn't going to do anything?



FRANK SALE - CROSS

1 Q I didn't say --

2 Q Or take care of something?

3 A I didn't say that.

4 Q What did he say?

5 A He said he would pay me when he got it or  
6 just put me off one way or the other.

7 Q But you took no steps during all of that  
8 two or three weeks or when he told you that, in other  
9 words, when he put you off you took no steps to  
10 prosecute then, did you?

11 A No, sir.

12 Q Weren't you interested -- as far as you  
13 were concerned you were interested in collecting your  
14 money, weren't you?

15 A I was interested in prosecuting him for  
16 giving me bad checks.

17 Q But you were interested in collecting the  
18 money primarily, weren't you?

19 A Not necessarily.

20 Q Not necessarily?

21 A (Negative shake.)

22 Q Was your reason for getting him to --  
23 what was your reason for getting him to send the  
24 titles?

25 A For collateral because he owed me money.

1 Q To collect your debt, right?

2 A Sure.

3 Q So you did receive them as collateral?

4 A No.

5 Q To be held as collateral?

6 A I asked them to be collateral but they  
7 weren't collateral because they weren't reassigned.

8 Q You, of course --

9 A The titles never were reassigned to  
10 Triangle Auto Auction.

11 Q Mr. Sale, you were asked in a legal  
12 proceeding, your company was, July the 15th, 1985, a  
13 year and a half ago approximately, was asked the  
14 question, please admit that it was agreed that these  
15 vehicles, meaning the six titles that, you know, that he  
16 sent you, those vehicles, that those vehicle titles  
17 were to be held as collateral for the payment of the  
18 checks.

19 The answer, signed by your attorney, Mr.  
20 Mullen, on behalf of Triangle, was -- request for  
21 admissions number three, that's the request that I  
22 just read you, to admit that they would be held as  
23 collateral, is admitted except insofar as it alleges  
24 that the vehicle titles were, in fact, collateral. The  
25 defendant does not admit that the vehicle titles were,

1 in fact, collateral, only that it was agreed that they  
2 be held as collateral.

3 So it was agreed that they be held as  
4 collateral for the debt, was it not?

5 A I don't know.

6 Q You don't know?

7 A I didn't agree to that, I wasn't at --

8 Q Well, Mr. Mullen has been acting for you  
9 as your attorney the entire time of which you're vice  
10 president and co-owner, hasn't he?

11 A Yes, sir. But like I say one more time,  
12 that the titles never were used as collateral because  
13 they weren't ever reassigned to us, we couldn't do  
14 anything with them.

15 Q Why didn't you -- you had spent two or  
16 three weeks you said, I don't want to misquote you, two  
17 or three weeks trying to get some collateral?

18 A Right.

19 Q Then you got the titles and nobody  
20 contacted him and said, hey, Danny, you didn't send an  
21 assignment, you didn't send a lien, these are worthless  
22 to us. Instead within four days Mr. Lancour went to  
23 the magistrate and swore out a warrant not telling the  
24 magistrate that you received twenty-four hundred and  
25 fifty-four dollars from the Ramcharger or six titles to

1 hold as collateral?

2 A Yes, sir, twenty-four hundred fifty  
3 dollars was the car that he sold out there and gave  
4 title to and we just -- he didn't send it to us  
5 voluntarily, we just held that, I believe.

6 Q Did he talk with Mr. Lancour about that  
7 and tell Mr. Lancour, go ahead and sell it and whatever  
8 it brings, get the best price you can and apply it on  
9 the debt?

10 A I don't know what he told Mr. Lancour.

11 Q If that's been the testimony up to this  
12 point.

13 A I don't know what he told Mr. Lancour.

14 Q Now, you say there was no agreement not  
15 to prosecute?

16 A No, sir.

17 Q At any time?

18 A (Negative shake.)

19 Q You did ask -- let me get the exact  
20 language, and ask you if this is as best you can recall  
21 what was said, Danny Cash asked you, did he not, in  
22 that conversation, well, what do you want in the way of  
23 security?

24 A I don't remember Danny Cash ever offering  
25 me any collateral except what I asked for.

FRANK SALE - CROSS

1 Q What did you ask for, that's what I'm  
2 getting at, you asked for it?

3 A Sure, I asked for something.

4 Q Okay. You asked him how many cars he had  
5 on his lot?

6 A I did, yes, sir.

7 Q And he told you about thirty, thirty-  
8 five, something like that?

9 A I don't remember what he said.

10 Q But some figure?

11 A Yeah.

12 Q And then you suggested to him or you  
13 asked him said, well, will you send me enough titles to  
14 cover the debt?

15 A I probably did.

16 Q That's your recollection, isn't it?

17 A That's correct.

18 Q And then he said, well, in other words,  
19 you want titles to enough cars or cars of sufficient  
20 value to cover the three checks?

21 A (Affirmative nod.)

22 Q Is that correct?

23 A Sounds right.

24 Q And then he said, all right, I'll send  
25 the titles to you?

FRANK SALE - CROSS

1           A     All right.

2           Q     And you're saying that you wanted those  
3 to be held as collateral?

4           A     Sure.

5           Q     Now --

6           A     But he didn't reassign my titles.

7           Q     Just let me finish my question.

8           A     Excuse me.

9           Q     You stated that before. Wasn't the  
10 understanding if he sent you those titles and your  
11 reason for asking and his reason for agreeing to do it,  
12 that they be held to secure the debt rather than any  
13 other legal action taken, wasn't that the --

14          A     No, sir.

15          Q     Well, what was the reason, what was the  
16 purpose, either yours or his in that?

17          A     In what?

18          Q     In asking for the titles and him sending  
19 them if it wasn't to avoid prosecution?

20          A     I wanted them to secure the debt.

21          Q     So you were interested in securing the  
22 debt?

23          A     Sure.

24          Q     And if he had sent those with the  
25 assignment on them you would have been willing not to



FRANK SALE - CROSS

1 prosecute?

2 A I would have had collateral then.

3 Q So if you had collateral you were willing  
4 not to prosecute?

5 A Sure.

6 Q Is that right?

7 A Sure.

8 Q And the admissions here by your attorney  
9 and the papers show that they were held as collateral.

10 MR. JOHNSON: That's all.

11

12 A Well, not really. They weren't  
13 collateral because they wasn't properly assigned.

14 MR. MULLEN: Thank you, Mr. Sale. That's  
15 all.

16 THE COURT: Thank you, sir, you may step  
17 down.

18 (Whereupon the witness stood aside.)

19

20 THE COURT: Call your next witness.

21 MR. MULLEN: Call Daniel F. Cash as an  
22 adverse witness. Will it be all right if  
23 Mr. Sale stays in the courtroom?

24 THE COURT: Is that all right with you?

25 MR. JOHNSON: No objection if he's not

1           going to testify further, sure.

2           THE COURT: All right.

3  
4           The witness, DANIEL F. CASH, called as an  
5 adverse witness, having been previously sworn, was  
6 examined and testified on his oath as follows:

7  
8                               DIRECT EXAMINATION

9 BY MR. MULLEN:

10           Q     Mr. Cash, just a few brief questions.  
11 When did you start Lynchburg Auto Auction?

12           A     Sir?

13           Q     When did you start Lynchburg Auto  
14 Auction?

15           A     Thirteen months ago.

16           Q     How much time on an average -- in an  
17 average work week would you say that you have devoted  
18 to that auto auction?

19           A     I am approximately at Lynchburg Auto  
20 Auction five hours a week, I'm the auctioneer out  
21 there.

22           Q     Now --

23           A     And that's at night.

24           Q     I understand. Now, with reference to  
25 what causes the automobile business to fluctuate up and

1 down, I'd like to ask you some questions concerning  
2 that. Do interest rates in the economy have an effect  
3 upon it?

4 A Certain price range cars, yes, sir.

5 Q Does inflation have an effect on it?

6 A Yes, sir.

7 Q Does the health of the general economy  
8 have an effect on it?

9 A What do you mean by the health of the  
10 general economy?

11 Q Whether people are out spending money or  
12 saving it?

13 A Oh, sure.

14 Q The general used car market conditions  
15 have an effect, for instance, cut rate financing on new  
16 cars have an effect on the used car business?

17 A Yes, newer new cars, newer year model  
18 automobiles, yes, sir.

19 Q Do your expenses of operation have an  
20 effect upon how much money you can earn in the car  
21 business?

22 A I would guess so, yes, sir.

23 Q Does the amount that you pay for cars  
24 that you sell have an effect upon your profit potential?

25 A Sure.

1           Q     Now, one question in dealing with these  
2 titles that were sent to Triangle Auto Auction on the  
3 17th of December of 1984: You knew when you sent the  
4 titles that Triangle couldn't do anything with them  
5 without a dealer reassignment or a title in their name,  
6 do you not?

7           A     I think I told you I didn't remember if I  
8 sent a reassignment, didn't I?

9           Q     I understand that. That's not my  
10 question. If you did not send a reassignment you would  
11 have known as a dealer that they could not do anything  
12 with those titles without your signature, wouldn't you?

13          A     If I didn't send one, no, but I said I  
14 don't remember if I did or not, but I couldn't do  
15 anything either.

16          Q     You couldn't do anything?

17          A     I couldn't go get a title, no, sir.

18          Q     Well, you could if you were going to  
19 commit fraud to do it.

20          A     I guess if I wanted to commit an act of  
21 fraud I could do it.

22          Q     You could also sell that car title  
23 attached to someone else to give yourself enough time  
24 to go to Triangle in Radford to get the title to the  
25 car, couldn't you?

1           A     It depends on the public. The average  
2 individual that comes in if he's going to pay you in  
3 cash wants his title then.

4           Q     Sure he does. But do not dealers attend  
5 your auto auction?

6           A     Sure. I didn't have my automobile  
7 auction at this time.

8           Q     At some other auction could you have not  
9 sold it title attached to a dealer on a personal basis  
10 who came on your lot?

11          A     I think that I had letters stating that I  
12 couldn't go to an auction.

13          Q     What about a dealer who came on your lot?

14          A     I guess if I could get him to agree with  
15 it, it's possible.

16               MR. MULLEN: Thank you. That's all the  
17 questions I have.

18               MR. JOHNSON: In regard to that question,  
19 two things I want to ask him about, if Your  
20 Honor please.

21

22                       CROSS EXAMINATION

23 BY MR. JOHNSON:

24           Q     Mr. Mullen asked you about selling title  
25 attached.

1           A     Uh-huh.

2           Q     And then could you sell title attached  
3 and get your money and go to Triangle and get the title  
4 and come back and so forth. If you sold title attached  
5 to avoid fraud you would have had to go to Triangle  
6 with regard to those titles, wouldn't you?

7           A     Yes, sir.

8           Q     So they would have been protected by you.  
9 If they were holding those titles you could not have  
10 disposed of those cars without having their consent or  
11 them giving you title?

12          A     No, if I sold at another automobile  
13 auction I would have a draft, a draft would be no good  
14 or a title attached check and it would be stamped on  
15 that check -- it would be made to me, but that could  
16 not be cashed and it would be no good until I had the  
17 title in my possession, so therefore I would have had  
18 to have gone to them and given it to them and brought  
19 the title back.

20          Q     That was the situation that Mr. Lancour  
21 gave us a rather involved description of this morning  
22 about the delay and so forth and coming back to the  
23 bank and all was to allow for that very thing to clear?

24          A     Yes, sir.

25          Q     So they would have been protected?



1           A     Sure.

2           Q     All right. The other thing I wanted to  
3 ask you, you started the auction thirteen months ago,  
4 that would have been October '85?

5           A     Yes, sir.

6           Q     So am I correct, and I can get them if  
7 you need to refer to the dates, but these notices from  
8 High Point and from Statesville and the dealing with  
9 Mr. Morris at Fredericksburg were all before you  
10 started your own auction company?

11          A     Yes, sir.

12          Q     So what I'm getting at is could there be  
13 any connection between, you know, your being barred  
14 from these auctions and the fact that you've started  
15 your own company?

16          A     Well --

17          Q     You didn't start your own company until  
18 after you had already been barred and gotten the  
19 letters, didn't you?

20          A     The rate that my business, my used car  
21 business has fell off, I really have to have something  
22 else that I can rely on making a living out of because  
23 what I've got now is not going to do it.

24          Q     Now, what I'm asking is this: The  
25 notices that you got, the letter from High Point, the

1 letter from Statesville --

2 A Yes, sir.

3 Q -- the information that you heard Lonnie  
4 Morris testify to about telling he couldn't sell those  
5 two cars and packing up and coming back, all of that  
6 took place and you received those letters and were  
7 barred months before you started your own company.

8 A Sure.

9 Q So your starting your company would not  
10 have had anything to do with your being barred from  
11 these other auctions?

12 A No.

13 Q Now, the thing that you were interested  
14 about, the income, he asked you about market  
15 conditions.

16 A Uh-huh.

17 Q You heard Mr. Wommack's testimony  
18 yesterday that between '84 and '85 you had five hundred  
19 -- I think five hundred and twenty-four thousand, I  
20 believe approximately, less gross sales, gross  
21 wholesale sales in that time?

22 A Yes, sir.

23 Q Would that have had any bearing on the  
24 economy or was that just by not being able to go to  
25 wholesale sales?

1           A     Well, you can look at the economy as a  
2 whole and let me give you an example, this two point  
3 nine that comes out --

4           Q     That deals with some new cars?

5           A     Right.

6           Q     Don't confuse the issue by going into  
7 that unless Mr. Mullen wants to ask you, but my  
8 question is this: Was this loss of some five hundred  
9 -- better than five hundred thousand in reduction in  
10 wholesale sales income --

11          A     Uh-huh.

12          Q     -- was that from the economy or was that  
13 from not going to dealers auctions where you made your  
14 money?

15          A     That was from not going to auctions.

16          Q     So the economy had nothing to do with  
17 that particular loss there?

18          A     No, sir.

19               MR. JOHNSON: That's all.

20

21                       REDIRECT EXAMINATION

22 BY MR. MULLEN:

23           Q     By not going to auctions -- why didn't you  
24 go to Fredericksburg where you could deal in cash and  
25 hard titles?

1           A     Why didn't I?

2           Q     Yes.

3           A     Because I couldn't give the titles at the  
4 time and I didn't have the cash.

5           MR. MULLEN: Thank you, sir.

6           THE COURT: All right. Step down.

7                     (Whereupon the witness stood aside.)

8  
9           THE COURT: Call your next witness.

10          MR. MULLEN: Phillip Keith.

11          MR. JOHNSON: May we approach the bench?

12                     (Whereupon an off-the-record  
13 discussion was held between the  
14 Court and counsel.)

15  
16          THE COURT: Members of the jury, we're  
17 going to take a short break now, so if you'll  
18 just retire to your jury room and we'll start  
19 again in just a few minutes.

20                     (Whereupon the jury left the  
21 courtroom.)

22  
23          THE COURT: Let's see, Mr. Johnson, you  
24 asked to take up a matter out of the presence  
25 of the jury.

1           MR. JOHNSON: Yes, sir. The matter that  
2 we -- I don't believe we were on the record  
3 this morning at the first meeting of the  
4 Court and counsel. We made a motion that the  
5 assistant commonwealth's attorney of  
6 Montgomery County, Mr. Keith, judging from the  
7 opening statement of Mr. Mullen, I understood  
8 that supposedly he will testify, will be asked  
9 to testify that had he been given the  
10 information about part payment having been  
11 received he would have advised the man to go  
12 ahead with prosecution.

13           We object to the admission of that  
14 evidence on the grounds that it's immaterial,  
15 it's speculative. The question is: What was  
16 relayed to Mr. Lancour in regard to  
17 instructions about the warrant, not what the  
18 commonwealth's attorney would have done if the  
19 information given him would have been  
20 different. It's pure supposition. It has no  
21 bearing upon what in his mind he thinks here  
22 two years after it happened, what he thinks he  
23 would have advised.

24           THE COURT: Mr. Mullen?

25           MR. MULLEN: First of all, I would like

1 to state to the Court that I know the Court is  
2 interested in allowing the same fair treatment  
3 to this counsel as it is in allowing --  
4 in treating Mr. Johnson.

5 I filed a motion in limine asking the  
6 Court to exclude certain of the plaintiff's  
7 witnesses testimony based upon extensive  
8 discovery that had been taken. The Court's  
9 ruling on the motion in limine was that it  
10 would be taken under advisement and the  
11 evidence would be heard, which makes the issue  
12 of the motion in limine moot. In other words,  
13 the jury has already heard it.

14 I seek the same treatment for this  
15 witness that was afforded to Mr. Johnson and  
16 his witness, number one.

17 Number two, Mr. Keith's testimony will be  
18 corroborative of Mr. Lancour's testimony that  
19 several conversations over a period of years  
20 had gone on in developing this notice letter  
21 that Mr. Keith authored. And in those  
22 conversations it was told by Mr. Keith to Mr.  
23 Lancour or other Triangle Auto Auction  
24 representatives that payment or part payment  
25 was not a bar to prosecution, because that's

1 the law under Cook versus Commonwealth, the  
2 178 Virginia case.

3 It's certainly proper for the jury to  
4 hear that testimony because it goes directly  
5 to the heart of the motive that Triangle Auto  
6 Auction had in securing these warrants.

7 THE COURT: Let me stop you right there,  
8 I want to ask Mr. Johnson something.

9 Mr. Johnson, you mean to tell me that on  
10 cross examination you're not going to ask Mr.  
11 Keith: Did you know at the time that you  
12 issued this policy that there had been part  
13 payment?

14 MR. JOHNSON: Well, Your Honor, I don't  
15 know whether I would or not, it would depend  
16 on his testimony. These gentlemen have  
17 already stated they didn't tell him, so I  
18 might ask or might not. I want to be fair  
19 with the Court, but whether I would or not,  
20 I don't know until I see what his testimony  
21 is.

22 THE COURT: Well, don't you think you  
23 would have a right -- you would ask that to  
24 imply that had he known that he would have  
25 taken a different course of action, wouldn't

1           you? That would be the only reason it would be  
2           relevant.

3           MR. JOHNSON: Yes, sir, I guess.

4           THE COURT: And you don't think he  
5           could ask him what he would have done  
6           knowing what his policy --

7           MR. JOHNSON: Well, Judge, my point is  
8           we're dealing here with the law with regards  
9           to advice of an attorney. The basic premise  
10          of that in every recitation that I've seen is  
11          that after a full and fair and complete  
12          disclosure is made and advice is received,  
13          then that can be, you know, considered as to  
14          whether or not it was probable cause after a  
15          full and fair and complete disclosure is made.

16          Now, there is nothing that I know in the  
17          law that says, well, what would that advice  
18          have been if he had been told such and such  
19          and such.

20          The question is, Mr. Lancour went to him  
21          and gave him only part of the picture and now  
22          he seeks to say, well, if I had given him all  
23          of it it wouldn't have mattered. He didn't  
24          give it all.

25          THE COURT: What I'm going to do is I'm



1 not going to allow on direct examination, but  
2 if you go into the matter on cross, I'm very  
3 likely to allow him to ask how that may have  
4 changed his policy.

5 At this point I think you're probably  
6 right that it's somewhat speculative in one  
7 respect what you may have done, just to ask  
8 him that on direct examination. But if you  
9 bring it out I certainly think he can show  
10 that his policy would not have been any  
11 different.

12 MR. JOHNSON: Yes, sir, I can't argue  
13 with that.

14 MR. MULLEN: Your Honor, I'm going to ask  
15 him, unless the Court rules to the contrary,  
16 did you ever have a conversation with any  
17 representative of Triangle Auto Auction prior  
18 to the issuance of these warrants against Mr.  
19 Cash in which you advised them that the law  
20 was, part payment is not a bar to prosecution  
21 or holding collateral is not a bar to  
22 prosecution.

23 THE COURT: All right. Any problem with  
24 that?

25 MR. JOHNSON: Did he ever have a

1 conversation?

2 THE COURT: There's already been  
3 testimony to that, that's corroborative of the  
4 other evidence. As long as it doesn't go  
5 beyond that my ruling would stand and I would  
6 not preclude you from doing that.

7 MR. MULLEN: My point being, if he told  
8 him once he didn't have to tell them twice.

9 MR. JOHNSON: Well, he can't just tell  
10 them, he had to tell Mr. Lancour.

11 THE COURT: You anticipate that would be  
12 the answer, that he told Mr. Lancour?

13 MR. MULLEN: Yes, sir, or that he doesn't  
14 remember that he didn't do it. And further  
15 beyond that, that he advised him all of the  
16 law that he knew and that was part of the law  
17 that he advised him.

18 THE COURT: I will allow that, but do you  
19 understand what my ruling is?

20 MR. MULLEN: Yes, sir.

21 MR. JOHNSON: I presume, Judge, that  
22 doesn't prevent me from going into these  
23 notices and whatnot posted in the -- well,  
24 that's not here --

25 THE COURT: That's something else.

1 MR. JOHNSON: Your ruling is that if I  
2 ask about whether he was given a full  
3 disclosure that that would open the matter?

4 THE COURT: I think so, yes, sir. I  
5 think he certainly then could ask him would  
6 that have made any difference at that time in  
7 the policy and I think you would know, you  
8 know, if he recollects if he testifies he  
9 remembers, I certainly think he could say what  
10 he would have done.

11 All right. Ready to call the jury in  
12 now?

13 MR. JOHNSON: Yes, sir.

14 MR. MULLEN: One more thing on that. I  
15 intend to qualify Mr. Keith as an expert  
16 witness which would open the door and allow  
17 him to render his opinion on the law. I think  
18 he certainly is qualified to do that having  
19 prosecuted hundreds of felony cases, having  
20 had the background and schooling and training  
21 and what have you.

22 THE COURT: Well, what are you going to  
23 ask him, what expert questions is he going to  
24 answer?

25 MR. MULLEN: I'm going to ask if the law

1 is that part payment is no bar to prosecution,  
2 the same thing the Cook case says.

3 MR. JOHNSON: That's for the Court to  
4 decide. The Cook case held one tight  
5 question, I have a copy of it here in my file,  
6 that a payment -- a one total payment of  
7 twenty-two dollars and eight-nine cents on a  
8 debt of six hundred dollars was not sufficient  
9 to satisfy the requirement of payment of the  
10 account. That's all they held.

11 A man promised to make weekly payment,  
12 the prosecution was delayed, he made one  
13 payment of twenty-two dollars and it said a  
14 payment of twenty-two dollars on an account of  
15 five hundred and eighty-some dollars would  
16 hardly be payment under the statute.

17 Mr. Keith cannot, if Your Honor please,  
18 cannot testify to the jury what the law is.  
19 This Court can and will do that in the Court's  
20 instructions. He can say under Your Honor's  
21 ruling what he told Mr. Lancour, but he can't  
22 testify as to the law.

23 THE COURT: I think that's right, Mr.  
24 Mullen. That will be my ruling. I'll instruct  
25 accordingly and I think that would invade the

1 Court's province.

2 MR. MULLEN: I'll abide by the ruling.

3 (Whereupon the jury entered the  
4 courtroom.)

5  
6 THE COURT: Call your next witness.

7 MR. MULLEN: Phillip Keith.

8  
9 The witness, PHILLIP KEITH, having been first  
10 duly sworn, was examined and testified on his oath as  
11 follows:

12  
13 DIRECT EXAMINATION

14 BY MR. MULLEN:

15 Q Look toward the jury when you answer my  
16 questions, please, Mr. Keith, and tell me, what is your  
17 name and occupation.

18 A My name is Phillip Keith, I'm the  
19 assistant commonwealth's attorney in Montgomery County,  
20 Virginia.

21 Q How long have you been assistant  
22 commonwealth's attorney?

23 A Since 1978.

24 Q And in the course of your duties do you  
25 prosecute criminal cases?

1           A     Yes, I do.

2           Q     How many cases would you say that you  
3 have been involved in the prosecution criminally or  
4 handled the prosecution on your own approximately?

5           A     It's hard to say exactly, but I do  
6 hundreds and hundreds every year.

7           Q     Do you have a hand in the formulation and  
8 publication of policies by the commonwealth's  
9 attorney's office?

10          A     Yes, I do.

11          Q     Let me show you Defendant's Exhibit No. 7  
12 and ask you if you can identify it?

13          A     Yes, sir, this is a notice that our  
14 office prepared to post in the magistrate's office  
15 concerning bad checks, and I specifically wrote that.

16          Q     All right. Would you tell the jury what  
17 the commonwealth's attorney's office in Montgomery  
18 County's policy is regarding prosecution for bad  
19 checks?

20                THE COURT: Refer to that by exhibit  
21 number so we'll know.

22                MR. MULLEN: I thought I did, Your  
23 Honor, it's Defendant's Exhibit No. 7.

24                THE COURT: Okay.

25                THE WITNESS: I'm sorry, what was your

1 question again?

2

3 BY MR. MULLEN:

4 Q Explain the policy of the commonwealth's  
5 attorney's office regarding prosecution of bad checks.

6 A Our policy is that if anyone wants to  
7 prosecute someone for a bad check we ask that person to  
8 come and visit with us first. The purpose of that  
9 visit is to make certain that everything is correct  
10 before the warrant is secured.

11 Q Now, are there any exceptions to the  
12 commonwealth's prosecution of bad checks?

13 A Sometimes people will come to us and ask  
14 to prosecute and we will tell them that they do not  
15 have a sufficient case that can be made.

16 Q What are the exceptions that you would  
17 not prosecute?

18 A We have listed those in this particular  
19 notice.

20 Q And would you go down that list and  
21 explain to the jury what that list means?

22 A Yes. If someone has taken a post dated  
23 check, we will not prosecute that, or an endorsed  
24 check, or a two party check, or checks for past due  
25 debts, checks which have been held by the payee for

1 payment by agreement.

2 Q Now, would you explain to the jury what  
3 that means?

4 A All right. A check which has been held  
5 by the payee for payment by agreement is a check that  
6 someone would have taken that specifically that person  
7 who is taking it would have held it and the two parties  
8 would have agreed that it would not be good at that  
9 time, but that it would be good at some later time.

10 Q Now, you're talking about at the time the  
11 check was tendered to the party holding it?

12 A At the time that it was passed, that's  
13 correct.

14 Q Would you explain the rest of those  
15 exceptions?

16 A Number six is where the passer of the  
17 check cannot be identified or he cannot -- he has not  
18 admitted passing the check. According to Virginia law  
19 you have to be able to identify the person who is the  
20 person that wrote the check and passed it.

21 And then number seven is a check where  
22 the payee has agreed to accept the bad check in  
23 exchange for some sort of fee.

24 Q All right. Did you have any  
25 conversations before December 21 of 1984, which was the



1 date upon which Mr. Lancour secured these warrants  
2 against Mr. Cash, did you have any conversations with  
3 Mr. Gene Lancour of Triangle Auto Auction prior to that  
4 time regarding how to go about prosecuting bad check  
5 givers?

6 A Yes, sir, I did.

7 Q And over what period of time and what  
8 would the substance of the conversations have been?

9 A I dealt with Mr. Lancour since he's been  
10 working with Triangle. I don't know how long that's  
11 been, several years. He came to visit me with some bad  
12 checks on one occasion several years ago and wanted to  
13 know specifically what to do.

14 I explained to him what the law was and  
15 I authored a letter that I suggested that he send to  
16 people who had passed bad checks.

17 Q Let me show you Defendant's Exhibit No. 5  
18 and ask you if you authored the language in that  
19 letter?

20 A Yes, I did.

21 Q Thank you. What did you tell Mr.  
22 Lancour, if you told him anything, about the situation  
23 where he had received part payment before securing the  
24 warrants?

25 A As I tell anyone who comes to see me

1 concerning that, I tell them that part payment makes no  
2 difference. The offense is complete at the time that  
3 the bad check has been passed.

4 Of course, as this notice says, the law  
5 does require that notice must be sent demanding  
6 payment, but part payment would make no difference, the  
7 law requires that there be full payment.

8 Q Would collateral make any difference?

9 A No, sir.

10 Q And would you have explained that to  
11 Mr. Lancour?

12 A Yes, sir, I --

13 MR. JOHNSON: Are you talking about on  
14 this occasion or are you talking about  
15 previous --

16  
17 BY MR. MULLEN:

18 Q On previous occasions.

19 A Yes, sir, we would have discussed that on  
20 previous occasions.

21 Q Now, did you participate in the  
22 prosecution of Mr. Daniel Cash on three warrants which  
23 Mr. Lancour obtained?

24 A Yes, sir, I did.

25 Q Did you give Mr. Lancour any advice on

1 whether to secure these warrants prior to their  
2 issuance?

3 A Yes, sir, I did.

4 Q What advice was that?

5 A He came to me, he showed me the checks,  
6 he showed me the letter that had been sent, he showed  
7 me the fact that it had been received, explained to me  
8 that the amounts had not been paid, and I told him to  
9 go to the magistrate's office and secure the warrants.

10 Q And did he do that?

11 A Yes, sir.

12 Q Subsequently, was Mr. Cash prosecuted in  
13 Montgomery County?

14 A No, sir. Mr. Johnson, in fact, came up  
15 with Mr. Cash and on the day that the preliminary  
16 hearing was to be held, we all gathered in the side  
17 room. It's the policy of our judge, it may be the  
18 right policy, it may be the wrong policy, but it is the  
19 judge's policy that if restitution has been made, the  
20 judge wants to give first-time offenders a break. I  
21 know that policy and I know that what the judge says  
22 goes.

23 So I felt it would be fruitless for me to  
24 proceed to try to prosecute Mr. Cash if, in fact, the  
25 checks had been paid. Mr. Lancour said the checks had

1 been paid, I believe the day before, and Mr. Johnson  
2 and Mr. Cash offered to pay I believe some interest on  
3 the checks. That interest was paid.

4 Mr. Johnson and I appeared before the  
5 judge, I explained to the judge that it was my decision  
6 at that time not to prosecute. I explained to him that  
7 restitution had been made and asked the judge to  
8 dismiss the case and mark it a civil matter. And  
9 again, that's because I know what the judge would have  
10 done anyway.

11 Q So whose decision was it then not to  
12 continue to prosecute?

13 A That was mine.

14 Q And whose decision was it to dismiss the  
15 charges against Mr. Cash?

16 A That was mine.

17 MR. MULLEN: Please answer any questions  
18 that Mr. Johnson may have.

19

20 CROSS EXAMINATION

21 BY MR. JOHNSON:

22 Q Mr. Keith, when we met there in the room  
23 on the left side of the courtroom, I believe it was  
24 you, myself, and Mr. Lancour?

25 A Yes, sir.

1           Q     Are they the only people there as I  
2 recall, I might be wrong?

3           A     As I recall it was the three of us,  
4 that's correct.

5           Q     And at that time, of course, you say you  
6 made the decision not to prosecute?

7           A     Right.

8           Q     But you asked Mr. Lancour if he was  
9 satisfied, that payment had been made and he was  
10 satisfied?

11          A     I asked him if he had been paid and if my  
12 decision would be satisfactory.

13          Q     And he said that it was all right with  
14 him whatever you wanted to do and kind of laughed and  
15 said he had gotten his money?

16          A     He said that it was up to me and that he  
17 had gotten his money.

18          Q     Right. Now then, as far as the policy of  
19 the judge and so forth to dismiss if payment has been  
20 made --

21          A     Yes, sir.

22          Q     -- that has a bearing on this, doesn't  
23 it, I mean, that's one reason that you wanted people to  
24 talk with you rather than just a magistrate issuing a  
25 warrant?

1           A     That's correct.

2           Q     And if you say here about checks which  
3 have been held by the payee for payment by agreement,  
4 if parties have had an agreement before they come to  
5 talk to you that those checks are going to be held or  
6 either some basis and whatnot and no prosecution, if  
7 they go ahead and make payment you would not then  
8 advise that creditor to prosecute, would you?

9           A     Not if it comes under that group right  
10 there, that's correct.

11          Q     Now, as far as the part payment, if full  
12 payment had been made prior to the time and accepted by  
13 the person issuing the warrant before they came to you  
14 and asked about it, you wouldn't advise them to issue a  
15 warrant then, would you?

16          A     No, sir, I would not.

17          Q     So if satisfactory collateral that was  
18 requested by the holder of the check to secure him if  
19 cash had been paid plus collateral requested to be held  
20 as collateral by the person who has the check, the  
21 creditor if we can call him that, had been received by  
22 an agreement, then -- and they had indicated that they  
23 would receive and had received cash plus in this case  
24 automobile titles, you would not advise him to proceed  
25 then, would you?

1           A     If both parties had a mutual agreement  
2 that there was something that was to be paid in lieu of  
3 the cash, then I would not advise a warrant to be  
4 secured.

5           Q     Or something done in the way of  
6 collateral guaranteeing payment at some future date?

7           A     Well, there would have to be a mutual  
8 agreement by both parties that would reach the level of  
9 a legal contract.

10          Q     And, of course, a verbal contract is  
11 perfectly legal, isn't it?

12          A     If it's a mutual understanding by both  
13 parties, but that takes obviously both parties.

14                   MR. JOHNSON: That's all. Thank you.

15

16                   REDIRECT EXAMINATION

17 BY MR. MULLEN:

18          Q     You would not make the judgment --

19                   MR. JOHNSON: We object to the  
20 leading question, if Your Honor please.

21                   THE COURT: All right. I sustain, he's  
22 your witness.

23

24 BY MR. MULLEN:

25          Q     Would you make any judgment as to what

1 was or was not full collateral or full payment or full  
2 consideration?

3 A I would have no way of knowing that  
4 because it would have to be a mutual understanding by  
5 both parties, therefore I would advise anyone who came  
6 to see me to go ahead and see the magistrate.

7  
8 RECROSS EXAMINATION

9 BY MR. JOHNSON:

10 Q But if there was an agreement between the  
11 parties you wouldn't, if it was an agreement between  
12 the parties you told me to hold something either with  
13 part payment and part collateral or whatnot you would  
14 be satisfied if they agreed to it?

15 A If the person who is probably going to be  
16 the defendant and if the complainant both came in and  
17 they said, we have worked this out, then I would say,  
18 that's fine, you just go ahead and settle it outside of  
19 the criminal law, but I would not know that in just  
20 about any case I can think of because I would only see  
21 the complainant.

22 THE COURT: Any other questions of the  
23 witness?

24 MR. MULLEN: No, sir.

25 THE COURT: Thank you, you may step



1 down. He can be excused?

2 MR. JOHNSON: Yes, sir.

3 THE COURT: All right, sir.

4 (Whereupon the witness stood aside.)

5  
6 THE COURT: Any other evidence?

7 MR. MULLEN: The defendant rests.

8 THE COURT: Anything else, Mr. Johnson?

9 MR. JOHNSON: No, sir.

10 THE COURT: All right. Members of the  
11 jury, it's time for the lawyers and for me to  
12 go over the instructions concerning the law  
13 in the case, so if you'll retire to the jury  
14 room, we'll start back in just a few minutes.

15 (Whereupon the jury went to the  
16 jury room.)

17  
18 THE COURT: Do you want everything we  
19 talk about now to be on the record or do you  
20 want to talk informally and then put your  
21 objections, if any, on the record?

22 MR. JOHNSON: Well, Your Honor, as far as  
23 going at this moment, I've got a little  
24 problem. I asked Mr. Mullen to please number  
25 his instructions and give them back to me

1 when he had our first conference and I haven't  
2 gotten them back, so I really haven't had a  
3 chance to read them.

4 THE COURT: Mr. Mullen may have some  
5 further motions. I'm not precluding you from  
6 doing that, but just in reference to the  
7 instructions, I'm going to give the originals  
8 of yours back or maybe you still have the  
9 originals, but wherever your originals are I  
10 ask for you to letter them in sequence so that  
11 we'll make some sense out of what we're  
12 talking about.

13 Do you have any motions, anything before  
14 we take up instructions?

15 MR. MULLEN: Yes, sir. I move to strike  
16 the evidence on the basis of my previous  
17 written -- or my previous motion to strike  
18 entered last night at the conclusion of the  
19 plaintiff's evidence.

20 I think it's clear now there is no  
21 contradiction in the evidence as to what the  
22 motive of Triangle Auto Auction was in  
23 prosecuting Mr. Cash. It was clearly to see  
24 that the criminal prosecution take place and  
25 that justice was done. That's distinct from

1           whatever efforts they may have made in the  
2           collection of the sixteen thousand four  
3           hundred and twenty-three dollars out of which  
4           they had been defrauded.

5           The evidence just does not rise to the  
6           point where it becomes a jury issue. There is  
7           no conflict.

8           I would also point out that again the  
9           plaintiff has not borne his burden of proof of  
10          showing any malice whatsoever on the part of  
11          any representative of Triangle Auto Auction  
12          Company in either securing these warrants or  
13          proceeding to the conclusion of those warrants  
14          made by the commonwealth's attorney and the  
15          judge of Montgomery County.

16          I would move to strike all of the  
17          plaintiff's evidence relative to damages  
18          because there has been absolutely no causal  
19          connection established between anything that  
20          Triangle Auto Auction did and any damages that  
21          Mr. Cash may have suffered. On the contrary,  
22          the evidence is but for the fact that he gave  
23          these bad checks he would not have had the  
24          problems with being barred at certain auto  
25          auctions and that was not even all of the auto

1        auctions, he could have dealt in cash at  
2        Fredericksburg and hard titles.

3                In addition to that to allow this case to  
4        go to the jury at this point would permit the  
5        jury to speculate on what damages, if any, Mr.  
6        Cash has sustained and whether or not Triangle  
7        Auto Auction has any responsibility for those.

8                The elements of the tort have not been  
9        proven. The damages are speculative, and the  
10       law is such that under Section 18.2-185  
11       Triangle has an absolute defense if it  
12       followed that Code Section. And for those  
13       reasons this case should not be permitted to  
14       go to the jury.

15               THE COURT: You're, in effect, renewing  
16       your previous motion?

17               MR. MULLEN: Yes, sir.

18               THE COURT: Mr. Johnson, would your  
19       argument be any different from what your  
20       argument was when he made his motion before?

21               MR. JOHNSON: No, Your Honor, it  
22       wouldn't. If I might just reaffirm the same  
23       argument and add one thing that I think we  
24       would submit the testimony now of Mr. Lancour  
25       and Mr. Sale very solidly buttresses the motion

1           that I made at the completion of our evidence.  
2           They have each stated they could give no other  
3           reason for that agreement other than to  
4           collect the debt and whatnot or other than  
5           that being the agreement to hold off on  
6           prosecution or whatnot.

7           The malice is inferred as the law is  
8           given in instruction number six. Of course,  
9           that didn't come up before I don't believe.  
10          Any -- malice is any reason except a genuine  
11          desire to see justice done, to enforce the  
12          law, and punish the guilty. And the evidence  
13          overwhelmingly shows that motive was to collect  
14          the debt.

15          THE COURT: Well, my ruling, Mr. Mullen,  
16          is going to be the same as before. I'm taking  
17          the matters under advisement as I indicated I  
18          would and I'm going to let the matter go to  
19          the jury with those matters under advisement.

20          Now, what I'd like for both of you to do  
21          is give me the originals of your proposed  
22          instructions sequentially either numbered or  
23          lettered.

24          MR. MULLEN: Your Honor, may I have about  
25          five or ten minutes to go over them?

1 THE COURT: All right. Take a short  
2 break. Let me know when you're ready.

3 MR. JOHNSON: I still don't have a copy  
4 of yours, David.

5 (Whereupon a brief recess was  
6 taken.)

7  
8 THE COURT: So as to save time with  
9 reference to the plaintiff's tendered  
10 instructions considering we've already briefly  
11 discussed the instructions informally, I am  
12 going to give instruction one, two, four, six,  
13 seven, eight, nine, and twelve. That is not  
14 to say that I'm refusing the others at this  
15 point, but they are the only instructions I  
16 want any discussion on, the ones I did not  
17 number.

18 MR. JOHNSON: I think you didn't include  
19 three, but what else?

20 THE COURT: All right. I'm going to give  
21 one, two, three, four, six, seven, eight,  
22 nine, and twelve without any further argument.  
23 Of course, any objection can be stated on the  
24 record for giving any of those and I'm not  
25 refusing at this point giving of the others

1 that are not mentioned, but since we've  
2 discussed them I think these instructions  
3 correctly state the law and I'm going to  
4 submit them to the jury on that basis.

5 Now, Mr. Mullen, do you have any  
6 objection to the giving of number three?

7 MR. MULLEN: Yes, sir, I do, Your Honor,  
8 and the objection I have to number three will  
9 probably be the same as I have on all the  
10 others, that 18.2-185 is an absolute bar and  
11 the jury should not be permitted to consider  
12 this evidence.

13 THE COURT: I understand that you have  
14 that standing objection to the giving of any  
15 instruction and I note your objection on that  
16 basis. Do you think that number three is a  
17 correct statement of the law if your objection  
18 were not made on that basis?

19 MR. MULLEN: I do not think Mullens  
20 versus Sanders upon which this is based is the  
21 present law of Virginia.

22 THE COURT: Because of the fact that we  
23 have the statute, but if the statute were not  
24 in effect would you think that instruction  
25 number three correctly states the law assuming

1 that we didn't have the statute and reserving  
2 your objection on that basis?

3 I think it is and I'm going to give it  
4 and you can note any other objections that you  
5 want.

6 MR. MULLEN: I do note my objection to  
7 that.

8 THE COURT: All right. Now, I'm calling  
9 your attention to number five, any objection  
10 other than what you already stated?

11 MR. MULLEN: Unless I missed it, Your  
12 Honor, I thought that was one that -- that is  
13 not one that you were giving.

14 THE COURT: I haven't said one way or the  
15 other, I'm just asking you to state an  
16 objection to number five if you have one.  
17 That instruction as I have it, and I think the  
18 plaintiff changed that instruction at some  
19 point, but I'll read it here, the one I have  
20 says: The Court instructs the jury that if the  
21 primary motive of the defendant when it in  
22 instigated -- that doesn't make any sense.

23 MR. JOHNSON: That's an extra in in  
24 there, Judge, I'm sorry.

25 THE COURT: Strike the word in. Starting



1 over: The Court instructs the jury that if the  
2 primary motive of the defendant when it  
3 instigated the criminal proceeding was to  
4 collect a debt due Triangle Auto Auction,  
5 Inc. rather than to punish the defendant for  
6 his supposed violation of the criminal law,  
7 this would be, quote, ulterior motive, close  
8 quote, on the part of the defendant as  
9 referred to in the other instructions given  
10 you.

11 Any objection to the giving of that  
12 instruction?

13 MR. MULLEN: Yes, I do, Your Honor, that  
14 is not what Mullens versus Sanders stands for.  
15 That was a case as I briefed the Court earlier  
16 on in which it was specifically stated by the  
17 creditor if you don't pay then I will  
18 prosecute. None of the evidence in this case  
19 rises to that level.

20 THE COURT: All right. But what would be  
21 an ulterior motive in your view?

22 MR. MULLEN: Prosecuting solely to  
23 collect the debt which is directly contrary to  
24 the evidence in this case.

25 THE COURT: Well, isn't that what the

1 instruction says, though?

2 MR. MULLEN: My position, Your Honor,  
3 respectfully is that the jury should not be  
4 permitted to consider the case of motive  
5 because -- as a matter of law.

6 THE COURT: Oh, you're saying as a matter  
7 of law. If there is a jury issue, if there is  
8 a jury issue as to ulterior motive and not as  
9 a matter of law, would this correctly state  
10 the law?

11 MR. MULLEN: If there were a jury issue?

12 THE COURT: In other words, how would you  
13 define ulterior motive is what I'm asking you?

14 MR. MULLEN: One of the motives  
15 prohibited such as the desire not to punish  
16 the guilty, not to see that justice is done  
17 solely to collect the debt.

18 THE COURT: Well, that's what the  
19 instruction says. I think that's an issue of  
20 fact the jury would have to determine. I'm  
21 going to submit it on that basis and give  
22 number five and note your objection giving  
23 that one.

24 All right, sir. Does that cover  
25 everything except ten and eleven, how about

1        number ten? I understand, Mr. Mullen, that  
2        you object because you say there is no proof  
3        of any damage in this case, is that what  
4        you're saying?

5                MR. MULLEN: Yes, sir.

6                THE COURT: Do you want to respond?

7                MR. JOHNSON: I didn't understand the  
8        objection, Judge, his objection is what?

9                THE COURT: He says that there is no  
10       evidence to support the instruction, there is  
11       no evidence from which the jury could conclude  
12       that the plaintiff was damaged.

13               Is that your objection?

14               MR. JOHNSON: In regards to any of these,  
15       any of the four?

16               MR. MULLEN: Yes.

17               THE COURT: We're referring to number ten  
18       now.

19               MR. JOHNSON: I know, but I mean is he  
20       objecting to all four items, that's what I  
21       didn't understand.

22               THE COURT: I understood you to say that,  
23       but if you're not --

24               MR. MULLEN: No, I object to all of them.

25               THE COURT: All right, sir.

1 MR. JOHNSON: All right. Then, if Your  
2 Honor please, in regard -- I guess my answer  
3 would have to be in regard to each of them  
4 then. Loss of injury to his business, I have  
5 this situation right here that's  
6 uncontradicted, that everyone who has  
7 testified has said that the loss of retail --  
8 in wholesale sales was due to being barred and  
9 the barring was due by reasonable  
10 circumstantial evidence which can establish  
11 the fact due to the prosecution for the  
12 checks.

13 Secondly, any embarrassment, humiliation,  
14 mental suffering, or insult, that's implied in  
15 law where you have this type of thing in  
16 arrest and so forth and the fact he's  
17 testified, his wife has testified, his father  
18 has testified, two or three of the other  
19 witnesses have testified that he was extremely  
20 distraught, upset, and so forth. It's up to  
21 the jury to put a value on that.

22 Injury to his reputation. To be  
23 perfectly frank with the Court, reputation has  
24 a pretty well defined meaning in law and I'm  
25 not positive we have affirmatively proven

1           number three, to be honest about it.

2           THE COURT:   What's in evidence of any  
3           actual out-of-pocket loss as opposed to --  
4           you've already said something about business.

5           MR. JOHNSON:   All right, sir.   The  
6           fifteen hundred dollars attorney fees.

7           THE COURT:   All right.

8           MR. JOHNSON:   The travel, which we didn't  
9           prove the amount, but the travel to and from  
10          Christiansburg, the fact that he had to -- and  
11          Fredericksburg, that he had to come back when  
12          barred, Mr. Morris, the jury could certainly  
13          put some value on these things.

14          THE COURT:   Any further comment on  
15          instruction ten, Mr. Mullen?

16          MR. MULLEN:   In response to Mr. Johnson,  
17          if Mr. Cash was, in fact, barred, he wasn't  
18          barred from Fredericksburg, that's the best  
19          evidence.   If he was barred from either of the  
20          other auctions it was because of nothing that  
21          can be traced directly or indirectly to  
22          Triangle.   The one letter about the insurance  
23          company at Statesville speaks for itself and  
24          the one about High Point is silent as to the  
25          reason.

1 THE COURT: All right. I'm going to give  
2 number ten, but I'm going to delete in  
3 subparagraph three everything in that  
4 subparagraph except the last word, and. I  
5 don't think there is any evidence of that,  
6 damage to his reputation.

7 I'm going to submit it on the factual  
8 issue as to all the other things.

9 MR. JOHNSON: That will not count injury  
10 to reputation, leave in and I guess change  
11 four to three?

12 THE COURT: Yes, change paragraph four so  
13 as to be number three. It's all right to do  
14 that on the instruction without retyping it?

15 MR. JOHNSON: Sure.

16 MR. MULLEN: That's fine.

17 THE COURT: All right. Any comment on  
18 instruction eleven?

19 MR. MULLEN: Since Your Honor took out  
20 the words, or damage to his reputation, that  
21 would have to be stricken from number eleven  
22 and to allow recovery for distress, again that  
23 encourages the jury to speculate, as well as  
24 my standing objection to the instruction.

25 THE COURT: All right. You have to take

1 out the part about reputation, there is no  
2 evidence to support that clearly. I'm going  
3 to refuse number eleven. I think it's covered  
4 by the previous instruction.

5 MR. JOHNSON: It maybe covered damages  
6 for distress to the extent that they are  
7 normal.

8 THE COURT: Well, in instruction number  
9 ten subparagraph two, any embarrassment,  
10 humiliation, mental suffering, or insult which  
11 he sustained, I think that covers. I will --  
12 will you withdraw that one?

13 MR. JOHNSON: The only thing, Judge, I  
14 think that -- well, we would ask for the first  
15 paragraph, because I think that's necessary  
16 because the only other instruction dealing  
17 with punitives. In other words, if you find  
18 your verdict for the plaintiff, Daniel F. Cash --

19 THE COURT: Just delete the last  
20 paragraph? Any problem with that? That looks  
21 like it would be beneficial to the defendant.  
22 You have to give him only the damages he  
23 actually -- can you get her to retype that  
24 one?

25 And twelve I'm going to give.

1           Mr. Mullen, any further objection you  
2 want to make. I think you stated all your  
3 objections, but I don't want to preclude you  
4 from saying anything else on the record.  
5 She's retyping number eleven to delete the  
6 last paragraph and I'll give that with that  
7 change.

8           MR. MULLEN: I don't believe I have any  
9 objections that I haven't stated.

10          THE COURT: Let's see. Mr. Mullen,  
11 you've given me some instructions that still  
12 have your case references on them.

13          MR. MULLEN: Yes, sir, I indicated to the  
14 Court --

15          THE COURT: Yes, I know. How are we  
16 going to let the jury take them back there  
17 with that on there?

18          MR. MULLEN: Well, I'm going to cut them  
19 off.

20          THE COURT: I'll tell you what, let's go  
21 through them before we do that. I'm going to  
22 give his number A. I think -- any problem  
23 with that, Mr. Johnson? I think that states  
24 what he's got to --

25          MR. JOHNSON: Yes, sir. No objection to



1           that.

2           THE COURT:   How about A-1?

3           MR. JOHNSON:   Judge, I just got these and  
4           I haven't had a chance --

5           THE COURT:   Isn't that what that case  
6           basically says?

7           MR. JOHNSON:   Well, the only thing that  
8           troubles me, this says that bad checks, if  
9           Triangle had a genuine desire. They could  
10          have a desire to do those things, but yet have  
11          the primary purpose of collecting the debt and  
12          under the law be guilty of abuse of process.

13          It seems to me that it ought to say if  
14          Triangle acted solely from a desire to see  
15          justice done, enforce the law, and punish the  
16          guilty if you're going to put it in a finding  
17          posture.

18          MR. MULLEN:   Your Honor, I think it states  
19          the law correctly, states the law as it's  
20          drawn.

21          THE COURT:   All right. I'm going to give  
22          that as it's written. I think it's an  
23          appropriate statement of the law considering  
24          we're going to give some others I think would  
25          clear it up.

1 All right. Now, when you cut these off,  
2 make sure that you leave given on there with  
3 my initial.

4 Reference to jury instruction B.

5 MR. JOHNSON: We would object to that, if  
6 Your Honor please. This really contradicts  
7 the other instructions given by the Court.  
8 Even if you find that they procured for an  
9 ulterior motive if enforces the collection of  
10 the debt, it's not enough for you to -- that  
11 the jury can find that that was sufficient if  
12 that was their ulterior purpose.

13 THE COURT: Pass that one.

14 How about C?

15 MR. JOHNSON: Well, Judge, the second  
16 paragraph I don't have any problem with. The  
17 first one I don't see what this jury really  
18 has to decide whether or not it constituted  
19 grand larceny or a prima facie case or  
20 whatnot. The question is whether or not the  
21 warrants should have been issued if there was  
22 an ulterior motive, not whether this Court is  
23 sitting on the weight of the evidence as to  
24 grand larceny. I think it's just confusing to  
25 have that part in there.

1           The second paragraph I don't object to  
2 because it says, and for no ulterior motive.

3           THE COURT: I believe I'm going to give  
4 number C. It explains to them what criminal  
5 offense it is and I think it does state the  
6 law correctly.

7           How about D?

8           MR. JOHNSON: No, sir, we would object to  
9 that.

10          THE COURT: You do or do not?

11          MR. JOHNSON: Yes, sir, I do, because the  
12 statement that if they believe that they made  
13 use of the criminal process without any  
14 act amounting to the misuse or oppression.  
15 There is no oppression and misuse have nothing  
16 really to do with it when you say is not  
17 guilty of an abuse of process even if you  
18 further believe that Triangle Auto Auction had  
19 an ulterior motive in seeking such action,  
20 that's contradictory.

21          THE COURT: Do you want to respond in any  
22 way? I think that is going to be covered.  
23 The idea you want to get across is already  
24 covered in the ones I'm going to give and  
25 aside from that, I question the use of the

1 terms misuse or oppression. I'm afraid that's  
2 going to confuse them as to what we're talking  
3 about.

4 MR. MULLEN: I'll withdraw number D.

5 THE COURT: All right.

6 Number E?

7 MR. JOHNSON: Well, Judge, we would  
8 object, first of all, to that instruction  
9 because the word prospective depends on where  
10 you're speaking from. Now, if the jury  
11 considered this to be prospective profits from  
12 the viewpoint of when the abuse occurred, they  
13 could consider prospective from that time. I  
14 think it would be completely confusing to the  
15 jury.

16 What we're dealing with are profits or  
17 lack of profits either one from '84 on up to  
18 through September.

19 THE COURT: Well, what about that,  
20 doesn't the damage instruction cover that? I  
21 mean, what do you mean, what will the jury  
22 think about prospective profits? The damage  
23 instruction I'm giving tells them that what  
24 they can give damages for and tells them that  
25 they have to base it on the evidence.

1 I'm going to refuse that one, Mr. Mullen,  
2 because I think it's not clear what  
3 prospective profits are and I think that would  
4 tend to confuse the jury and also I think the  
5 other instructions are going to tell them  
6 adequately what they can consider.

7 What about number F?

8 MR. JOHNSON: We object to this, first of  
9 all, on it being repetitious of instruction --

10 THE COURT: That, I think, is covered by  
11 the giving of some of the others and seems to  
12 be repetitious, your number F.

13 MR. JOHNSON: It's repetitious of C.

14 THE COURT: C tells them what the crime  
15 is.

16 MR. MULLEN: I'll withdraw F, Your Honor.

17 THE COURT: How about G, I'm going to  
18 give G.

19 MR. JOHNSON: No objection to that. I've  
20 already told Mr. Mullen I didn't object to  
21 that.

22 THE COURT: How about number H?

23 MR. JOHNSON: No, sir, I object to that,  
24 I object to that because that's not the  
25 question here. Mr. -- this makes an absolute

1 statement from the Court in regard to this  
2 when actually even Mr. Keith's testimony is if  
3 there was an agreement between the parties,  
4 that both agreed to hold the check and so  
5 forth, this would apply in the face of that  
6 and simply say in payment in part or in full.

7 Now, the question was part payments,  
8 security, collateral. This would lead the  
9 jury to think that automatically from the  
10 18.2-185 there would be a guilt of grand  
11 larceny and consequently the warrants would be  
12 proper. That invades the province of the  
13 jury, first of all, if Your Honor please.

14 MR. MULLEN: Your Honor, it correctly  
15 states the law in the Cook case and the law  
16 that's still in effect, part payment is not a  
17 bar to prosecution.

18 MR. JOHNSON: This doesn't say part, it  
19 says payment either in full or in part and Mr.  
20 Keith said if there was full payment they  
21 would not advise to prosecute.

22 He said further that if there was a  
23 collateral -- to be held as collateral  
24 agreement that was agreed to by both the  
25 parties which is our contention that's a jury

1 question, that it would be a bar to his  
2 issuing the warrants.

3 So the entire evidence of Mr. Keith, the  
4 defendant's witness, would be immaterial if  
5 this instruction is given.

6 THE COURT: I'm not going to give that  
7 one, I'm afraid that's going to confuse them  
8 as -- you know, it seems to be contradictory  
9 of instruction C which talks in terms of prima  
10 facie case, non-payment within five days. And  
11 here you're talking about even if you paid him  
12 in full within five days it's not -- maybe not  
13 be a bar to the prosecution, but it then goes  
14 on to tell them in effect that the crime has  
15 been committed.

16 I think it's confusing and I don't  
17 believe it correctly states the law as it  
18 applies to this case. I'm going to refuse  
19 number H.

20 MR. MULLEN: Note my exception.

21 THE COURT: How about number I?

22 MR. JOHNSON: Oh, yes, sir, definitely.

23 THE COURT: I'm going to refuse just to  
24 save time here because it, in effect, says  
25 that if they were an integral part, but if

1 somebody else participated in it, the way I  
2 read the instruction, that they would not be  
3 liable under the law and it is, you know, it  
4 really wouldn't be any evidence to support the  
5 giving of that instruction.

6 MR. MULLEN: Please note my exception to  
7 that, Your Honor.

8 THE COURT: All right. How about J?

9 MR. JOHNSON: No objection to the meat of  
10 the instruction to the definition, but I  
11 object to the, quote, definition of common law  
12 actual malice.

13 THE COURT: Yes, it's got a heading on  
14 it, Mr. Mullen.

15 MR. MULLEN: I would agree to amend that  
16 one.

17 THE COURT: Do you want me to just write  
18 a line through that?

19 MR. MULLEN: That will be fine.

20 THE COURT: All right. I'll give it with  
21 that change. What I'm blacking out so  
22 everybody will make sure that we know, the  
23 line at the beginning of the instruction J  
24 which says punitive damages, hyphen,  
25 definition of common law actual malice, I'm



1 deleting all of that by marking through it.  
2 I'm going to give it as changed.

3 Is that given somewhere else, is that  
4 instruction given?

5 MR. JOHNSON: That's in my punitive  
6 damages instruction.

7 THE COURT: I don't mind giving it again  
8 if it states the law, but it seems sort of --  
9 has it already been given?

10 MR. MULLEN: Not exactly. I think we're  
11 entitled to it like that.

12 THE COURT: All right. I'll give it.

13 Is that all of them?

14 MR. MULLEN: I believe that's all of  
15 them.

16 THE COURT: I think the rest of them are  
17 just copies of Mr. Johnson's.

18 Maybe we better run through them so we  
19 see how we stand. Is that all of your  
20 tendered instructions?

21 MR. MULLEN: Yes, sir.

22 THE COURT: I've already stated what I'm  
23 giving of Mr. Johnson's. Do I need to restate  
24 those or do you just want to go through his?

25 I'm giving A, A-1, C, G, and J. J has

1 changed. I refused, according to what I have  
2 here, instructions H, I, and E for the reasons  
3 stated and the others were withdrawn, I  
4 believe, is that right?

5 MR. MULLEN: Yes, sir.

6 THE COURT: Does that jive with what  
7 everybody has?

8 MR. JOHNSON: Yes, sir.

9 MR. MULLEN: Yes, sir.

10 THE COURT: Do we need to go through Mr.  
11 Johnson's anymore?

12 MR. MULLEN: No, sir.

13 THE COURT: Okay. Ready to bring them  
14 in?

15 MR. JOHNSON: Could we maybe have five  
16 minutes just simply to get some papers  
17 together, that's all.

18 THE COURT: I'm going to sit here and  
19 wait for you.

20 (Whereupon a brief recess was  
21 taken.)

22  
23 THE COURT: Unless there is something  
24 else to take up. If you want any further  
25 objections put them on the record now.

1 MR. MULLEN: I may have already made this  
2 motion, Judge, and if I have --

3 THE COURT: Go ahead, whatever you want  
4 to put on.

5 MR. MULLEN: As a part of my motion to  
6 strike all of the evidence, it's contrary to  
7 the law and it's contrary to the evidence and  
8 for that reason I ask the Court to strike it  
9 and not let the case go to the jury.

10 MR. JOHNSON: I have one motion to make  
11 after the Court rules on that. Our answer to  
12 that, if Your Honor please, of course, it's  
13 purely a jury question.

14 THE COURT: All right. I'm going to  
15 submit it with the things under advisement  
16 that I indicated I was taking under  
17 advisement.

18 So we'll know, we passed instruction B, I  
19 believe. I don't know whether we addressed  
20 that one or not. I hate to even do that, but  
21 I look here and I don't have --

22 MR. JOHNSON: I think you're correct and  
23 I objected and the Court was going to pass  
24 this for now. I have on here I objected and  
25 you reserved ruling on that.

1           MR. MULLEN: I think the pleadings are  
2 always part of the case file and I would abide  
3 by the Court's instruction on whether to --

4           THE COURT: I don't think you should. I  
5 think you should argue. You can tell the jury  
6 that you're arguing what you think the  
7 evidence is and you have to argue that in good  
8 faith and not willfully misstate what the  
9 evidence is even ethically. And so what would  
10 be the evidence of that? I don't think you  
11 can put the pleadings in, you certainly can't  
12 do that.

13          MR. MULLEN: I accept and abide by the  
14 Court's ruling.

15          THE COURT: Are you ready to bring them  
16 back in and instruct them?

17          MR. JOHNSON: Yes, sir.

18          THE COURT: Okay. Call them in.

19                   (Whereupon the jury entered the  
20 courtroom.)

21  
22          THE COURT: Members of the jury, it's now  
23 time for me to instruct you concerning the  
24 law applicable to the facts in this case as  
25 you find them. It's an awful lot of reading

1 on my part, but it is my duty to read them to  
2 you, so now please listen. You do get to  
3 carry these with you back to the jury room  
4 when you start your deliberations.

5 The Court instructs the jury that the  
6 plaintiff, Daniel F. Cash, is not required to  
7 prove his case beyond a reasonable doubt, but  
8 that the plaintiff is only required to prove  
9 his case by a preponderance or greater weight  
10 of the evidence in order to entitle him to a  
11 verdict against the defendant, Triangle Auto  
12 Auction, Inc.

13 The Court instructs the jury that  
14 Triangle Auto Auction, Inc. is responsible at  
15 law for the acts of its officers, agents,  
16 servants, or employees when acting within the  
17 scope of their employment.

18 The Court instructs the jury that you  
19 shall find a verdict for the plaintiff,  
20 Daniel F. Cash, if you believe from a  
21 preponderance of the greater weight of the  
22 evidence each of the following: one, the  
23 existence of an ulterior motive on the part of  
24 the defendant, such as the collection of a  
25 debt instead of the desire to bring the

1 plaintiff to justice; and two, the defendant  
2 did an act in the use of the process not  
3 proper in the regular prosecution of the  
4 proceeding.

5 The burden is on the plaintiff to prove  
6 abuse of process, that is that the criminal  
7 proceeding was instigated by the defendant  
8 with an ulterior motive other than that of  
9 bringing the plaintiff to justice.

10 When a party has the burden of proof of  
11 an issue then he must prove that issue by the  
12 greater weight of all of the evidence. This  
13 is sometimes called the preponderance of the  
14 evidence. It is that evidence which you find  
15 more convincing. The testimony of one witness  
16 whom you can believe can be the greater weight  
17 of the evidence.

18 The Court instructs the jury that if the  
19 primary motive of the defendant when it  
20 instigated the criminal proceeding was to  
21 collect a debt due Triangle Auto Auction, Inc.  
22 rather than to punish the plaintiff for his  
23 supposed violation of the criminal law, this  
24 would be an ulterior motive on the part of the  
25 defendant as referred to in the other

1 instructions given to you.

2 Malice exists when the controlling motive  
3 or instigating criminal proceedings is any  
4 reason except a genuine desire to see justice  
5 done, to enforce the law, or to punish the  
6 guilty. Malice may be inferred from a lack  
7 of probable cause.

8 A person instigates criminal proceedings  
9 against another by bringing the criminal  
10 charge or, two, cooperating actively in  
11 bringing the criminal charge.

12 Any fact that may be proved by direct  
13 evidence may be proved by circumstantial  
14 evidence, that is, you may draw all reasonable  
15 and legitimate inferences and deductions from  
16 the evidence.

17 The Court instructs the jury that you are  
18 the judges of the facts, the credibility of  
19 the witnesses, and the weight of the evidence.  
20 You may consider the appearance and manner of  
21 the witnesses on the stand, their  
22 intelligence, their opportunity for knowing  
23 the truth and for having observed the things  
24 about which they testified, their interest in  
25 the outcome of the case, their bias, and if

1 any have been shown, their prior inconsistent  
2 statements, or whether they have knowingly  
3 testified untruthfully as to any material fact  
4 in the case.

5 You may not arbitrarily disregard  
6 believable testimony of a witness. However,  
7 after you have considered all the evidence in  
8 the case then you may accept or discard all or  
9 part of the testimony of a witness as you think  
10 proper.

11 You are entitled to use your common sense  
12 in judging any testimony. From these things  
13 and all the other circumstances of the case,  
14 you may determine which witnesses are more  
15 believable and weigh their testimony  
16 accordingly.

17 The Court instructs the jury that if you  
18 find your verdict for the plaintiff, Daniel F.  
19 Cash, then in determining the amount of  
20 damages to which he is entitled you may take  
21 into consideration all of the circumstances  
22 surrounding the abuse of process by the  
23 defendant and you may take into consideration  
24 such of the following elements as you may  
25 believe from a preponderance of the evidence



1           resulted from the actions of the defendant,  
2           any loss of injury to his business, any  
3           embarrassment, humiliation, mental suffering,  
4           or insult which he sustained, and any actual  
5           out-of-pocket losses that were caused by the  
6           defendant.

7           And from these as proven by the evidence  
8           your verdict should be for such sum as will  
9           fully and fairly compensate the plaintiff for  
10          the damages sustained by him as a result of  
11          abuse of process not to exceed the sum sued  
12          for.

13          If you find your verdict for the  
14          plaintiff, Daniel F. Cash, you shall award him  
15          compensatory damages for the loss or injury he  
16          has actually suffered.

17          The Court instructs the jury that if you  
18          find that the plaintiff, Daniel F. Cash, is  
19          entitled to be compensated for his damages and  
20          if you further believe by the greater weight  
21          of the evidence that the defendant acted with  
22          actual malice in instigating the criminal  
23          proceedings against the plaintiff, then you  
24          may award punitive damages to the plaintiff to  
25          punish the defendant for his actions and to

1 serve as an example to prevent others from  
2 acting in a similar way.

3 Actual malice is a sinister or corrupt  
4 motive such as a desire to injure the  
5 plaintiff or conscious disregard of the rights  
6 of others.

7 If you award punitive damages you must  
8 state separately in your verdict the amount  
9 you would allow as compensatory damages, if  
10 any, and the amount you allow as punitive  
11 damages.

12 The Court instructs the jury that abuse  
13 of process consists in the malicious misuse or  
14 misapplication of process to accomplish some  
15 purpose not warranted or commanded by writ and  
16 as malicious perversion of regularly issued  
17 process to secure results -- a result not  
18 lawfully or properly obtainable thereunder.

19 It is not malice for Triangle Auto  
20 Auction, Inc. to have instituted the criminal  
21 proceedings against Daniel F. Cash for his  
22 giving Triangle Auto Auction, Inc. the bad  
23 checks if Triangle Auto Auction, Inc. had a  
24 genuine desire to see justice done, to enforce  
25 the law, or to punish the guilty.

1           It is not malice if any of these were the  
2 motives and Triangle Auto Auction, Inc.'s  
3 continuing the prosecution of Daniel F. Cash  
4 for the giving of those bad checks.

5           The regular or legitimate use of the  
6 criminal process for the bad checks even with  
7 a bad intention on the part of Triangle Auto  
8 Auction, Inc. is not malicious abuse of  
9 process.

10          Abuse of process consisting of the  
11 malicious misuse or misapplication of process  
12 to accomplish some purpose not warranted or  
13 commanded by writ and as malicious perversion  
14 of the regularly issued process to secure a  
15 result not lawfully or properly obtainable  
16 thereunder -- this is repetition of the other  
17 instruction, but I'm going to give it and  
18 just call that to the jury's instruction -- to  
19 their attention, that is. It is not malice  
20 for Triangle Auto Auction, Inc. to have  
21 instituted the criminal proceedings against  
22 Daniel F. Cash for his giving Triangle Auto  
23 Auction, Inc. the bad checks if Triangle Auto  
24 Auction, Inc. had a genuine desire to see  
25 justice done, to enforce the law, or to punish

1 the guilty.

2 The Court instructs the jury that  
3 making or delivery of checks returned by the  
4 drawee bank for insufficient funds after five  
5 days written notice of the return by the  
6 holder of the checks and non-payment being  
7 made by the maker is prima facie evidence of  
8 the intent of the maker to defraud the holder.  
9 This is a form of grand larceny, a criminal  
10 felony, and is prosecutable as such under the  
11 law of Virginia.

12 If you believe that Triangle Auto  
13 Auction, Inc.'s motivation in prosecuting  
14 Daniel F. Cash for the three bad checks which  
15 he gave them was to see justice done, to  
16 enforce the law, or to punish the guilty and  
17 for no -- and for no ulterior motive, then you  
18 shall find your verdict in favor of Triangle  
19 Auto Auction, Inc. in the lawsuit of Daniel  
20 F. Cash versus Triangle Auto Auction, Inc. for  
21 abuse of process.

22 The Court instructs the jury you must not  
23 base your verdict in any way upon sympathy,  
24 bias, guesswork, or speculation. Your verdict  
25 must be based solely upon the evidence and the

1 instructions of the Court.

2 Actual malice is a sinister or corrupt  
3 motive such as hatred, personal spite,  
4 ill will, or a desire to injure the plaintiff.

5 The counsel in the case have a right to  
6 make a closing argument now, and I again  
7 remind you that closing arguments of counsel  
8 are not evidence in the case.

9 I need to ask counsel how much time you  
10 think you need to argue. If you will agree on  
11 that now and tell me.

12 MR. MULLEN: I need forty-five minutes,  
13 Your Honor.

14 THE COURT: How much?

15 MR. MULLEN: As much as forty-five  
16 minutes.

17 THE COURT: Mr. Johnson, is that  
18 acceptable?

19 MR. JOHNSON: That's acceptable. Thirty  
20 is all right with us.

21 THE COURT: I'll give each side forty-  
22 five minutes.

23 Mr. Johnson, do you want me to write your  
24 time or will you do it?

25 MR. JOHNSON: Yes, sir. Would you let me

1 know if I use as much as twenty minutes?

2 THE COURT: I'll tell you when twenty  
3 minutes is up.

4 You may make a closing argument.

5 (Whereupon an off-the-record  
6 discussion was had.)  
7

8 THE COURT: Would the jury like to just  
9 step inside there and consider whether or not  
10 you would like to break for lunch now before  
11 you hear the arguments or whether or not you  
12 want to go on with the arguments or what you  
13 would like to do. We want to do what you want  
14 to do.

15 JUROR: We'd like to go to the jury room.

16 THE COURT: All right. Just let us know  
17 when you've made a decision then.

18 (Whereupon the jury left the  
19 courtroom.)  
20

21 THE COURT: In my haste I gave a  
22 repetitious instruction, A-1 really just  
23 states the same thing as does the previous  
24 one, I believe in large part. Does that  
25 create any problem? I read it to them and I

1 so instructed them, do you want to withdraw  
2 that or do you want it to go as is?

3 MR. MULLEN: I believe I had a difference  
4 between A and A-1.

5 THE COURT: It may have been some, but it  
6 was so close that it sounded like an echo.

7 MR. MULLEN: Judge, I need all the help I  
8 can get in the case, so I would like to leave  
9 it unless there --

10 MR. JOHNSON: Objection.

11 THE COURT: Since I gave it and it was no  
12 objection I'll let it stay in there. They can  
13 decide for themselves to what use they want to  
14 put it.

15 JUROR: We would like to have lunch now.

16 THE COURT: We'll do that then. I  
17 understand that the jury would like to recess  
18 for lunch now so that's what we'll do, so try  
19 to be back here not later than one-thirty and  
20 we will recess for lunch at this time and, of  
21 course, keep in mind that you're not to  
22 discuss the case or make any decision  
23 concerning it until you're all in the jury  
24 room together with your deliberations, so come  
25 back at one-thirty.

1 (Whereupon a lunch recess was taken  
2 after which the proceedings continued  
3 as follows:)

4 (Whereupon the jury entered the  
5 courtroom.)  
6

7 THE COURT: Okay. Mr. Johnson.  
8

9 CLOSING ARGUMENT

10 BY MR. JOHNSON:

11 May it please Your Honor and ladies and  
12 gentlemen, we -- I know Mr. Mullen, and all of us for  
13 that matter, appreciate your obvious attention to the  
14 evidence and so forth. We are all sorry that it's  
15 rather warm. At least we've accomplished one thing, we  
16 switched from cold to warm since we've been here, it's  
17 too cold upstairs and too warm down here.

18 But anyhow, this is the final stage of  
19 this proceeding, as you know, and we'll try not to take  
20 anymore time than necessary, but this is important to  
21 people here, not only to my client, Mr. Cash, but to  
22 Triangle Automobile Auction as well, because this is  
23 the only way that such matters as this can be resolved,  
24 is by a proceeding and it's up to you now.

25 You've heard the evidence, the Court,



1 Judge Miller, has instructed you as to the law and so  
2 as we said at the beginning it's your function now to  
3 put the evidence that you've heard and the law together  
4 and come up with your verdict.

5           You've heard it and I'm sure your memory  
6 is undoubtedly better than mine, but I'm just going to  
7 mention a few things that it seems to us are important  
8 and ask you that if you would consider all of the  
9 evidence and all of the Judge's instructions.

10           Now, I'm certainly not going to go  
11 through all the Court's instructions because the Judge  
12 has read those to you and if we or Mr. Mullen or either  
13 one only refer to one or two that doesn't mean that  
14 they are more important than the others. The Judge has  
15 given you the instructions, they are to be considered by  
16 you as a whole, that's the law of the case, that's what  
17 you apply to the evidence to come up with your results.  
18 So if we mention one or two or three it's not that we  
19 mean that they are the only ones, they are all  
20 important.

21           Now, what we're dealing with really here  
22 boils down it seems to me to one real question, and you  
23 know we can take the testimony, as it were, of Mr.  
24 Keith, the last witness who testified, the  
25 commonwealth's attorney, assistant commonwealth's

1 attorney in Montgomery County, and you know, he was  
2 asked about the part payment, would it keep them from  
3 prosecuting. He said, no. He was asked if full  
4 payment -- if something was fully paid within the five  
5 days would that keep them from paying -- from  
6 prosecuting. He said, yes, that it would. He would not  
7 recommend anybody prosecute if it was paid within the  
8 five days.

9 Now, he was asked then about collateral  
10 and he said, if the two parties agreed upon collateral,  
11 if they were in agreement that he would not prosecute  
12 if they had agreed to take the collateral and hold that  
13 for the debt, that he would not prosecute.

14 Now he said, he wouldn't do it just on the  
15 statement of the defendant, obviously, but Mr. Lancour  
16 and Mr. Sale had entered into this agreement when Mr.  
17 Sale asked for the titles. I don't believe under the  
18 evidence that anybody can seriously question but what  
19 that was an agreement, an agreement can be implied just  
20 as well as under, why else was it done. I asked both  
21 Mr. Lancour and Mr. Sale, neither could say why it was  
22 done other than as an agreement not to prosecute if he  
23 sent the titles having already paid the twenty-four  
24 hundred and fifty-four dollars.

25 In, fact, think about this, Mr. Lancour,

1 if you will remember, when really confronted with this  
2 thing said, well, you know, I didn't agree to that, I  
3 wouldn't have done that, Mr. Sale did that. I said,  
4 well, Mr. Sale is your superior, isn't he? Well, yes.  
5 But you don't agree with him, you don't think he was  
6 authorized? Oh, yes, he was authorized, but I wouldn't  
7 have done it.

8                   And I asked him, I said, well, is the  
9 reason you wouldn't have done it is because you knew it  
10 was agreement not to pursue it? He said -- he never did  
11 answer the question, he never did.

12                   What actually this notice says, and Mr.  
13 Keith straightened this out, too, after we heard a lot  
14 about this, that, and the other about post-dated  
15 checks and all, there are two things. If it's the  
16 desire of the victim to recover the money, then it's --  
17 if that's the main purpose, they are not going to  
18 prosecute, right there, second paragraph, read for  
19 yourself, I won't take time to read it now.

20                   Then item five, I asked him about the  
21 meaning of checks which had been held by the payee for  
22 payment by agreement. I said, Mr. Keith, what does  
23 that mean, doesn't that mean if two people entered into  
24 some kind of agreement either expressed or applied, and  
25 I asked him, isn't a verbal agreement proper or

1 binding; he said, yes. That they are going to hold  
2 those checks on some basis of collateral or any other  
3 kind if they agreed then you withdraw as shown by the  
4 notice, and will not prosecute. He said, that's right.

5 Now, that's this case. And try as they  
6 will and Mr. Lancour with all of his explanations about  
7 the economy and this and that and the other, these  
8 figures not the economy, but these figures is what's  
9 happened to this young man as a result of this thing,  
10 unwarranted prosecution, staring you in the face he  
11 wants to talk about what's happened in unemployment in  
12 this, that, and the other.

13 Now, this is the evidence we submit. The  
14 notice says and to put this to rest, Mr. Keith says, if  
15 by agreement the people, both people, had agreed to hold  
16 something in lieu of cash I wouldn't advise them to  
17 issue the warrant.

18 Now, there was a lot of quibbling back  
19 and forth and one thing and the other about whether or  
20 not there was an agreement, but the evidence remains,  
21 and remember Steve Hamlet overheard just his side of  
22 it, remember that Danny Cash has told you here that  
23 what happened, what the agreement was, what do you  
24 need, what do you want as security? Mr. Sale said, I  
25 got to have my money. Danny said, what do you want as

1 security. Well, how many cars do you have on the lot?

2 Mr. Sale didn't deny this when I asked him  
3 this morning. Danny Cash said, maybe thirty-five or  
4 thirty, maybe thirty-five, forty. Mr. Sale says, well,  
5 send me enough titles in value to cover the amount of  
6 the debt. Danny Cash says and Steve Hamlet overheard  
7 him: So you want titles to cover the debt? He said,  
8 that's right. He said, all right, I'll send them.

9 He did send them, they were accepted, Mr.  
10 Sale finally said that, well, if I had had collateral I  
11 wouldn't have prosecuted, if I had collateral.

12 Now, we asked him, we said, Mr. Sale,  
13 didn't Triangle admit under oath back July the 15th of  
14 '85, they were asked and Mr. Lancour -- Mr. Mullen, the  
15 attorney answering for them for Triangle, signed  
16 Triangle by him, please admit that it was agreed that  
17 these vehicle titles were to be held as collateral for  
18 the payment of the debt.

19 The answer, the answer to that question,  
20 request for admissions number three, admit that they  
21 were held as collateral; admission, number three is  
22 admitted except insofar as it alleges that the vehicle  
23 titles were in fact collateral.

24 The defendant does not admit that the  
25 vehicle titles were in fact collateral, only that it

1 was agreed they would be held as collateral. That's  
2 Tweedledum and Tweedledee if I've ever heard it. He  
3 said, if I had collateral to hold for the debt I  
4 wouldn't have prosecuted it. He says here they would  
5 be held as collateral, but they weren't, in fact,  
6 collateral.

7 Well, you know, somebody once said that  
8 as I believe I read somewhere, Abraham Lincoln, if  
9 you call an elephant's tail a leg, how many legs does  
10 an elephant have. I think he said, well, four, calling  
11 an elephant's tail a leg doesn't make it a leg.  
12 Calling collateral something else doesn't make it  
13 different. This admission says it was to be held as  
14 collateral and we submit they are obligated to have  
15 abided by this agreement.

16 What they did and what the evidence we  
17 submit shows plainly, they, in effect, pushed this  
18 young man when he told them at the very first and told  
19 you at the beginning, we didn't try to cover up  
20 anything, that he made a mistake, that he made a  
21 mistake in his bank book, and he's not being tried for  
22 who made the mistake, that really doesn't come into  
23 this issue, we submit.

24 The question is whether or not he was  
25 falsely accused or prosecuted for warrants issued that

1 resulted in this tremendous damage to him and was cut  
2 off from going to auctions as a result of those, not  
3 the checks, but the prosecution, that's the question.

4           And what it boils down to is whether or not  
5 these people were trying to enforce the law, as Mr.  
6 Sale said, all I wanted to do was prosecute, turned  
7 right around and mentioned to me for two or three weeks  
8 he called him three or four or five times a week,  
9 where's my money, where's the money. If you wanted to  
10 prosecute, why wasn't it already in the mill at that  
11 time, why didn't he do it then. He said the money  
12 didn't matter, it really didn't matter. Mr. Lancour  
13 said the money mattered but not that much.

14           But what they did, they got everything  
15 they could voluntarily, they got the twenty-four  
16 hundred fifty-four dollars from the Ramcharger. They  
17 got the six titles, which he didn't offer, which Mr.  
18 Sale asked for and he sent. Then they got another two  
19 thousand dollars and only after they got everything  
20 they could in the way of money and titles, then lo and  
21 behold they went in and didn't mention to the  
22 magistrate that they had received these things, didn't  
23 mention at that time to the commonwealth's attorney  
24 that they had received them, by Mr. Lancour's own  
25 admission, got the warrants and attempted to prosecute.

1 Now, that's what happened.

2           The question here is not whether Mr. Cash  
3 made a mistake in giving these checks, that really even  
4 up until now he hasn't been able to get over the  
5 financial effects of all of this. That's not the  
6 question, he's admitted that, the charges involving  
7 these checks, that any criminal charges were dismissed  
8 by the commonwealth's attorney.

9           Now, the question is whether or not these  
10 people acted reasonably and properly in doing this. And  
11 notice this, that we submit is of utmost importance,  
12 they sent the letters, the last letter, certified  
13 letter, and you'll have it there, I won't read it, you  
14 look at it, you'll have all of these with you when you  
15 go to your jury room, the letter said, if you don't pay  
16 it within five days the law provides we can go ahead  
17 and prosecute.

18           Mr. Lancour tried to juggle around you  
19 remember for a little while, but I don't remember  
20 whether I got those titles on the 17th or the 18th, I  
21 showed him the Federal Express. Well, I don't know, it  
22 might have been on the 18th or 19th. I said, well, Mr.  
23 Lancour, your own admission here over a year ago says  
24 you got it on the 17th. Well, finally he said, yeah, I  
25 did.



1                   What was he trying to do? He was trying  
2 to get it outside that five days. That's exactly -- we  
3 submit that's the only interpretation of the evidence.

4                   The letter dated the 12th, the 17th is  
5 what he was trying to get around because that's when he  
6 got the security, and that security, common sense tells  
7 us, was given in lieu of payment. Like Mr. Keith says,  
8 if the parties have agreed upon something in lieu of  
9 payment I would not recommend to prosecute.

10                  Mr. Lancour I'm sure is a fine man  
11 individually, he's a very intelligent, very glib,  
12 experienced, very educated. He knew what he was doing,  
13 we submit, he knew full well what he was doing and he  
14 was using all he could to get what he could voluntarily  
15 and then trying to use a criminal prosecution without  
16 admitting or stating what he had gotten previously in  
17 order to nail this young man to the wall. And that's  
18 what he's effectively done.

19                  The one thing that hasn't really been  
20 contested here is that the difference in figures in  
21 1984 and 1985 on net profit was -- well, including  
22 everything, the difference was eighty-six thousand nine  
23 hundred and fifteen dollars. There's no getting  
24 around that, there is no getting around it and no  
25 evidence to contradict that. The only way he could get

1 the money from wholesale sales was to do it by going to  
2 the auctions.

3               There is no denying that he was cut off  
4 from the auctions. They say, well -- you remember how  
5 carefully he phrased that question: Did Triangle order  
6 him not to attend the auctions? Mr. Lancour says, no.  
7 He was not asked did Triangle spread the word to anyone  
8 else in this group that Bob Cash says deals together to  
9 do it. He wasn't asked that and he didn't answer that,  
10 not to this moment he hasn't answered it. The question  
11 was very carefully asked, was Triangle stopping him.

12               As far as Triangle ordering him not to  
13 go, who in the world would have thought it was  
14 necessary after being falsely or wrongfully charging the  
15 man with a criminal offense. He would have been fool  
16 to go up there after that had happened, so it wasn't  
17 necessary for them to order him to.

18               But the other auctions in this group as  
19 Bob Cash -- probably you're familiar with NADA, the  
20 little manual for the retail sales and whatnot, that's  
21 the National Automobile Dealers Association -- Bob Cash  
22 says it was a similar organization among these auctions  
23 right there in the area.

24               Under the evidence can anybody doubt but  
25 what the word went out about these prosecutions as a

1 result of that he was cut off, a young industrious man  
2 who has worked hard since he was -- by these respected  
3 business people said since he was a youngster. And his  
4 business is knocked in the head like this because of a  
5 prosecution, that these people couldn't wait another  
6 thirty days to get their money.

7           Now, that's what this boils down to. In  
8 addition to that the Court has told you and you'll find  
9 that in the instructions of the Court, has told you the  
10 items that you can consider according to your  
11 interpretation of the evidence, loss of injury to his  
12 business. Right here you have one year eighty-six  
13 thousand, another year, Mr. Wommack -- and nobody has  
14 questioned his testimony, he says right now we've got a  
15 possible profit of twenty-three thousand. Mr. Wommack  
16 when asked: What's it going to be for all of '86? No  
17 question in my mind it's going to be a deficit, that  
18 will be eaten up by expense items that have to be taken  
19 care of between now and the end of the year.

20           So what that means is there's going to be  
21 another figure over here of loss from '85 to  
22 '86 that will exceed the fact that right now the  
23 twenty-three thousand there's going to be a deficit at  
24 that time. If there's a deficit there that's even an  
25 additional loss that's tied onto '86.

1           The Court says any embarrassment,  
2 humiliation, mental suffering, or insult. Now, two  
3 officers have come in here and explained -- and  
4 incidentally, you heard Mr. Eugene Wingfield, an  
5 experienced investigator over here, when asked about  
6 prosecution he said, the instructions the magistrates  
7 have here, and he said his desk was next to them or  
8 right there at them, and he hears it day in and day  
9 out, is that if some arrangement has been made to pay  
10 something, do not issue a warrant.

11           That's basically the same thing Mr. Keith  
12 says, if arrangement has been made, and this telephone  
13 call originated by Mr. Sale could have been nothing but  
14 an arrangement.

15           Do you remember -- you remember, I asked  
16 Mr. Lancour: What other effect could that telephone  
17 conversation have than to be an implied agreement that  
18 if you sent those titles requested by Mr. Sale no  
19 prosecution would take place? Mr. Lancour hasn't  
20 answered that now because he can't. He said he didn't  
21 agree with it, that's the reason why I guess that he  
22 says he didn't agree with it, but he allowed it to  
23 happen, nobody tried to set it aside.

24           Mr. Sale says, well, he didn't send  
25 collateral because I couldn't use it. Mr. Sale got

1 exactly what he requested. If he got those things if  
2 he got those titles, all he had to do was pick up the  
3 telephone, dial a number in Lynchburg, and say, Mr.  
4 Cash, I want a full assignment on these things, I  
5 don't want to be able when you pay your money just to  
6 give them back to you, I want a full assignment and  
7 whatnot and Danny Cash would have had an opportunity to  
8 furnish them.

9 Did Mr. Sale do that? No. And I guess  
10 the reason he didn't was because Mr. Lancour by then  
11 was probably on his way to the magistrate's office to  
12 get the warrants that Danny Cash had thought would not  
13 be issued because these titles had been sent, these  
14 titles protected him.

15 We don't need a long discussion about  
16 what Triangle's policy is and this, that, and the other  
17 to know that. The uncontradicted evidence is that when  
18 he sent these titles to cars on his lot that he could  
19 not -- he could not sell those cars without getting  
20 those titles back from Triangle. He was effectively  
21 blocked from doing anything with that.

22 Of all things my other counsel over  
23 here, Mr. Mullen, tells you, well, look, or he asks the  
24 witness, rather, well, you know, it might have involved  
25 you being guilty of fraud, but couldn't you have done

1 it. Can you imagine saying, well, you know, would you  
2 be willing to commit fraud to do it, would you commit a  
3 crime to do it. That's the only way he could have done  
4 it would be to sell them not having the title.

5               So then they say, well, he could have  
6 sold it title attached, but they admitted that to do  
7 that he would still have to contact Triangle and get  
8 those titles back and the only way he could get it  
9 back which was the purpose, the agreement would be to  
10 pay the debt. That's the security, that's the  
11 collateral, and that's the collateral that's never been  
12 questioned as being collateral until this very minute  
13 in this courtroom.

14               The admissions said it was held as  
15 collateral, that's always been the position. If he  
16 wanted more he could have asked for it. That was  
17 within the five days set by the letter. That complied  
18 with the requirement.

19               The prosecution was for one purpose we  
20 submit and one only and that was to nail him to the  
21 wall and make him make some extra arrangements in  
22 addition to what he had already done so they could  
23 get their money a little sooner.

24               We ask you to look particularly at all  
25 those instructions, but notice this instruction three,

1 please. The Court instructs the jury that you shall  
2 find a verdict for the plaintiff, Daniel Cash, if you  
3 believe from the greater weight of the evidence, not  
4 beyond a reasonable doubt, but if you believe by the  
5 greater weight of the evidence, each of the following  
6 two things: one, the existence of an ulterior motive  
7 on the part of the defendant such as the collection of  
8 a debt, that's the ulterior motive, instead of a desire  
9 to bring the plaintiff to justice. If that's his  
10 primary motive, that's half of what has to be proven.

11 The other is that he did an act an abuse  
12 of the process not proper in the regular prosecution of  
13 the proceeding. And we submit that was done by going to  
14 get -- by getting these titles, by crediting the cash  
15 and by still going ahead then and issuing -- asking for  
16 issuance of a warrant without notifying the registered  
17 -- the magistrate, rather, that he had titles and cash  
18 to more than secure the debt.

19 THE COURT: Twenty minutes, Mr. Johnson.  
20

21 BY MR. JOHNSON:

22 Now, as far as the testimony of Mr.  
23 Lancour, and I'm not going to go over the testimony of  
24 the plaintiff's witnesses because you've heard it, I  
25 would be happy to comment on it, but as we say, it's

1 late in the day. The fact that he had read this notice  
2 the fact that he knew about that, that he disagreed  
3 with Mr. Sale, he didn't question that Mr. Sale had  
4 done it, he disagreed with it, he didn't make his  
5 disagreement known at the time, because he was  
6 interested in getting the money. The fact that he is  
7 experienced, if the check is not satisfied within five  
8 days it didn't make any difference.

9 Well, this is contrary to what Mr. Keith  
10 and also Mr. Wingfield said that it made all the  
11 difference in the world. It says, he was asking  
12 about, well, did you get a reassignment? No. Did you get  
13 any lien? No. Then I asked him: Did you ask for one?  
14 No. They were satisfied to hold those titles, they  
15 knew that they had a stranglehold on him. He had to  
16 leave those six cars sitting on his lot the entire time  
17 until it was paid. He might have been able to sell one  
18 of those and paid part of the debt, but he couldn't do  
19 it because they had the title up there.

20 Then he talks about the reason that they  
21 prosecuted in this instance. And really all he and  
22 Mr. Sale could say when you pointed it down was it was  
23 company policy. We prosecute all of these matters.  
24 Then why on earth did they spend weeks waiting to  
25 prosecute trying to get what they could and when they



1 finally got everything they could then and then only  
2 did they seek to prosecute if that's all they were  
3 interested in.

4           We submit, we respectfully submit it's  
5 perfectly obvious what has happened here. These people  
6 have brought about a situation that ruined Danny Cash,  
7 that if he ever can recover financially it's going to  
8 be in an entirely different type of business. Triangle  
9 I guess fights fire with fire.

10           He's joined with somebody else trying to  
11 start his own auction down here and he tells you that  
12 all he does down there really is auctioneer. He's  
13 still working on his business, but you see what the  
14 result has been, a thriving business up until that  
15 time, and notice this, what is it that's uncontradicted  
16 in 1983? He had paid these people sixty-three thousand  
17 eight hundred and seventy-five dollars; 1984, he paid  
18 them seventy thousand three hundred eighty-four  
19 dollars; a total of a hundred and thirty-four dollars  
20 and two hundred and fifty -- a hundred and thirty-four  
21 thousand two hundred and fifty-nine dollars is what he  
22 paid them in '83 and '84.

23           Then he's treated like this after  
24 that's done because he made a foul up in his bank book  
25 and nobody questions that. You heard Mr. Wommack's

1 testimony, it's a mistake he made and he knows he made  
2 the mistake. But the point is you can't whip somebody  
3 just because they made a mistake, you can't kick them  
4 under the table, you can't ruin their business by  
5 issuing a warrant if there was no earthly reason for  
6 it, no justification. And we submit that if he had  
7 told that magistrate that, I have gotten twenty-four  
8 hundred fifty-four dollars, I've got six titles to  
9 vehicles sitting on Danny Cash's lot that he can't get  
10 back and the wholesale value somewhere around twenty-  
11 two to twenty-four thousand dollars, that magistrate  
12 would not have issued that warrant.

13 THE COURT: Mr. Johnson, you have twenty-  
14 three minutes.

15 MR. JOHNSON: Thank you.

16  
17 BY MR. JOHNSON:

18 That's the case, ladies and gentlemen,  
19 that's the evidence that you've heard, we submit. We  
20 ask that you simply look at the evidence, compare those  
21 with the Judge's instructions, apply one to the other,  
22 decide who brought this situation on and who should be  
23 responsible for this.

24 We have tried to do what we can to  
25 present this case to you and now it's your duty and

1 yours alone to decide this and we simply ask and I'm  
2 sure you will attempt to do this, that you decide this  
3 according to the law and the evidence, the evidence  
4 that you've heard and the law given you by the Court.

5 Thank you.

6 THE COURT: Mr. Mullen.

7  
8 CLOSING ARGUMENT

9 BY MR. MULLEN:

10 I want to thank each of you as members of  
11 this jury for sitting here today and taking the time  
12 and listening to all of this testimony and looking at  
13 all of these exhibits and paying very close and good  
14 attention and coming down here to the end of it now.

15 I talked with you a little bit in opening  
16 this morning, yesterday morning, rather, about trial  
17 procedure. And one of the things that I indicated to  
18 you in a civil case is that after I finish speaking  
19 with you and giving you my closing statements I don't  
20 have another opportunity to come back and talk to you,  
21 Mr. Johnson does, he has about twenty-one or twenty-  
22 two minutes left.

23 So I would ask of you only this: If  
24 there is something that I fail to cover and something  
25 that he talks to you about, please remember that I do

1 not have another opportunity to respond and I would ask  
2 you only to think of what I would have said had I had  
3 that opportunity.

4 I would like to talk to you a little bit  
5 about the law of this case, and the law is contained in  
6 the Court's instructions. Some of these instructions  
7 are of greater importance, perhaps, in being able to  
8 understand this case than are others. I do not mean to  
9 take away from any of the others, but there are some  
10 that I wish to point out.

11 First of all, Triangle Auto Auction does  
12 not have the burden of convincing you of anything in  
13 this case today. Had we chosen to offer no evidence  
14 you could have gone and decided this case and if there  
15 had not been more evidence than not to convince you of  
16 Mr. Cash's claims against Triangle you must have  
17 returned your verdict in favor of Triangle.

18 We did, however, choose to come into this  
19 courtroom and tell you exactly what happened. All of  
20 our witnesses have been honest and open and aboveboard  
21 and I think you appreciate that.

22 Now, as it relates to the law of this  
23 case, Triangle Auto Auction is being accused of  
24 malicious abuse of process. That's something that you  
25 don't hear much about, you don't see many cases in

1 court. You need to know and have some understanding of  
2 what the terms are. The best way I think I can deal  
3 with that is to put it on this chart board for you.

4 Mr. Johnson is in a position of having to  
5 prove malicious abuse of process. One of the elements  
6 of that tort, and a tort is a wrong, is malice, he  
7 must show on the -- on behalf of Triangle Auto Auction,  
8 Incorporated, a sinister or corrupt motive in bringing  
9 about the prosecution of Mr. Daniel F. Cash.

10 For instance, some examples of a sinister  
11 or corrupt motive, hatred, spite, a desire to injure, a  
12 conscious disregard of Mr. Cash's rights. I'm going to  
13 get into the evidence in a few minutes and ask you if  
14 you can honestly conclude from any of the evidence  
15 whether that was presented on behalf of the plaintiff  
16 or on behalf of the defendant or any combination  
17 whatsoever. There has been no evidence whatsoever that  
18 Triangle Auto Auction had a sinister or corrupt motive.

19 In addition to that, in order to find a  
20 verdict for the plaintiff, Mr. Cash, you must find that  
21 Triangle Auto Auction abused process, that they had a  
22 perverse purpose, that they made a wrongful use of the  
23 criminal laws and the criminal process of the State of  
24 Virginia.

25 Now, what is process? That's simply the

1 arrest and prosecution procedure through which Triangle  
2 Auto Auction went. Now, having said that, and please  
3 keep in mind we do not have to disprove anything, they  
4 have to prove by the greater weight of the evidence  
5 each of these elements.

6 Instruction number A tells you it is not  
7 malice for Triangle Auto Auction to have instituted the  
8 criminal proceedings against Cash for his giving the  
9 bad checks if Triangle had a genuine desire to see  
10 justice done, to enforce the law, or to punish the  
11 guilty.

12 It is not malice if any of these were the  
13 motives of Triangle Auto Auction continuing the  
14 prosecution once it's started. And regular, legitimate  
15 use of the criminal process for the bad checks even  
16 with a bad intention on the part of Triangle Auto  
17 Auction, which I do not for one minute concede, is not  
18 malicious abuse of process.

19 On the other hand instruction number C  
20 tells you this: The making or delivery of checks --  
21 and we're talking about these checks, the bad checks --  
22 returned by the bank upon which they were drawn for  
23 insufficient funds after five days written notice of  
24 the return by the holder and without payment having  
25 been made -- now, payment having been made means

1 sixteen thousand four hundred and twenty-three dollars  
2 -- is prima facie evidence of the intent of the maker  
3 to defraud the holder. The maker is Mr. Cash, the  
4 holder is Triangle Auto Auction.

5 This is a form of grand larceny, a  
6 criminal felony, and is prosecutable as such under the  
7 law of Virginia.

8 You must not base your verdict in this  
9 case in anyway whatsoever upon sympathy, upon bias,  
10 upon guesswork, or upon speculation. You must base  
11 your verdict solely upon the evidence and the Court's  
12 instructions.

13 The Court further instructs you in number  
14 H, any fact that may be proved by direct evidence,  
15 testimony from the witness stand, exhibits, that sort  
16 of thing, may be proved by circumstantial evidence.  
17 That is, you may draw all reasonable, reasonable, and  
18 legitimate, legitimate inferences and deductions from  
19 the evidence.

20 In the course of my further argument I  
21 want to discuss that instruction with you. When you  
22 get to the point of determining what your verdict  
23 should be in this case, the Court tells you this: If  
24 you find your verdict for the plaintiff, Daniel F.  
25 Cash, you shall award him compensatory damages for the

1 loss or injury he has actually suffered. That means as  
2 a result of Triangle Automobile Auction Company's  
3 actions.

4 When you get ready to go into your jury  
5 room, I would like for you to take this pile of  
6 exhibits and look them over as you've done during the  
7 course of this trial, and it's been a little difficult  
8 to try to listen and look at the same time, take them  
9 with you if you will and go through them.

10 Look at the bad checks that were returned  
11 by the bank upon which they were drawn, the ones that  
12 Mr. Cash gave.

13 Look at the sales slip for the Ramcharger  
14 where Triangle was paid a portion of the money it had  
15 coming.

16 Look at the notice letters, pay close  
17 attention, if you will, to the authority for the notice  
18 letter. It incorporates the law of the State of  
19 Virginia that is sometimes referred to as the Code of  
20 Virginia. It says and I quote: "This letter is your  
21 notification that you have five days from the date of  
22 this letter within which to pay by cash or certified or  
23 cashier's funds the above amount, which is the amount  
24 of the bad check, to Triangle Auto Auction, Inc. If  
25 you do not then the necessary warrants will be secured



1 for your prosecution".

2               There are three of these letters. There  
3 is a bond which Mr. Cash posted. There are other  
4 exhibits which are of importance. The letter from  
5 Statesville Auto Auction, if you will, please read  
6 that: If you have any questions -- I'm sorry. We have  
7 been advised by our insurance company, Auction  
8 Insurance Agency of Alabama, that they are no longer in  
9 a position to insure your transactions. Until we  
10 receive word from this insurance agency, we will not be  
11 able to transact business with you.

12               And the letter from High Point: This is  
13 to inform you that you are no longer an authorized  
14 dealer at the High Point Auto Auction. This means that  
15 you will not be permitted to buy nor sell automobiles  
16 at the auction in the future. I am sure you understand  
17 the reason for us having to take this action.

18               There is no letter from Triangle Auto  
19 Auction, there is none from Fredericksburg. There is,  
20 however, the checks stubs for the bad check records  
21 that Danny Cash created in his checkbook. There is in  
22 red the figures penciled in or penned in by his  
23 accountant, which show the correct red deficit balance  
24 and a pattern of issuing bad checks going on for  
25 several months.

1                   There is in addition to that the bank  
2 statements, every one of which indicate returned check  
3 charge after returned check charge after returned check  
4 charge.

5                   And finally there is a new account opened  
6 with a balance of twenty-one thousand nine hundred and  
7 eight dollars and sixty-two cents. These exhibits are  
8 important in my judgment to your deliberations in this  
9 case.

10                  I feel that I must comment upon the  
11 evidence that has been brought before you in this case.  
12 Danny Cash in his testimony, I kept the checking  
13 account, I wrote the bad checks, I added when I should  
14 have subtracted. My bank statements told me thirty-  
15 five bad checks in four months and, members of the  
16 jury, that doesn't stop him, he's still doing it, just  
17 not as often. No one else has prosecuted him, does  
18 that mean that Triangle shouldn't have.

19                  In this case he wrote the bad checks, he  
20 got the letters, he ignored his bookkeeper, and if he  
21 got the overdraft notices then what did he do with  
22 them? He threw them in the trash.

23                  He could have sold the cars that were on  
24 his lot at some other auction, but he chose not to  
25 because he didn't want to take a beating on them, he

1 didn't want to lose money. It made no difference to  
2 him that Triangle managed to lose sixteen thousand four  
3 hundred and twenty-three dollars because of what he  
4 did. It made little difference to him that he kept  
5 twelve thousand dollars of Triangle's money for eighty-  
6 seven long days.

7 I'm going to tell you in a few moments  
8 why I think your verdict must be for Triangle Auto  
9 Auction and I think you've gotten hints just from the  
10 statements that I made about Mr. Cash.

11 I'm privileged to represent Triangle Auto  
12 Auction. I said that to start with and I say it now.  
13 It is on the other hand an unpleasant task that I have  
14 at this time to talk to you about Mr. Cash and his  
15 dealings with Triangle. But the way I have been  
16 brought up and the way that I practice law I don't know  
17 any other way but to tell it like it is and that's what  
18 I intend to do.

19 Passing bad checks is grand larceny,  
20 larceny is stealing, and stealing is a crime. The law  
21 of the State of Virginia says so and none of us in this  
22 room have the power to change that, nor should we.

23 How much stealing went on in this case?  
24 Sixteen thousand four hundred and twenty-three dollars.  
25 When the merchant gets the three bad checks as in this

1 case, exactly what's he supposed to do? The merchant  
2 is Triangle Auto Auction. Number one, he can ignore  
3 it, but that's not practical, he's short sixteen  
4 thousand four hundred and twenty-three dollars.

5               Number two, he can try to collect it,  
6 peaceably if possible, civilly in the course of the  
7 Commonwealth of Virginia if necessary. And thirdly,  
8 and there is an important distinction between  
9 collecting civilly and prosecuting criminally. They  
10 are two different animals, different standards of  
11 proof, different courts.

12               Obviously as far as Triangle is concerned  
13 in this case number one is out, they couldn't afford to  
14 ignore it, they have to operate. So they tried to  
15 collect it, but Mr. Cash didn't pay it. Now, keep  
16 in mind that Mr. Cash owes sixteen thousand four hundred  
17 and twenty-three dollars. He doesn't owe just twenty-  
18 four hundred and fifty-seven dollars, he doesn't owe  
19 just two thousand, he doesn't owe just some other  
20 amount of money. Part payment by Mr. Cash is not the  
21 same as full payment by Mr. Cash.

22               Now, that's one side of the coin. The  
23 other side of the coin is Triangle's actions toward the  
24 prosecution of Mr. Cash. That's the criminal process,  
25 not the civil collection one. Time in this case does

1 not stand still and allow only one area to proceed and  
2 the other to stop. It doesn't work that way.

3 Triangle must operate its business and  
4 its account is short the amount of the bad checks that  
5 have come back from the bank here in Lynchburg. The  
6 bank in Radford took the money out of Triangle's  
7 account.

8 So far as an agreement is concerned,  
9 show me the witness from that witness stand who  
10 testified that there was ever an agreement not to  
11 prosecute. That's not what the letters say, that is  
12 not what the witnesses say. That is an implication and  
13 an inference that Mr. Cash drew and unjustifiably so.

14 In order to have an agreement both  
15 parties must agree. One can't dictate as in this case  
16 when Mr. Cash said I will do this, I will do that, I  
17 won't do this, I won't do that, but there is a problem  
18 here, something is wrong.

19 The question is: Who is on trial in this  
20 case? Is it the check passer, Mr. Cash? No. Is it the  
21 check received? Yes. But what did they do, what did  
22 Triangle Auto Auction do? They made an effort civilly  
23 to collect what was due them because it had been stolen  
24 from their auto auction by Mr. Cash, but Mr. Cash says  
25 I only borrowed your money. But Triangle never agreed

1 to that, they didn't want their money borrowed.

2 Mr. Cash says besides, I paid it back.

3 That's not relevant. The commonwealth's attorney from  
4 Montgomery County who advised Triangle told you the  
5 crime was committed when the check bounced. Mr. Cash  
6 says, you cost me my business profits, you cost me my  
7 reputation, you, Triangle, cost me mental distress,  
8 humiliation, embarrassment, and, yes, attorney's fees.

9 But let's look at these for a moment.

10 The business, Mr. Cash said because of the letters, but  
11 read the letters, Auction Insurance Agency of Alabama,  
12 High Point Auto Auction, you know why we're doing this.  
13 Fredericksburg, deal in cash and deal in titles, sure,  
14 we'll do business with you.

15 Mr. Cash says, I don't have cash and I  
16 don't have hard titles. That's Triangle's problem?  
17 Triangle caused that?

18 Where is the testimony that Mr. Cash was  
19 barred from doing business thereafter at Triangle Auto  
20 Auction? There's none. As far as this case is  
21 concerned I as their attorney do not have to negate,  
22 negative, minus, cut out every other possible cause of  
23 a loss that Mr. Cash sustained. If he has sustained  
24 any, and the testimony is by his bookkeeper that he  
25 has.

1 But just for the fun of it and just for  
2 argument sake and just to make sure you understand,  
3 let's try a few causes anyway, possible causes. Mr.  
4 Johnson said in his opening statement there was a mix-  
5 up in communication between Mr. Cash and his  
6 bookkeeper. Well, look at the checkbook stubs for  
7 yourself. You tell me how anybody can operate any  
8 business successfully and effectively when he doesn't  
9 know what kind of money he has in his checking account  
10 and exactly whose responsibility is it to insert the  
11 entries into the checking account if it is not Mr.  
12 Cash's.

13 Now, he inserted a few entries here and  
14 there and he messed up what he did. Let's look at Mr.  
15 Cash's bookkeeper. Well, you know, maybe he's got some  
16 responsibility here, because it took him about six  
17 weeks to get around to doing one of the statements,  
18 the October statement, I believe it was, it could have  
19 been the November, and he didn't tell Mr. Cash that he  
20 was overdrawn thirty-four thousand dollars or whatever  
21 the amount was until sometime in December. You know,  
22 maybe the bookkeeper has got some fault.

23 Mr. Cash's bank statements, they show a  
24 pattern, a pattern, if you will, over a period of four  
25 months of bad checks. Triangle is responsible for

1 that? Amazing.

2                   What about the public records, you know,  
3 we don't do criminal trials in secret in Virginia and  
4 thank heavens that we don't. Criminal information is a  
5 matter of public record and it should be. Maybe the  
6 Commonwealth of Virginia is responsible at least in part  
7 for some of Mr. Cash's so-called losses.

8                   What about the community talk. None of  
9 the community members in this case presented themselves  
10 in this court to say I heard it and here's how I heard  
11 it and here's where I heard it and I heard it from  
12 Triangle. Show me one that testified from that witness  
13 stand. There weren't any.

14                   Other possible causes, business  
15 conditions. All of us sitting here know that business  
16 conditions fluctuate up, they fluctuate down.  
17 Sometimes the economy is good, sometimes it isn't,  
18 sometimes car dealers run sales, cut rate financing,  
19 what have you. Interest rates, Mr. Cash himself had to  
20 admit affect his business and his ability to make  
21 money.

22                   The general economy, whether people are  
23 employed and spending money or whether they aren't  
24 affect his ability and yours and mine to earn a living.

25                   Mr. Cash said he suffered humiliation, he



1 suffered embarrassment and so forth and so on. Is  
2 Triangle responsible for that? Answer this question  
3 for me, if you will: Why shouldn't someone who issues  
4 sixteen thousand four hundred and thirty-two dollars in  
5 bad checks be embarrassed and humiliated because he did  
6 it? Why shouldn't he suffer somewhat? His victim  
7 does.

8                   Mr. Johnson in his opening statement  
9 said, Mr. Cash couldn't pay these checks, but that's  
10 not what the Bank of Forest check stubs show you. He  
11 had twenty-eight thousand and some dollars in it in  
12 January and he didn't pay until February. He surely  
13 could have paid. He had cars on his lot. Now, true he  
14 sent some of the titles to Radford, but he could have  
15 very easily have gotten those titles back. And he had  
16 other cars, he didn't have to sell those, he could have  
17 sold those cars and should have sold those cars and  
18 should have taken that money within the notice period  
19 to Triangle Auto Auction.

20                   He could have borrowed the money from his  
21 father, but he didn't want to. He and he alone wanted  
22 to dictate the terms of repayment or payment to  
23 Triangle Auto Auction.

24                   Now, let's talk Triangle Auto Auction and  
25 see what they did. The commonwealth's attorney's

1 assistant from Montgomery County tells you that four to  
2 five years ago because of problems with bad checks that  
3 Triangle was experiencing they consulted him. At that  
4 time and in those conferences he explained to them what  
5 the law of the State of Virginia is.

6 And the question came up, suppose we go  
7 ahead and start prosecution and we get part payment or  
8 suppose there is part payment made on the bad checks?  
9 The commonwealth's attorney tells him that doesn't make  
10 any difference, go ahead and prosecute.

11 But there are other checks and there are  
12 other balances. Before Triangle Auto Auction could  
13 even secure a felony warrant for Danny Cash on even one  
14 of these bad checks, some representative had to go to  
15 the magistrate's office and therein presented with a  
16 notice in the magistrate's office which says if all you  
17 want to do is collect your money, go somewhere else,  
18 don't bother us with criminal prosecution.

19 On the other hand, if you want to see  
20 justice done, if you want to see the guilty punished  
21 and so forth and so on, fine, we're here to help you,  
22 go see the commonwealth's attorney. And Mr. Lancour  
23 did.

24 Thereafter Mr. Johnson on behalf of Mr.  
25 Cash went to Montgomery County, Virginia and

1 participated in the discussions which resulted in the  
2 prosecution being dropped or dismissed. But who did  
3 it? It was not Triangle Auto Auction or any of its  
4 representatives, it was the judge who dismissed the  
5 charges upon the recommendation of the commonwealth's  
6 attorney because the commonwealth's attorney knew what  
7 was going to happen anyway.

8 I think you can tell from his testimony  
9 he didn't like that law and he would like to go ahead  
10 and prosecute, but he knows what's going to happen so  
11 why fight the system.

12 Who had control of the criminal  
13 prosecution once it was initiated? The State of  
14 Virginia did, because Triangle could not dismiss those  
15 charges.

16 On the other hand, who passed the bad  
17 checks? Mr. Cash did. Who ignored the handwriting in  
18 the checkbook? Mr. Cash. Who ignored the writing on  
19 the letters? Mr. Cash. Who ignored the overdraft  
20 notices and the bank statements? Mr. Cash. And I could  
21 go on and on and on, but I'm not going to do that. Who  
22 thumbbed his nose thirty-five times at the law and  
23 passed bad checks? Mr. Cash did.

24 On the other hand, who followed the law?  
25 Triangle Auto Auction did. But who got sued? Not Mr.

1 Cash, Triangle Auto Auction.

2           The law of the State of Virginia says  
3 that passing bad checks is a criminal act. The  
4 prosecutor says prosecute. Mr. Cash on the other hand  
5 says, take my twenty-four hundred and fifty-seven  
6 dollars, take my two thousand dollars and take six  
7 pieces of worthless paper, but under no circumstances  
8 prosecute me. And then Triangle has to defend its  
9 actions in this Court.

10           Mr. Cash goes a step further and he says,  
11 do this because I'm suing you for two hundred and fifty  
12 thousand dollars. I ask you this: Where is the  
13 malice, who has the sinister, the corrupt, and the evil  
14 motive, if it's not Mr. Cash? Who has abused the  
15 system? Mr. Cash. But then again, maybe it's the  
16 bookkeeper, maybe it's the bank, maybe it's the  
17 insurance company, maybe it's High Point Auto Auction,  
18 maybe it's Fredericksburg Auto Auction, maybe it's the  
19 National Automobile Dealers Association, maybe it's the  
20 public, and maybe it's the prosecutor who testified.  
21 Maybe just maybe sometime, some day it will occur to  
22 Mr. Cash that he, Mr. Cash, is the one who abused the  
23 system.

24           You folks sitting on this jury are the  
25 conscious of this community. You're the conscious of

1 Lynchburg, in a greater sense you're the conscious of  
2 the people across the State of Virginia, and if the  
3 message that you want to send to merchants across this  
4 state is, don't prosecute bad check passers because  
5 you'll get sued, then send that message.

6 I would remind you of this, in the  
7 questions that I asked you before you took your seats  
8 as jurors, I asked you if you could be fair in reaching  
9 your verdict and you said you could. I remind you of  
10 that commitment, I expect you to do that and I have  
11 every conviction in my heart to know that you will do  
12 exactly that.

13 You have a verdict form which the Judge  
14 is going to give you. One of the lines on that verdict  
15 form entitles you, allows you, not entitles you, it  
16 allows you to enter your verdict for the defendant,  
17 Triangle Auto Auction. And that's what I'm here to ask  
18 you to do.

19 Triangle Auto Auction did not, and I  
20 repeat, did not maliciously with a sinister motive  
21 abuse any process or did it abuse Mr. Cash. On the  
22 other hand I've already told you who abused whom.

23 If you would, please keep in mind I do  
24 not have a further opportunity to respond. I do want  
25 to make one or two more comments about a so-called

1 agreement. There never was an agreement. There was  
2 dictatorial tactics on the part of Mr. Cash, there was  
3 not an agreement not to prosecute by Triangle, there is  
4 not evidence that there was an agreement.

5 Thank you very much.

6 THE COURT: Mr. Johnson.

7  
8 CLOSING ARGUMENT

9 BY MR. JOHNSON:

10 I'm not going to stand here and tell you  
11 what it was and it wasn't because it's not up to  
12 Joe Johnson to decide this case and I wouldn't be  
13 presumptuous enough to stand up here and tell you what  
14 there was and what there wasn't. That's your decision.

15 If you look at this evidence, if you can  
16 consider this evidence with your own good judgment and  
17 the law given you by the Court and say not what Mr.  
18 Mullen thinks, but what you think about whether there  
19 was an agreement, which he says Mr. Cash dictated and  
20 his own clients say that Sale called and asked for  
21 this, nobody has denied that. If you can say that  
22 wasn't an agreement and it was sent for some other  
23 reason, then you decide the case his way, not because  
24 he says so, but because you see it that way.

25 I submit it defies all reason, human

1 nature, and common sense to say that for some other  
2 unstated reason Mr. Sale called and asked for titles  
3 valued at more than the value of the debt, and for some  
4 unstated reason this young man sent titles that  
5 prevented him from selling those cars. And they can't  
6 tell us any other reason. Each of them said, well, no,  
7 no, no, it wasn't an agreement, wasn't an agreement.  
8 What was it? What was it?

9           You're here to apply the law and apply  
10 the evidence, but you're here primarily to use your own  
11 good common sense. That's what I ask you to do, not  
12 the fact that he stands up here and tells you such and  
13 such and such. I wouldn't presume to tell you because  
14 of what I think. You look at the evidence, if you will.

15           Let me just answer a few of these things  
16 because you've heard a dissertation here on the  
17 impropriety of passing bad checks and on his mistake  
18 and everything most except what this case is concerned  
19 with.

20           We told you at the very beginning that he  
21 made a mistake on his bank book. Many people have done  
22 that. Many people have made a mistake. It so happened  
23 because he deals in purchasing automobiles and whatnot  
24 it was a rather large mistake. And he had to for four  
25 months, for four months because of all this turmoil he

1 did have some checks returned.

2 But remember this, the language has  
3 been used, bad checks, there is not one single  
4 person including Triangle who's lost a penny, they  
5 collected their money with interest, ladies and  
6 gentlemen. You talk about stealing, nothing has been  
7 stolen from them, nothing has been stolen from them.  
8 They got every bit of their money with four hundred and  
9 thirty-eight dollars interest on the money they got  
10 back. And if they had waited a little bit longer they  
11 would have gotten it back without this prosecution.  
12 That's the point, that's the point. He's not right in  
13 giving a bad check and we're not attempting to say he  
14 was.

15 But they're not right in taking advantage  
16 of a situation and holding this young man over a rack  
17 because he made a mistake, and letting him think, and  
18 giving you every reason to think if he had paid no  
19 money -- if he gave these titles there would be no  
20 prosecution, he would have from thirty to forty-five  
21 days to pay it. And that's never been denied that he  
22 was given that impression by giving these titles.

23 Now, the statements made, well, they  
24 abided by the law. Did they, did they make a full and  
25 free and frank disclosure to that magistrate up there



1 when they went to get the warrant? They had had so  
2 much trouble with bad checks and whatnot, why didn't  
3 they tell the whole story?

4                   If they had we wouldn't be here today,  
5 because we submit to you, use your own good judgment and  
6 decide whether that magistrate under that notice about  
7 an agreement, if they had told about these titles those  
8 warrants would not have been issued. He would not have  
9 been arrested, they would have been paid their money,  
10 they would then -- he would then have gotten the titles  
11 back, and we would not be here today. And hopefully,  
12 hopefully he wouldn't have sustained this absolutely  
13 catastrophic damage that nobody has been able to  
14 question one dollar of actually, but what he sustained,  
15 that's why we're here.

16                   Mr. Mullen presents you a chart. Now,  
17 remember this, this is Mr. Mullen's chart. The Court  
18 has given you the Court's own chart about what malice  
19 is, not this thing about sinister and corrupt this,  
20 that, and the other, this way he wants to phrase it.  
21 But the Court tells you, and this is about as simple as  
22 you can get, malice exists when the controlling motive  
23 for instigating criminal proceedings is any reason  
24 except a genuine desire to see justice done, to enforce  
25 the law, or punish the guilty. In other words, to

1 carry out the criminal law.

2           If it's any other motive, that's presumed  
3 malicious in law. Malice may be inferred from the lack  
4 of probable cause. If they had the titles, if they had  
5 the money, and yet if their motive in going ahead even  
6 with that was to collect the rest of their money, if  
7 that was their main motive, then by law they are guilty  
8 of malice, they used the law maliciously for the  
9 purpose of furthering their own end as it were.

10           Now then, just trying to be -- sort of  
11 touch a few of these things, Mr. Mullen says the  
12 letters, if you don't pay in five days. Well,  
13 according to his agreement that letter within five days  
14 they paid -- he paid, he furnished the collateral,  
15 he paid twenty-four hundred dollars, he furnished six  
16 titles. He guaranteed payment, wasn't he entitled to  
17 think he had met the terms of that letter by doing  
18 this?

19           These people, Mr. Lancour said, well, I  
20 didn't approve of the whole idea, Mr. Sale never could  
21 give a reason anything other than an agreement, sure,  
22 it was an agreement. You think this young man would  
23 take advantage of these fellows with their experience  
24 and this man's ability to express himself and so forth,  
25 you think he's the one that's misused them in this

1 situation. All he has done is make a mistake in his  
2 checkbook which he admitted from the time I first stood  
3 up upstairs to talk to you about this case. He's  
4 taken the stand, he's told you what happened, and no  
5 single thing of what he told you has been shown to be  
6 incorrect, not one single thing. Think about his  
7 testimony.

8                   Mr. Mullen said, well, he wanted to blame  
9 it on the bookkeeper. Did we? He turned around a few  
10 ago minutes and says, maybe the bookkeeper was a little  
11 bit at fault. He first accused me of blaming it on  
12 the bookkeeper. What I told you from the beginning, I  
13 said, Danny Cash made the mistake.

14                   The only problem with the bookkeeper is  
15 -- whether they got a little bit upset with each other,  
16 but not bad -- was the fact that he didn't have a  
17 chance to check the books in October and November so  
18 Danny didn't know until December that he had made the  
19 mistake. The bookkeeper didn't make the mistake, he  
20 just didn't get around to checking it for whatever  
21 reasons, that's all.

22                   Danny Cash is not trying to avoid  
23 his responsibility. He paid back the sixteen thousand  
24 dollars plus interest to show his recognition of  
25 responsibility. They haven't lost a penny. As it were,

1 he's lost the major part of his business, yes, he's had  
2 to pay a lawyer to represent him up there in Montgomery  
3 County. Certainly, he did, and that charge that never  
4 should have been brought in the first place.

5           Then this letter from the insurance  
6 company. My friend, Mr. Mullen, reads this and it ends  
7 saying -- the High Point letter-- he said, no  
8 indication of any knowledge on their part. The High  
9 Point letter says, and you look at it, quote: "I am sure  
10 you know the reason for us to take this action."

11           Now, we submit he did know the reason, he  
12 does know the reason, and we submit under the evidence  
13 you know the reason why it was taken. It was as Bob  
14 Cash has told you and it's not been denied, these  
15 people have an organization and when word went out  
16 including this insurance company whatever the name was  
17 that's on there, when the word went out they all cut  
18 him off, as it were, because these people had gotten  
19 a criminal warrant. That's the crux of this thing.  
20 That's the basis of this suit and that's why we are  
21 here today. Not to justify his actions, that's been  
22 dismissed, to show these people that they can't deal  
23 fast and loose with the law of the Commonwealth of  
24 Virginia and use a criminal process improperly to  
25 collect a civil debt. That's why we're all here today.

1                   It says -- Insurance Company in Alabama  
2 writes this. You know, I seldom just happen to hear  
3 things by word of mouth from Alabama and I don't  
4 reckon you do either, but how did the insurance  
5 company in Alabama find out about it to write the  
6 letter unless the word had gone out to them, don't deal  
7 with this man, we want to teach him a lesson, he gave  
8 us a bad check, we had to prosecute him for it.

9 Needlessly, but yet look at the effect on his life.

10 Says, still giving bad checks, this didn't stop him.

11                   Where in the world is the evidence of him  
12 still giving bad checks. The evidence is that in  
13 October, November, December 1984, January '85 he gave  
14 bad checks, the first ones being uncontradicted, these  
15 to Triangle. From then a mistake had been made, he gave  
16 bad checks in those months.

17                   The only evidence I recall since January  
18 of '85 of a bad check, not a check, but a bank draft  
19 for an insurance premium was the one given to Mr.  
20 White, right over here, who said these have been signed  
21 ahead of time, run a substantial premium, it was  
22 returned, Mr. White said Danny came right over with  
23 cash and paid it. There is no evidence of bad checks  
24 in '86, there is no evidence in this case we submit of  
25 bad checks except October, November, December of '84

1 and January of 1985. That's what you have in evidence  
2 there is his statement for those months and yet he says  
3 still giving bad checks, what's he talking about.

4 Now, the matter of never an agreement and  
5 so forth, what is an agreement? You know, we really  
6 don't need any law for that. An agreement is I tell  
7 you that if you'll do a certain thing then I'll  
8 do something and you say, okay, that's fine with me,  
9 that's an agreement.

10 Frank Sale says, what you got on your  
11 lot, he tells him, all right, you send me titles to  
12 cover this. Danny says, I'll send them, and did send  
13 them. That is an agreement in anybody's language and  
14 anyway you want to look at it, that's an agreement and  
15 that's within the five days notice.

16 He had every reason to think he had made  
17 arrangements to take care of this, would have done so,  
18 in fact. Talk about not paying until February, but by  
19 that time he had to defend himself, had to get up money  
20 to defend himself on a criminal charge, had to operate  
21 without having cars on his lot because they held up  
22 titles, and then they say he delayed until just before  
23 the hearing to pay it. He would have paid it in terms  
24 of the agreement if they had let him rather than trying  
25 to force him to the wall in an unjustified criminal

1 charge.

2                   Now, it says someone had to go to the  
3 magistrate to comply with the law and to give the  
4 circumstances. Okay. We've said if he had given the  
5 circumstances, if he had told that magistrate, you read  
6 that notice, you think about Mr. Keith's testimony, you  
7 think about Eugene Wingfield's testimony, what's done  
8 right across the street here, magistrates apply the  
9 same law all over Virginia, not just in Montgomery  
10 County, and you decide whether or not a disclosure was  
11 made or whether or not Mr. Lancour concealed having  
12 gotten this money and these titles so he could get a  
13 criminal warrant issued to force the rest out of him  
14 somehow by criminal process. If he did, the Court says  
15 that is a basis for you to award a judgment to Mr.  
16 Cash.

17                   Now, it says six pieces of worthless  
18 paper. If you believe that Mr. Frank Sale with his  
19 experience and Mr. Lancour with his experience asked  
20 for and received six pieces of worthless paper, then  
21 you consider that in your decision. If you really  
22 believe that they felt like these papers were worthless  
23 and if you think Mr. Sale would have asked for them if  
24 he thought they were worthless, then you make your  
25 decision.

1           They weren't worthless, they eventually  
2 resulted in being paid by having those and they  
3 returned them on the 7th of February, so they certainly  
4 weren't worthless.

5           Told about the message you sent to  
6 merchants, yes, every one of us wants to see people  
7 paid -- want to see people avoid bad checks, but Danny  
8 Cash has paid a big penalty already for making this  
9 mistake, all of this, he's paid a penalty.

10           But the main thing, we submit to you, has  
11 to deal with here as to whether the message you send  
12 out is going to be go ahead, use the criminal process,  
13 don't tell the magistrate the whole story, get a  
14 criminal warrant on the basis of your own limited side  
15 of something, show the notices, show the return  
16 receipts, show the checks, but for God's sake, don't  
17 show the security, the collateral, the guarantee you've  
18 got because if you do they might not issue the warrant.  
19 Is that the message you want to send out? That's what  
20 was done by experienced business people.

21           The Court's instructions very quickly,  
22 the first instruction, we don't -- Mr. Mullen talks  
23 about proof, we don't have to prove this, we have to  
24 establish it by the greater weight of the evidence, and  
25 not like a criminal case where you have to prove it



1 beyond a reasonable doubt. The inferences like why he  
2 was cut off from the auctions? All you have to decide,  
3 you weigh the evidence on one side, evidence for the  
4 plaintiff, evidence for the defendant, if the  
5 plaintiff's evidence outbalances the defendant's  
6 evidence at all, he's proved his case. That's all  
7 that's necessary, that's what the Court tells you.

8               Secondly, so there won't be any question,  
9 it's Triangle Auction that's being sued and the Court  
10 tells you they are responsible for the acts of Mr.  
11 Lancour and Mr. Sale. So don't get confused by that,  
12 don't say, well, it hadn't been shown that anybody,  
13 Mr. Lancour or Mr. Sale did something. Triangle is  
14 responsible at law and here today for whatever you  
15 decide will be the law.

16               I've already read you instruction three  
17 about the two things you need to find. Let me read you  
18 part of -- sort of summarize instruction four. The  
19 burden is on the plaintiff to prove abuse of process,  
20 that is by the greater weight of the evidence. That is  
21 that the criminal proceeding was instigated by the  
22 defendant, Triangle, with an ulterior motive other  
23 than bringing the plaintiff to justice.

24               When a party has the burden of proof on  
25 an issue, then he must prove that issue by a greater

1 weight of all the evidence, which is what we have just  
2 talked about. This is sometimes called the  
3 preponderance of the evidence. It is that evidence  
4 which you find the most convincing. The testimony of  
5 one witness who you can believe would be the greater  
6 weight of the evidence.

7 Now, you look at instruction four in  
8 connection with instruction five. I ask you to  
9 remember that, when you read one consider it along with  
10 the other because this says if you believe the  
11 plaintiff -- the defendant rather, had an ulterior  
12 motive. That's what the case is about, if they had and  
13 if they used this ulterior motive to prosecute, then  
14 you find for the plaintiff here.

15 Five tells you what an ulterior motive  
16 is. And this isn't Johnson talking, this is the Judge  
17 talking, this is the Judge giving you the instructions.  
18 He tells you in instruction five what an ulterior  
19 motive is. The Court instructs the jury that if the  
20 primary motive of the defendant, when it instigated the  
21 criminal proceeding was to collect a debt due Triangle  
22 Auto Auction, Incorporated, rather than to punish the  
23 plaintiff for his supposed violation of the criminal  
24 law. This would be, and it's in quotes, ulterior  
25 motive on the part of the defendant, that is Triangle,

1 as referred to in the other instructions of the Court.

2           So those two together tell you that if  
3 their main purpose was to collect their money, that's  
4 an ulterior motive and that in itself is sufficient  
5 upon which you could exercise your duty to decide this  
6 case, and to base it upon that is sufficient.

7           I've read you about the malice. If there  
8 is any reason other than a genuine desire to have  
9 justice done by the criminal law, then you've got to  
10 find in the case, we submit, for the plaintiff. And that  
11 is malice as is required. Don't get hung up obviously  
12 on the term, instigated criminal proceeding. The Court  
13 tells you that just means one bringing a criminal  
14 charge. You have the three warrants there, state that  
15 they issued on the complaint of Mr. Lancour, so he  
16 brought the criminal charge or -- either/or cooperating  
17 actively in bringing the criminal charge, so that's not  
18 been denied.

19           Eight tells you you can base your verdict  
20 on circumstantial evidence. Such evidence, for  
21 instance, as in right here, that's been testified to by  
22 the bookkeeper, Mr. Wommack. It hasn't been contested  
23 so those figures about the loss are exact.

24           Now, the circumstantial evidence is that  
25 nobody has produced any reason other than what all of

1 the plaintiff's witnesses say that it was caused by not  
2 being able to do wholesale transactions at the  
3 auctions. So there again there's really no question  
4 about that.

5               Then the Court tells you you are the  
6 judges of the witnesses whether they have some ulterior  
7 motive, whether they have some reason to testify as  
8 they do. And I ask you to remember this as we said  
9 before, no one has shown one thing that Danny Cash has  
10 testified to yesterday or today as being incorrect, not  
11 one thing. You decide whether the same can be said of  
12 the testimony of the defendants, that no agreement was  
13 had, that he gave the titles because he asked for them,  
14 but for some reason other than an understanding not to  
15 prosecute.

16               That's all of these things that you decide  
17 whether or not those shall be accepted at full value,  
18 but think about the fact Danny Cash has not been shown  
19 or nobody has even claimed that he's testified falsely  
20 or incorrectly or incompletely at any time.

21               Now, the damages. The Court instructs  
22 you if you find a verdict for him you base it on the  
23 loss of injury to his business, this, which  
24 incidentally is still going on, we couldn't prove it  
25 past this date, but the business is going on. It's

1 still in tough shape, he's trying. Whether he can  
2 resurrect it or not goodness only knows.

3 Any embarrassment, humiliation, mental  
4 suffering, or insult. What does it mean New Year's Eve  
5 to be taken away from the business, your family and  
6 brought down to jail, fingerprinted, photographed  
7 among police officers that have been your friends all  
8 your life, still are his friends, humiliated in front  
9 of relatives, friends, and so forth. What's that  
10 worth, goodness knows I can't put a value on it, that's  
11 your duty and I wouldn't try to superimpose my  
12 judgment on yours, you use your own good judgment in  
13 that regard.

14 Then thirdly, any actual out-of-pocket  
15 losses that were caused the defendant -- caused the  
16 plaintiff by the defendant. We have produced the fact  
17 that he had to pay a legal fee, he's had some expenses,  
18 they are little things that no value has been put  
19 on, but they're the facts.

20 For instance, you remember the testimony  
21 about an eight car trailer truck picked up at auctions  
22 that he bought and had to sell at a loss because he  
23 can't pick up at auctions anymore because of these  
24 criminal warrants that were obtained without cause.

25 Then the Court tells you two things, and

1 with this I'm finished, if you should find your -- if  
2 you find your verdict for the plaintiff, Danny F. Cash,  
3 you shall award him compensatory damages for the loss  
4 of injury that he has suffered. That's instruction  
5 eleven. Now, those are the things listed here in  
6 instruction ten, the loss of income that he sustained,  
7 that's compensatory or actual damages as we call it.

8           We told you at the beginning we had asked  
9 in this suit for two hundred thousand dollars actual  
10 damages. However, that figure is just our request,  
11 that's not evidence. You use your good judgment about  
12 this loss, the other things, the other actual damages  
13 and you decide that. I simply tell you what we have  
14 asked for in our suit.

15           Then secondly, instruction twelve is the  
16 matter of punitive or as we call it sometimes exemplary  
17 damages. That is, damages to keep someone else from  
18 doing the same type of thing, from doing the type of  
19 thing that was used here to distort the normal process  
20 of the law and issue a warrant on unjustified basis.  
21 And you, if you see fit, can award punitive damages to  
22 keep somebody else from doing the same.

23           We talk about message to the community.  
24 I suggest it to you that your opportunity here is  
25 to give a message that no one is going to catch

1 somebody who is down and distort and twist the ordinary  
2 process of the criminal law procedure to their own  
3 advantage. That's the message you can send and you  
4 can do it best by punitive damages.

5 THE COURT: Your time is up.

6 MR. JOHNSON: Thank you, Your Honor.

7  
8 BY MR. JOHNSON:

9 We have asked for fifty thousand dollars  
10 in our motion for judgment for punitive damages for a  
11 total of two hundred and fifty.

12 Judge, may I just say, the Judge has  
13 prepared a statement for you to insert your decision as  
14 to compensatory or to punitive or if you find for the  
15 defendant you simply insert it.

16 Thank you.

17 THE COURT: Members of the jury, it is  
18 time now for you to start your deliberations.  
19 Before you do so I suggest the first thing you  
20 do is select one of your members as your  
21 foreman. This is the form of your verdict,  
22 this is how you let everybody know what you  
23 have done in the case.

24 If you find for the plaintiff, you fill  
25 in the amount of compensatory damages that you

1           should find and your foreman signs that. If  
2           you find from the instructions and the  
3           evidence in the case and find for the  
4           plaintiff and feel that punitive damages are  
5           in order, you put in that and your foreman  
6           signs that. If you find there are no punitive  
7           damages in order, you write none in the space  
8           provided.

9           The other possible verdict is that you  
10          find for the defendant. If you find for the  
11          defendant your foreman signs that.

12          So I give you the form of your verdict,  
13          the instructions, and exhibits and ask you to  
14          start your deliberations. Of course, your  
15          verdict, any verdict you reach must be  
16          unanimous.

17                   (Whereupon the jury went to the  
18                   jury room at 2:50 p.m.)

19  
20          THE COURT: Bring the jury on in.

21                   (Whereupon the jury entered the  
22                   courtroom at 3:30 p.m. and all  
23                   were accounted for.)

24          THE CLERK: Members of the jury, have you  
25          agreed upon your verdict?



1 FOREMAN: Yes, we have.  
2 THE CLERK: May I have it, please?  
3 (Whereupon the jury foreman delivered  
4 the verdict form to the clerk.)  
5  
6 We, the jury, on the issue joined find  
7 for the plaintiff and fix compensatory damages  
8 at one hundred and thirty thousand dollars.  
9 Diane Fanning, foreman.  
10 We, the jury, on the issue joined find  
11 for the plaintiff and fix punitive damages at  
12 fifty thousand dollars. Diane Fanning, foreman.  
13 THE COURT: Does counsel want the jury  
14 polled?  
15 MR. MULLEN: Yes, Your Honor.  
16 THE COURT: All right. Go ahead and poll  
17 the jury.  
18 THE CLERK: Members of the jury, if this  
19 is your verdict, say it is, if it is not, say  
20 it is not.  
21 (Whereupon the jury was polled and all  
22 responded affirmatively.)  
23 THE COURT: Members of the jury, I want  
24 to thank you for your service as jurors on  
25 these two days. If you will listen now the

1 clerk will tell you when she wants you to come  
2 back.

3 THE CLERK: We need you all to return on  
4 Monday the 24th.

5 THE COURT: Does everybody understand  
6 when you're to come back?

7 Thank you again and you're excused until  
8 that time, 9:30 a.m.

9 (Whereupon the jury was excused and  
10 left the courtroom.)

11  
12 THE COURT: Any motions?

13 MR. MULLEN: Your Honor, I move the Court  
14 to set aside the jury's verdict as contrary  
15 to the law, as contrary to the evidence, and  
16 it is grossly excessive.

17 THE COURT: Do you want to respond, Mr.  
18 Johnson?

19 MR. JOHNSON: Your Honor, not in detail,  
20 other than we feel the Court has submitted the  
21 case to the jury on the issues properly  
22 stated. It's certainly not contrary to the  
23 law and the evidence and it's in no wise  
24 excessive because the financial figures alone  
25 justify it.

1 THE COURT: I'm going to take the motion  
2 under advisement and I want counsel to give me  
3 a memorandum in support of your positions in  
4 the case. There are a lot of legal issues  
5 involved. I'm not going to enter judgment on  
6 the verdict today, but I want to hear from  
7 you. As soon as I get that I will make a  
8 decision soon thereafter.

9 How long would you need, Mr. Mullen?

10 MR. MULLEN: Three weeks, Your Honor.

11 THE COURT: And how long would you need  
12 after you receive his?

13 MR. JOHNSON: Two weeks.

14 THE COURT: Okay. That's sufficient. As  
15 soon as I get it I will make a decision.

16  
17 THUS ENDED THE PROCEEDINGS FOR NOVEMBER 14, 1986, DAY 2  
18 OF 2.

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

REBECCA E. COCHRAN

Notary Public - Court Reporter

13

14

15

16

17

18

19

20

21

22

23

24

25

# OATH OF COURT REPORTER

(Required by Rule 1:10)

VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF LYNCHBURG, VIRGINIA.

Daniel F. Cash.

VS.

CASE NO. \_\_\_\_\_

Triangle Auto Auction, Inc.

I, \_\_\_\_\_, a Court Reporter,  
do solemnly swear that I will take down and transcribe the proceedings  
faithfully and accurately in the above styled case, to the best of my ability,  
and be subject to the control and discipline of the Court. So help me God.

Rebecca E. Bohran

Subscribed and sworn to before me this 14th day of  
November, 1986.

Jeanne A. Wenzel  
Deputy Clerk

Daniel F. Cash,

Plaintiff,

vs.

Triangle Auto Auction, Inc.

Defendant.

We the jury, on the issue joined, find for the plaintiff, and  
fix compensatory damages at \$130,000.

Diane Fanning  
Foreman.

We the jury, on the issue joined, find for the plaintiff, and  
fix punitive damages at \$50,000.

If NONE, Write NONE \_\_\_\_\_.

Diane Fanning  
Foreman.

We the jury, on the issue joined, find for the defendant.

\_\_\_\_\_  
Foreman.

Virginia: At Lynchburg Circuit Court, November 14, 1986

Present, the Honorable Richard S. Miller, Judge.

Daniel F. Cash,

Plaintiff,

vs.

Triangle Auto Auction, Inc.

Defendant.

This day came the parties in person and by their respective counsel, and came also the jury sworn on November 13, 1986 for the trial of this case, according to their adjournment.

Thereupon the evidence of the defendant was presented in full.

Thereupon the defendant by counsel, renewed his motion to strike the Plaintiff's evidence, as stated to the record, which motion the Court took under advisement.

The jury having heard all of the evidence and argument of counsel, and having received the instructions of the Court, were sent to the jury room to consider of their verdict. They subsequently returned their verdict in open court, in the following words, to-wit: "We the jury, on the issue joined, find for the plaintiff, and fix compensatory damages at \$130,000. Diane Fanning, Foreman." "We the jury, on the issue joined, find for the plaintiff, and fix punitive damages at \$50,000. Diane Fanning, Foreman."

Thereupon the defendant by counsel, moved the Court to set aside the verdict, on the grounds stated to the record, which motion the Court doth take under advisement.

The Court doth take these motions under advisement and this case is continued generally.

511

A Copy, Teste:

VIRGINIA, IN THE CIRCUIT COURT FOR THE CITY OF LYNCHBURG

DANIEL F. CASH  
Plaintiff

v.

TRIANGLE AUTO AUCTION, INC.  
Defendant

)  
)  
)  
)  
)  
)  
)

BRIEF IN SUPPORT OF  
MOTION TO SET ASIDE  
VERDICT

TO: THE HONORABLE RICHARD H. MILLER, JUDGE OF THE AFORESAID  
COURT:

Defendant, Triangle Auto Auction, Inc., hereby moves the Court to set aside the Verdict of the jury as contrary to the law and evidence and in support of said Motion respectfully states as follows:

#### FACTUAL BACKGROUND

Between November 12, 1984 and November 26, 1984, Daniel f. Cash purchased automobiles from Triangle Auto Auction, Inc. in Radford, Virginia and in payment for said automobiles tendered three checks totaling \$16,423.00. Hereafter, Daniel F. Cash will be referred to as Cash and Triangle Auto Auction, Inc. will be referred to as Triangle. His checks were deposited by Triangle in its account in Radford, Virginia and when the checks reached the bank upon which they were drawn, in Lynchburg, Virginia, they were returned because of insufficient funds. Triangle followed the steps outlined in Sections 18.2-181 through 18.2-185 of the Code of Virginia and notified Cash that the checks had been returned marked insufficient funds. Cash authorized the sale of one of his vehicles through Triangle and on December 14, 1984, Triangle received \$2,457.00 which was



credited toward the total of the bad checks. On December 31, 1984, Cash paid Triangle \$2,000.00 which was credited toward the total of the bad checks. On February 7, 1985, Cash paid \$11,966.00 which was credited toward the total of the bad checks. On February 26, 1985, Cash, through his attorney, paid the interest accrued of \$438.74. The total of the bad checks together with the interest was then paid in full.

While the collection efforts on the bad checks were proceeding, Triangle proceeded criminally against Cash for the issuance of the bad checks. Triangle had previously consulted the Commonwealth's Attorney's Office of Montgomery County, Virginia which had authored the language in the bad check notice letters received by Cash. Cash does not deny the issuance of the bad checks nor the receipt of the notice letters nor does Cash contend that he completely paid the entire debt before February 7, 1985. (See Admissions by Cash.) Triangle, through its agent, Eugene C. Lancour, with the knowledge and the approval of the Assistant Commonwealth's Attorney for Montgomery County, Virginia swore out the criminal bad check warrants against Cash on December 21, 1984. On December 31, 1984, Cash was arrested in the City of Lynchburg. Preliminary hearing on the felony bad check charges was continued to February 8, 1985 and was on that date held. The day before, February 7, 1985, Cash tendered all of the balance due on the bad checks with the exception of the interest which had accrued on the debt. On

February 8, 1985, upon Motion of the Assistant Commonwealth's Attorney for Montgomery County, Virginia, the Judge of Montgomery County General District Court dismissed the bad check charges against Cash. It is and was the policy of that particular Judge to routinely dismiss bad check charges if at or prior to trial "restitution" had been made. The Commonwealth's Attorney's Office was aware of this policy of the Court and routinely assisted the Court in effecting that policy.

While the criminal proceedings were in process, Cash, at the request of Triangle, sent six car titles for cars which were located on Cash's lot in Lynchburg to Triangle which titles were requested by Triangle for purposes of "collateral". The titles were not signed over to Triangle nor were dealer reassignments executed to Triangle. Although Triangle requested collateral, it received nothing but bare paper. Triangle held the titles until payment of the bad checks had been received and then returned the same to Cash. It is Cash's contention that the request for collateral by Triangle was satisfied by his tendering the six titles, although Cash was sure they were not signed over to Triangle and does not remember executing any reassignments to Triangle. Cash offered no evidence that the titles were signed nor that dealer reassignments had been properly executed and tendered. All of Triangle's evidence indicated that the titles were not signed and no dealer reassignments had been received. Nevertheless, it is Cash's

contention that the mere tendering of bare paper titles, without more, was sufficient to constitute part payment or collateral to Triangle for the total of the bad checks and that any prosecution which Triangle instituted or pursued was a malicious abuse of the criminal process of Virginia in that part payment, tendering of collateral, the making of an agreement for collateral, or the receipt of any thing of value by Triangle completely rendered Triangle helpless, without civil penalty, in pursuing the criminal charges.

Trial was held in the City of Lynchburg Circuit Court on November 13 and 14, 1986 and over objections of Triangle, Cash introduced testimony of himself and others which he claimed supported his contention that Triangle's actions had resulted in his being barred from wholesale dealer automobile auctions, resulting in loss of profits to his wholesale business. Over objections of Triangle, Cash's father was permitted to testify that a "National Automobile Dealers Association", of which Triangle was allegedly a member, had black listed Cash and his father as a result of the criminal charges having been placed. Testimony was offered purporting to show that an employee of Cash's had been barred from Fredericksburg Auto Auction, although that testimony clearly indicated that no barring had actually occurred, but rather Fredericksburg had required Cash to deal in cash and hard titles. Evidence, over objection of Triangle, was introduced in the form of letters from other auto

auctions, one of which indicated that Auto Auction Insurance Agency was the source of Cash's having been barred from that particular auction and the other letter indicated that "Cash knew the reason" why he was barred. Over objections of Triangle, the jury was permitted to consider Cash's father's testimony of barring as well as Cash's employee and the letters.

Motions for Summary Judgment by Triangle were taken under advisement as well as Motions to Strike Cash's evidence after Cash rested and upon conclusion of all of the evidence. After two days of testimony, the jury considered the matter for approximately 45 minutes and returned a verdict in the sum of \$130,000.00 compensatory damages and \$50,000.00 punitive damages against Triangle. Triangle made a Motion to set the verdict aside as contrary to the law and contrary to the evidence which Motion is under advisement by this Court.

#### LAW AND AUTHORITIES

Section 18.2-181 of the Code of Virginia states that any person who, with intent to defraud, ... delivers any check ... knowing, at the time of such making, ... that the maker, ... has not sufficient funds ... shall be guilty of larceny. Section 18.2-183 of the Code states that ... Delivery of a check ... payment of which is refused by the drawee because of lack of funds ... shall be prima facie evidence of intent to defraud ... unless the maker ... shall have paid the holder thereof the amount due thereon, together with interest ... within 5 days

after receiving written notice that such check ... has not been paid to the holder thereof. In his Admissions Cash admits the issuance of the bad checks, the refusal of the drawee bank to pay because of insufficient funds, the receipt of notice, and his failure to pay the amount of the instruments within the 5 day notice period. It is therefore admitted by Cash that Triangle is in compliance with Section 18.2-181 and 18.2-183 of the Code. The evidence further indicated that it was upon the advice of the Commonwealth's Attorney, beginning several years prior to the prosecution of Cash, that Triangle instituted criminal proceedings. Cash contends, nevertheless, that an agreement for collateral with Triangle, whether collateral was ever actually received by Triangle or not, and or part payment to Triangle is a bar to prosecution.

Such is not, however, the law of the Commonwealth of Virginia. *Cook v. Commonwealth*, 178 Virginia 251, (1941) states that payment, is no bar to prosecution if made within the notice period of Section 18.2-183. Cook also states that payment (full payment) would constitute no bar to prosecution, but would merely negative the presumption of fraudulent intent. Cash does not contend, nor did the evidence indicate that payment (full payment) had been made either within the notice period or prior to the preliminary hearing date. Cook further states that the crime, if any, is committed at the time the check is drawn and that subsequent acts of the drawer are of evidential value only

in helping to establish the operative fact of fraudulent intent. Cook is important to this case because it authorizes Triangle to proceed civilly, or through consultation and agreement with Cash to proceed to collect the \$16,423.00 out of which it had been defrauded and at the same time proceed criminally against Cash. Cash's contention is not that he made full payment, and even if he had Cook would control and permit the prosecution to continue, but that he made part payment and an agreement for collateral which would prevent the prosecution. That is absolutely not what Cook stands for, because if full payment is no bar to prosecution, it is ludicrous to contend that part payment or an agreement for collateral is a bar.

Cash had every opportunity from the date of the notices, beginning December 4, 1984 and received December 6, 1984, another notice dated December 6, 1984 and received December 8, 1984, and still another notice dated December 12, 1984 and received December 14, 1984, to effect full payment, negative the presumption of his fraudulent intent at the time of issuance of the bad checks, and properly then preclude Triangle from criminally proceeding on December 21, 1984.

Evidence presented at trial by Cash's bookkeeper, Cash's father and Cash himself indicated that Cash had the ability to secure funds within that time frame, to completely and totally pay the \$16,423.00 out of which Triangle had been defrauded, but he chose not to do so because, paraphrasing, "the

market was down and I would have lost money on the cars if I had had to sell them. It would have taken too much time to borrow the money on my house or other properties and, although my father had it and would have lent it to me, I didn't want to borrow it from him." Cash's contentions are irrelevant and immaterial on the basis of Sections 18.2-181 and 18.2-183 and Cook.

Triangle, admittedly in compliance with Sections 18.2-181 and 18.2-183 is then entitled to the protections of Section 18.2-185, which states in relevant part, in any civil action growing out of an arrest under Section 18.2-181 ... as to the status of the check ... or of any collateral agreement with reference to the check ... shall be admissible unless such statements ... be written upon the instrument at the time it is given by the drawer. The checks were given by the drawer, Cash, to Triangle on November 12, 1984 and November 26, 1984. The checks were admitted into evidence and there is no indication on the face or back of the check in any way tending to indicate that they were not represented as good at the time of delivery or that there was any collateral agreement at that time.

Section 18.2-185 further provides "if payment ... be refused by the bank ... and the person who drew or uttered such instrument be arrested or prosecuted under the provisions of Section 18.2-181 ... 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 ... if the one who arrested ... such person ... shall have, before doing so, 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. The Admissions by Cash established that Triangle complied with Section 18.2-185 of the Code. The Admissions further established the fact that the five day notice period was given and that within the five day notice period that amount due under the provisions of each of the instruments, namely the bad checks, was not paid. It is therefore irrelevant what discussions ensued between Cash and Triangle as to any "collateral agreement", part payment, agreement to make restitution, agreement to make full payment in installments, or any other agreement or discussions about an agreement between Cash and Triangle. Absolutely no evidence concerning the discussions, the tendering of part payment, the sale of the cars, the tendering of title, the holding of title, or any other evidence whatsoever concerning the negotiations between Cash and Triangle was properly admissible. Section 18.2-185 is an absolute bar to permitting the jury to consider any such evidence.

Section 18.2-185 is a clear bar to the prosecution by



the arrested person in any civil action. It is true that the headnote states "Evidence and presumption in malicious prosecution actions after issuance of bad checks" and does not refer to abuse of process actions. However, Section 1-13.9 of the Code of Virginia states that "the headlines of the several Sections of this Code printed in black face type are intended as mere catchwords to indicate the contents of the sections and shall not be deemed or taken to be titles of such sections, nor as any part thereof, nor, unless expressly so provided, shall they be so deemed when any of such sections including the headlines, are amended or reenacted." For purposes of application of the law as set forth in Section 18.2-185 it is clear that the headnote must be disregarded. Once the Court correctly applies Section 1-13.9, the Court must then conclude that Section 18.2-185 controls and Cash's action against Triangle for abuse of process must be dismissed.

Prior to trial, Triangle filed a Motion For Summary Judgment on the basis of Cash's Admissions that Triangle complied with Sections 18.2-181 and 18.2-183. Triangle moved the Court in said Motion For Summary Judgment to grant it Summary Judgment on the basis of the protections outlined in Section 18.2-185. Said Motion was taken under advisement and has not been ruled upon. Said Motion For Summary Judgment was reiterated by Triangle during the trial and was taken under advisement and has not been ruled upon. Upon the bases provided

in Section 18.2-185, after the conclusion of Cash's evidence, Triangle moved to strike all of the evidence, which Motion was taken under advisement and has not been ruled upon. At the conclusion of all of the evidence Triangle reiterated its Motion For Summary Judgment and Motion To Strike all of the evidence on the basis that Section 18.2-185 was controlling and the case should not be permitted to go to the jury. All of said Motions were taken under advisement and have not been ruled upon.

Without any shadow of a doubt, since Triangle complied with Section 18.2-181 and 18.2-183 of the Code, Section 18.2-185 controls thus making it mandatory that the Court sustain the Motion for Summary Judgment, strike the evidence of the Plaintiff, strike all of the evidence of the Plaintiff and Defendant and enter judgment in favor of Triangle.

Triangle filed in this action a Motion in Limine to preclude the introduction of testimony concerning Cash's alleged "barring" at several automobile auctions. Triangle alleged that such evidence, without appearance at trial of any representative of the automobile auctions engaging in the alleged "barring" would be inadmissible hearsay. The Motion was taken under advisement and the jury was permitted to consider testimony of one of Cash's employees as well as letters purportedly authored by High Point and Statesville Auto Auctions.

Hearsay evidence is any testimony of a witness in

Court about statements made out of Court by another person. (See Friend, The Law of Evidence in Virginia, page 478.) Cash's employee's testimony concerning anything he was told by any representative of Fredericksburg Auto Auction was clearly hearsay evidence and was clearly inadmissible. At the point where the Motion In Limine was filed by Triangle, the Court should have ruled that the letters were likewise inadmissible hearsay and the Motion should have been sustained, thus precluding the introduction of the letters. At trial, again, the High Point letter should have been excluded as inadmissible hearsay. Triangle did not, at trial, object to the introduction of the Statesville letter because it indicated on its face that Auto Auction Insurance Agency was responsible for Cash's alleged "barring". Since Auto Auction Insurance Agency was not a party to the action, it was nevertheless improper to permit the jury to speculate that actions by Triangle resulted from actions by Auto Auction Insurance Agency or vice versa.

Triangle's Motion In Limine further moved the Court to preclude the introduction of testimony on Cash's behalf attempting to show as part of his damages reductions in gross revenues for 1985 and 1986 compared with prior years. The Motion In Limine was taken under advisement and was not ruled upon and the jury was allowed to consider the evidence of Cash and his bookkeeper purporting to show reductions in gross revenues. None of the evidence produced at the trial on behalf

of either the Plaintiff or the Defendant evenly remotely tended to show actions by Triangle were responsible for reductions in gross revenues suffered by Cash. To permit the introduction of such evidence to be considered by the jury was improper because no causal connection was established between Triangle's actions and Cash's reductions of revenues; hence the jury was permitted to speculate that Triangle was the source of Cash's problems in reductions of gross revenues and the jury was improperly permitted to conclude that Triangle should pay damages resulting therefrom.

Cash himself testified in deposition and in trial that he did not know the source of his alleged "barring" at auto auctions and to have permitted the jury to consider such evidence since the relevancy had not been established was improper. Friend on evidence, Section 135, Relevance and Admissability, states that irrelevant evidence is not admissable.

Triangle alleges that its Motion In Limine should have been sustained prior to trial and that none of the evidence of barring or reductions of gross revenues should have been permitted to be considered by the jury.

#### THE JURY VERDICT

Since the jury was improperly permitted to consider the reduction in gross revenues and was improperly permitted to consider the alleged barring at Fredericksburg, Statesville and

High Point Auto Auctions, the jury verdict was grossly excessive and improper. The jury apparently did not conclude that Cash had any responsibility whatsoever for his own criminal actions in issuing the bad checks, although testimony at trial amply demonstrated the fact that Cash kept his own check books, repeatedly failed to keep running balances and failed to keep correct balances when he did make entries. The evidence moreover amply demonstrated that he had a pattern of issuing bad checks which continued long after his issuance of bad checks to Triangle and his subsequent arrest. Moreover, the evidence amply demonstrated that Cash had an ability as distinguished from a willingness to effect full payment of the bad checks to Triangle prior to the institution of the criminal proceedings, but he chose not to do so. The jury verdict therefore of compensatory damages in any sum is plainly wrong, because no causal connection was established between any of Cash's alleged damages or problems and Triangle, rather the evidence amply demonstrated that Cash himself not only created his own problems but allowed them to continue by virtue of his failure to pay the instruments prior to December 21, 1984.

The very most that can be said for any and all of Cash's evidence, admitted improperly as it was, was not even sufficient enough to properly allow the jury to speculate on the source and the causes of Cash's problems. None of the evidence whatsoever established with any reasonable degree of certainty

that Triangle was responsible to Cash. The evidence, on the contrary, amply demonstrated that Cash issued the bad checks and Cash failed to make them good, that in compliance with the law Triangle instituted criminal proceedings and cooperated with the Commonwealth in prosecuting, all of which was proper. Cash's own evidence indicated that none of the witnesses knew the source of Cash's problems. His own evidence, improperly admitted, indicated that Statesville barred him because of actions by Auto Auction Insurance Agency; High Point barred him because of reasons he (Cash) knew and Fredericksburg did not bar him at all, it only required that he deal in cash and titles. Cash's own testimony further demonstrated that market fluctuations in the used car business were common, business was normally bad in the winter months and that many other factors, such as inflation, interest rates, cut rate financing, and so forth affected gross revenues. To have permitted the jury to conclude that Triangle was responsible for Cash's gross revenues reduction improperly permitted the jury to speculate that Triangle was responsible.

#### PUNITIVE DAMAGES AND MALICE

One of the elements of the tort of abuse of process is the necessity for showing of malice on the part of Triangle. All of the evidence, including that offered by the Plaintiff and the Defendant as well, indicated that there was no agreement for Triangle not to institute criminal proceedings or to drop

criminal proceedings if Cash either paid the total of the bad checks, partly paid the bad checks, offered collateral for the bad checks, or tendered collateral for the bad checks. It was clearly indicated by every representative of Triangle that regardless of what Cash did with reference to payment of the bad checks, it was Triangle's view that he had committed criminal acts and would be prosecuted. Regardless of the fact that prior to trial Cash partly paid a portion of the \$16,423.00 total of the bad checks, Triangle was entitled to prosecute under Sections 18.2-181 and 18.2-183. Regardless of the fact that Cash tendered six titles to vehicles on his car lot, which titles he maintains were collateral, Triangle was entitled to prosecute under Sections 18.2-181 and 18.2-183. Triangle in an effort to fully comply with the laws of the Commonwealth of Virginia, on more than one occasion, consulted the Commonwealth's Attorney's office of Montgomery County, Virginia and was advised as the evidence in Court indicated, that regardless of payment or collateral arrangements, if such arrangements were not made at the time the checks were delivered, Triangle was entitled to prosecute. Reliance upon the laws of the Commonwealth of Virginia and reliance upon the advice of the Commonwealth's Attorney to prosecute can never amount to malice. In addition, Montgomery County, the evidence indicated, had a system of checks and balances to prevent the issuance of criminal warrants if the sole purpose of the issuance of the

criminal warrants was to collect a debt. The notice card produced from the Magistrates Office and testified to by the Commonwealth's Attorney clearly indicated that such was the case. The Assistant Commonwealth's Attorney testified to specific conversations with representatives of Triangle prior to the issuance of criminal warrants. All of Triangle's evidence indicated that no deal was made with Cash not to prosecute if payment was made. Absolutely to the contrary, all of the evidence in the case indicates that Triangle's desire was to see that the guilty were punished and that justice was done, and that is why the prosecution was instituted and continued.

The definition of malice given the jury by the Court required the jury to find in Triangle an ulterior motive. Absolutley not one scintilla of evidence indicated that Triangle's motive was anything other than those permitted by the law. Nothing about Triangle's motive was any reason except a genuine desire to see justice done, to enforce the law or to punish the guilty. The Court told the jury in Instruction No. 12 that actual malice is a sinister or corrupt motive such as a desire to injure the Plaintiff or conscious disregard for the rights of others. The jury concluded that Triangle had actual malice, but the very definition which it was provided is diametrically opposed to the conclusion the jury reached. No sinister or corrupt motive, from the evidence, was shown to have existed.



Since one of the elements of the tort of abuse of process involves proving malice, the jury should not have been permitted to consider heaping insult upon injury by awarding damages for malice, one of the elements of the tort, and further being permitted to award additional damages for the same malice by way of a punitive nature. The jury verdict indicated it did so by finding the elements of the tort existed and by separately adding \$50,000.00 in punitive damages. The jury's verdict was plainly wrong and clearly unjust.

#### REMITTITUR

Triangle does not desire to dwell upon the responsibility of this Court to reduce the grossly excessive damages the jury awarded based upon its consideration of improper evidence, conjecture and speculation, but Counsel for Triangle believes it to be his responsibility to move the Court for remittitur and Counsel for Triangle accordingly so moves.

#### MOTION FOR NEW TRIAL

In the alternative to the Court's sustaining Triangle's Motion In Limine, Motion For Summary Judgment, Motions for Striking the Plaintiff's evidence, Motions for striking all of the evidence, and Motion to set aside the jury verdict as contrary to the law and evidence, Counsel for Triangle moves the Court for a new trial on all of the grounds above stated, as well as the reiteration of the elements of the tort.

Michie's Jurris prudence on Abusive of Process at Section 61 states that the test of the tort is whether the process was used for the purpose for which it was designed by the law, or whether on the contrary, it was used to secure some collateral disadvantage to the other party. In this case, again, all of the evidence indicated that Triangle was in the process of collecting the funds out of which it had been defrauded by Cash and was in the process of attempting to secure collateral when the criminal proceedings were instituted and that the process of collection continued likewise while the criminal process was proceeding. None of the evidence indicated that the criminal process was instituted or continued by Triangle in order to secure any collateral disadvantage to Cash. The civil law is distinct and separate from the criminal law and clearly all of the evidence indicated that civil process continued while criminal process likewise was making its way through the Courts of the Commonwealth and accordingly, Triangle properly utilized the criminal process for the purpose for which it was designed, namely to punish the guilty party, Cash, for his having defrauded Triangle of \$16,423.00. It is absolutely not relevant in any way, shape nor form, that Triangle may only have been defrauded of a portion of its money for some of the time between the date of issuance of the bad checks on November 12 and November 26, 1984 and payment of the bad checks in part on December 14, December 31, February 7 and finally, final

payment on February 26. Triangle properly secured the warrants and properly aided the prosecution and there was therefore no oppressive or perverted use of the process. Cramer v. Crutchfield, 496 Fed Supplement 949 (E.D. Virginia. 1980) further establishes the fact that an act in the use of the process not proper in its regular prosecution must have been committed. No such evidence exists on the part of Triangle in this case.

The Court permitted several jury instructions out of Mullins v. Sanders to go to the jury. The proper application of Mullins v. Sanders, 189 Virginia 624, would have required the jury that in order for Triangle to collect its debt as opposed to punishing the guilty and aiding the criminal prosecution, Triangle must have instituted the criminal proceedings. Again, no such evidence was produced by either the Plaintiff or the Defendant.

An article on close point, namely Abuse of Process - Collection of Debt, 27 ALR 3rd 1202 at Section 1209, in commenting upon Mullins v. Sanders, states as follows: "The mere fact that the creditor has procured a criminal warrant against the debtor for the ulterior purpose of enforcing the collection of the debt will not of itself support an action for Abuse of Process. The Court stated, for, in addition to incurring civil liability, the debtor may have also violated the criminal law so as to justify his arrest and prosecution, and so

long as the creditor merely aides in the prosecution of the criminal proceeding in a regular manner, that is, by procuring the warrant in a proper manner and appearing as a witness, he is not liable for abuse of process, despite the fact that the criminal prosecution may result in payment of the debt.

There should be no question in the Court's mind that Cash violated the criminal laws, Sections 18.2-181 and 18.2-183. Triangle procured the criminal warrants and appeared as a witness and Counsel for Triangle strongly urges that it is not the criminal prosecution that resulted in payment of the debt but even if it were, Mullins v. Sanders stands for the proposition that Triangle is not liable for abuse of process. The criminal process of the Court must have been used as a means of oppression, beyond the mere fact of arrest and the regular prosecution of the charge, to compel the debtor to make a settlement. Not one shred of evidence indicated that such was the case here.

The Court has been previously cited the case of Glidewell v. Murray-Lacey and Company, 124 Virginia 563 (1919), in which case evidence tended to show that the real purpose of the Defendants in an abuse of process action was not to enforce the criminal law, but to collect a private debt. The Court nevertheless found that an act in the use of the process not proper in its regular prosecution and amounting to perversion to some unlawful purpose did not exist, the Court finding that the

Defendants had a moral and legal right to accept satisfaction and found for the Defendants. In this case, likewise, Triangle had a moral and legal right to accept partial satisfaction leading to total satisfaction whether it be in the form of payment or so called collateral and whether Triangle did or did not accept any such payment or any such so called collateral prior to trial, it was its moral right and duty to do so. The fact of its acceptance cannot be construed legitimately as an abuse of process.

Triangle submits that whether the six titles submitted by Cash to Triangle were or were not collateral is irrelevant because proper application of Section 18.2-183 and Cook v. Commonwealth would so indicate. Even if it were relevant, however, the six titles in no way meet the test of what is actually collateral. Sections 46.1-69, 70 and 71 of the Code of Virginia indicate that the only method of establishing a security interest in an automobile is to have a security interest, or lien, shown on the face of the title. None of the evidence in this case indicated that Cash ever signed anything which would have permitted Triangle to show a lien on the face of the title, nor did any of the evidence even remotely tend to indicate that Triangle had established a lien on any of the titles; hence the inescapable conclusion is that none of the titles held by Triangle amounted to collateral.

### CONCLUSION

Counsel for Triangle at the trial tendered to the Court photo copies of Michie's Jurrisprudence, ALR, Cramer v. Crutchfield, Glidewell v. Murray-Lacy and Company, Mullins v. Sanders and Sections 18.2-181 through 185 of the Code of Virginia. Counsel for Triangle strongly urges the Court to consider each and every authority offered by Triangle and to set aside the grossly excessive verdict of the jury because it is absolutely contrary to the law as well as contrary to the evidence.

Respectfully,

TRIANGLE AUTO AUCTION, INC.

BY

  
David W. Mullen, Counsel


### C E R T I F I C A T E

I hereby certify that I mailed a true and correct copy of the foregoing Brief to Joseph R. Johnson, Attorney, Allied Arts Building, Lynchburg, Virginia 24505 this 4th day of December, 1986.

  
David W. Mullen

DAVID W. MULLEN  
ATTORNEY AT LAW, INC.  
MAIN ST., P.O. BOX 848  
LYNCHBURG, VA 24073

534

FILED IN THE CLERK'S OFFICE OF THE  
COURT OF THE CITY OF LYNCHBURG  
DATE DEC 5 - 1986 TIME 10:05 AM  
TESTE: JUANITA E. SHIELDS, CLERK  
BY 

DAVID W. MULLEN

*Attorney at Law, Inc.*

CHRISTIANSBURG, VIRGINIA 24073

DAVID W. MULLEN

PROFESSIONAL BUILDING

December 16, 1986

P. O. BOX 845

TELEPHONE 382-8298

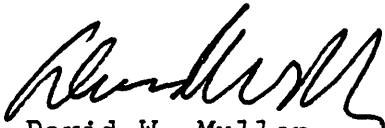
The Honorable Richard H. Miller, Judge  
Circuit Court for the City of Lynchburg  
P.O. Box 60  
Lynchburg, VA 24505

Re: Cash v. Triangle Auto Auction, Inc.

Dear Judge Miller:

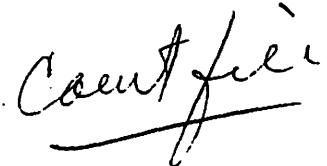
This letter will confirm a telephone conversation which I had today with Joe Johnson, Attorney for Daniel F. Cash. I have ordered the transcript from the Court reporter and will deliver a copy to your office as soon as I receive it. Mr. Johnson and I are going to share the cost of preparation of this transcript. Mr. Johnson and I are further in agreement that, with the permission of the Court, his two week period of time within which to respond to my Memorandum will run from the date of delivery of the transcript to your office and his. I will see to it that the copies are mailed from here the same date. I trust this meets with the approval of the Court, but if not I shall appreciate hearing from you.

Sincerely,



David W. Mullen  
DWM/dml

cc: Joe Johnson  
Johnson & Cunningham  
725 Church Street  
9th floor Allied Arts Building  
Lynchburg, VA 24504



TWENTY-FOURTH JUDICIAL CIRCUIT  
OF VIRGINIA

WILLIAM W. SWEENEY, JUDGE  
(804) 847-1491  
RICHARD S. MILLER, JUDGE  
(804) 847-1490  
LYNCHBURG CIRCUIT COURT  
LYNCHBURG, VIRGINIA 24504



COMMONWEALTH OF VIRGINIA  
CITIES OF LYNCHBURG AND BEDFORD  
COUNTIES OF AMHERST, BEDFORD, CAMPBELL AND NELSON

ROBERT C. GOAD, JUDGE  
(804) 263-4069  
LOVINGSTON, VIRGINIA 22949  
J. SAMUEL JOHNSTON, JR., JUDGE  
(804) 847-0961  
RUSTBURG, VIRGINIA 24586

January 20, 1987

Joseph R. Johnson, Jr., Esq.  
Attorney at Law  
P. O. Box 717  
Lynchburg, VA 24505

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

Re: Daniel F. Cash v. Triangle Auto Auction, Inc.

Gentlemen:

This is to advise that on today, January 20, 1987, I received from the court reporter the two-volume transcript of the trial of November 13 and 14, 1986, in the captioned law action.

Very truly yours,

Richard S. Miller, Judge

RSM/n

cc: Mrs. Juanita E. Shields, Clerk



VIRGINIA: IN THE CIRCUIT COURT FOR THE CITY OF LYNCHBURG

DANIEL F. CASH,  
Plaintiff

v.

TRIANGLE AUTO AUCTION, INC.,  
Defendant

PLAINTIFF'S BRIEF IN  
OPPOSITION TO DEFENDANT'S  
MOTION TO SET ASIDE VERDICT

TO THE HONORABLE RICHARD S. MILLER, JUDGE:

COMES NOW, the plaintiff, Daniel F. Cash, by counsel, and submits the following Memorandum in opposition to the defendant's Motion to Set Aside the Verdict previously rendered.

#### EXPLANATION OF REFERENCES

The above matter was tried with a jury on November 13 and November 14, 1986, and the transcript is contained in two volumes, one for each day's proceedings. The pagination is continued from the volume containing the first day's proceedings to that containing the second day's proceedings and the first page of the second day's proceedings is numbered page 258. References to pages of the transcript will be as follows: (Tr. ); therefore, references to pages 1 through 257 will be contained in the transcript of proceedings of November 13, 1986 and references to pages 258 through 457 will be contained in the volume containing the transcript of proceedings held on November 14, 1986.

#### FACTS

The plaintiff would call the Court's attention to certain omissions and corrections in the material set forth in the "Factual Background" of the defendant's brief. The defendant submits that the defendant's agent, Eugene C. Lancour, obtained the warrants against the plaintiff with the knowledge and approval of the

Assistant Commonwealth's Attorney for Montgomery County. However, the evidence at trial was that the Assistant Commonwealth's Attorney was not advised by Mr. Lancour when the warrants were obtained that the plaintiff had made a partial payment and had also provided security for the debt. (Tr. 301-302). With respect to the collateral, the defendant contends that the titles forwarded to the defendant by the plaintiff were not actually collateral but were merely pieces of paper of no use to the defendant. However, the evidence indicated that the defendant's agents merely requested the titles and did not ask the plaintiff for a reassignment or other documentation. (Tr. 298). Mr. Lancour testified that assignments were not requested from plaintiff and Mr. Sale, after initially claiming assignments were requested, admitted that Mr. Lancour's testimony was correct. (Tr. 298, 319). Further, and most definitively of all, Mr. Lancour finally admitted in his testimony, as had been admitted in the pre-trial Request for Admissions, that it was agreed that the titles would be held as collateral. (Tr. 291, 292, 294). Then Frank Sale testified if he had collateral (sic.) he would have been willing not to prosecute. (Tr. 327).

In its "Factual Background", defendant contends that it is the plaintiff's position that a partial payment and provision of collateral prevented the defendant from legally swearing out the warrants. However, it is not the plaintiff's position that under these circumstances the defendant was legally barred from obtaining the warrants due to the partial payment and collateral but that under these circumstances, the obtaining of the warrants constituted an abuse of process, as they were obtained for the purpose of collecting an indebtedness, rather than enforcing the

criminal law.

It should be noted that the evidence indicated that the defendant, acting through its agents, continued to try to collect on the checks after the warrants were obtained and, in fact, threatened to put the plaintiff in jail if he did not pay in cash immediately. (Tr. 75, 120-122). It should also be noted that at the hearing on the criminal charges, Mr. Lancour stated that he did not care if the charges were dropped because the checks had been paid. (Tr. 353).

The plaintiff has identified what he believes are the five major points which the defendant has raised and will address them in the following order: whether the plaintiff's action is barred by §18.2-185 of the Code of Virginia, 1950, as amended; whether the letters and phone calls regarding the plaintiff being barred from dealing at wholesale auto auctions were properly admitted; whether the plaintiff's evidence showed that his damages were caused by the actions of the defendant; whether the verdict was excessive, in whole or in part, under the evidence; and whether the evidence made out a jury issue with respect to the elements of abuse of process.

#### ARGUMENT

##### I. WHETHER THE PLAINTIFF'S ACTION IS BARRED BY §18.2-185 OF THE CODE OF VIRGINIA?

The defendant contends that §18.2-185 of the Code of Virginia gives it an absolute defense to the plaintiff's cause of action and that its sending of the registered letters created an irrebuttable presumption that the warrants were taken out with reasonable or probable cause. However, the plaintiff submits that §18.2-185, by its own language, is only applicable in malicious

prosecution actions and does not apply to actions involving the abuse of process. §18.2-185 creates a conclusive presumption that persons obtaining warrants, if they follow the statutory requirements, are acting with reasonable or probable cause. However, under Virginia law, an action for abuse of process does not require the absence of reasonable or probable cause on behalf of the defendant. In Glidewell v. Murray-Lacy, 124 Va. 563, 98 SE 665, (1919), the Virginia Supreme Court stated this principle as follows:

"(12, 13) A Number of decisions from other jurisdictions are cited in the brief of counsel for plaintiff in error to support the proposition there advanced that criminal process cannot be wrongfully used to collect a debt, and that in such cases it is not necessary to prove malice or want of probable cause. The last named element, want of probable cause, is of course, immaterial in all such cases, because that relates to the suing out and not to the use of the process. . . ." 124 Va. at pp. 575-576.

The Fourth Circuit Court of Appeals has recognized the same distinction.

"The crux of the tort of abuse of process, whether civil or criminal, lies in the malicious abuse or misuse of a process or writ which has been lawfully and properly issued; in other words, although the writ was issued upon the proper grounds and with probable cause, it was caused to issue and was used, not for the purpose for which it was intended, but for some collateral object." Ross v. Peck, Iron & Metal Co., 265 F. 2d 262, 267-268 (4th Cir., 1959).

"Abuse of process, under both Maryland and Virginia law, is a species of tort action distinct from malicious prosecution or use of process. While malicious prosecution concerns institution of process for its ostensible result but without probable cause, abuse of process is the improper use of otherwise regularly issued process in a manner not contemplated by law after its issuance . . . the essential elements of abuse of process are: (1) An ulterior purpose; and (2) a willful act in the use of the process not proper in the regular course of the proceeding . . . proof of absence of probable cause for the original proceeding is unnecessary . . . nor is it required to show that process was issued maliciously." Tomai-Minogue v. State Farm Mutual Auto Ins. Co., 770 F. 2d 1228, 1237-1238 (4th Cir., 1985). 540,

Plaintiff thus submits that since the issue of probable cause is not germane to the elements of abuse of process, §18.2-185 creates no defense to the present action. Furthermore, plaintiff submits that §18.2-185 is in derogation of the common law in that it creates conclusive presumptions unknown to the common law actions of malicious prosecution and abuse of process. For this reason, it should be narrowly and strictly construed. This principle of statutory construction has been stated as follows: "In determining the meaning of a statute, it will be presumed in the absence of words specifically indicating the contrary, that the legislature did not intend to innovate upon, unsettle, disregard, alter or violate the common law". 17 Michie's Jurisprudence, Statutes, §48. This principle requires that Courts not expand statutes in derogation of the common law beyond the clear meaning of their language. Wilson v. Volkswagen of America, Inc., 440 F. Supp. 1368 (E.D.Va., 1978).

The plaintiff submits that it would require an unjustifiable expansion of the language of §18.2-185 to apply it to actions of abuse of process which do not involve the issue of reasonable or probable cause for the issuing of the process itself. Plaintiff therefore submits that under the required narrow interpretation of the statute it cannot be deemed to bar the present cause of action.

II. WHETHER THE EVIDENCE OF LETTERS AND PHONE CALLS  
REGARDING THE PLAINTIFF BEING BARRED FROM DEALING  
WITH WHOLESALE AUTO AUCTIONS WAS PROPERLY ADMITTED?

The defendant submits in its brief that it was erroneous for the Court to allow certain letters and contents of phone conversations into evidence as proof that the plaintiff had been barred from further dealing with wholesale auto auctions after problems with the checks he wrote to the defendant. It should be noted

that the testimony of Lonnie Morris with respect to what he was told when he went to the Fredericksburg Auction was not objected to by the defendant's counsel. (Tr. 191-192). Danny Cash testified that after Lonnie Morris returned to Lynchburg, he (Cash) was told by telephone conversation "that (he) could not come up there and deal". Defense counsel did not object to the above statement but only objected to any "reason" being given by that person. (Tr. 95-96). Furthermore, the admission of the letter from the Statesville Auction (Plaintiff's Exhibit No. 14) was not objected to by the defendant. (Tr. 91). Regardless of the fact that objections were not noted to much of the testimony regarding the letters and phone calls, the defendant now contends that they should not have been allowed into evidence because they were hearsay. The plaintiff submits that, notwithstanding the defendant's failure to properly object, the letters and phone calls communicating the actions of the auto auctions to Cash and his employee fall into well-recognized exceptions to the hearsay rule. Specifically, plaintiff submits that this evidence comes within both the statement of intent or state-of-mind exception and the "res gestae" exception to the hearsay rule.

The state-of-mind or statement of intent exception to the hearsay rule has been described as follows:

"Declarations which reveal the mental condition or attitude of the declarant are frequently admitted as an exception to the hearsay rule. . . One of the most common uses of this exception is to prove the intention of a person concerning some future act.

"A closely related but distinguishable problem occurs when one side or the other seeks to introduce declarations of a person of intent to do a future act, as evidence that this act was in fact later done. The leading United States case on this point is that of Mutual Life Insurance Co. v. Hillmon. There the Supreme Court of the United States ruled that letters written

by one Walters expressing his intention to leave town with Hillmon were admissible 'not as narratives of facts . . . nor yet as proof that he actually went away from Wichita, but as evidence that . . . he had the intention of going, and of going with Hillmon, which made it more probable both that he did go and that he went with Hillmon. . . .'

. . . .

"It is submitted that in other cases, both civil and criminal, evidence of threats and other declarations of intention or design should always be received unless too vague or remote to be of substantial probative value." Friend, The Law of Evidence in Virginia, §248.

The plaintiff submits that the letters and phone calls were properly admitted into evidence as the exception to the hearsay rule as they clearly indicate that it was the intention of the various wholesale auto auctions to terminate their dealings with him, and were not admitted in evidence to prove the truth of the statements.

Plaintiff further submits that this evidence falls outside the hearsay rule under the "res gestae" exception. This exception allows into evidence all declarations which accompany or characterize an act which may be relevant to the issues in the case.

"The rule has been stated thus: when any act done by any person is a fact in issue, or is relevant to the issue, the following . . . are relevant. . . all statements made by or to that person accompanying and explaining such act." Friend, The Law of Evidence in Virginia, §240.

The "res gestae" exception to the rule described by Michie's Jurisprudence, is as follows:

"The term 'res gestae' means the acts, declarations and circumstances which stand in causal connection with and are illustrative of the principal transactions under-going investigation.

. . . .

"The purpose of permitting the introduction of evidence as part of the res gestae, which is an exception

to the hearsay rule, is to prove facts and not opinions."  
7B Michie's Jurisprudence, Evidence, §259.

Plaintiff submits that letters and phone calls he received from the various auctions were therefore admissible as statements accompanying and explaining his being barred from dealings at the auctions and further as declarations which stand in a causal connection with a principal transaction involved in the case. Plaintiff submits that their admission into evidence was therefore proper as evidence of the actions taken against him by the various auto auctions.

There is one other most compelling reason why the letters and phone call evidence was properly admitted in evidence. Defense counsel, in his opening statement to the jury, stated:

"He (Danny Cash) will also tell you that not one single automobile auction has told him he cannot deal there today. They have only told him that he must use cash, hard green stuff, and hard titles for his cars."  
(Tr. 44).

To exclude the fact of the letters and phone calls from the auto auctions would allow the above incorrect statement by defense counsel to go to the jury unchallenged.

### III. WHETHER THE EVIDENCE SHOWED THAT THE PLAINTIFF'S DAMAGES WERE CAUSED BY THE ACTIONS OF THE DEFENDANT?

The defendant in its brief contends that the plaintiff's evidence was not sufficient to establish a causal connection between the plaintiff's damages and the actions of the defendant. Plaintiff would submit that the circumstantial evidence overwhelmingly indicated that the majority of plaintiff's damages were a direct result of his being barred from the auto auctions shortly after the problems occurred with respect to his checks. This evidence was certainly substantial enough for the jury to reasonably infer that the defendant had been the motivating force behind



plaintiff being barred from dealing with the other auto auctions. Plaintiff submits that he was entitled to recover damages for the natural and probable consequences of the defendant's actions.

"In an action for abuse of process, the plaintiff may recover whatever actual damage he has suffered as a natural and probable consequence of the trespass, including any special or peculiar damages which he has suffered, if such special damages were pleaded. Special damages may include physical or mental injury, expenses, loss of time and injury to business, property or financial standing." 1 Am. Jr. 2d, Abuse of Process, §25.

The plaintiff submits the evidence was overwhelming that his being barred from other automobile auctions was a direct consequence of the check problems he had with the defendant and that thus the defendant irrefutably was responsible for the actions of the other wholesale auctions. The plaintiff's father, Robert Cash, testified from his personal knowledge that the three auctions who took action against his son were members, together with the defendant, of an association which took collective actions of this nature when banning persons from dealing at their respective auctions. (Tr. 229). Robert Cash further testified that he received letters barring him from dealing at the same auctions that had barred his son, even though he had had no dealings with them for some time. (Tr. 226). He had no explanation for this, other than his son's problems with the defendant regarding the checks, and his obvious association with his son. The jury's inference that the defendant was behind the barring of the plaintiff by the other auto auctions is further supported by the plaintiff's testimony that he had dealt with all four of the auctions for some time without any problems. (Tr. 93). The plaintiff further testified that the four auctions that he dealt with on a regular basis were High Point, Statesville, Fredericksburg and Triangle, and the fact that,

other than the defendant, all the auctions that he dealt with took action against him almost contemporaneously, could certainly not be considered a coincidence. Furthermore, the defendant submitted no evidence from any of the other auctions which would refute or rebut the inference that the defendant was the cause of the plaintiff receiving the letters and phone calls barring him from dealing with the other auctions. In other words, there was no evidence submitted that indicated that the other three auctions had made independent decisions with respect to barring the plaintiff, nor was there any evidence which would contradict the inference that their actions were taken at the behest of the defendant. Finally, the jury's conclusion that the defendant was responsible for the plaintiff being barred from the other auctions certainly is reasonable, considering the evidence regarding the dates that the plaintiff was advised by letter and phone call that he could not deal at the other auctions. The checks, which are the subject of this controversy, were written to the defendant by the plaintiff in November of 1984. The evidence indicated that in December of 1984, the plaintiff's employee was not allowed to deal at the Fredericksburg auction. (Tr. 190). The plaintiff himself was also advised of this situation by phone call. (Tr. 97). The dates of the letters from the High Point and Statesville auctions, which are respectively plaintiff's Exhibits Nos. 13 and 14, are January 31, 1985 and February 17, 1985. In consideration of the plaintiff's testimony that he had had no prior problems in dealing with these auctions, the jury's inference that the defendant was responsible for the actions of the other auctions is certainly supported, since the date of their actions are so proximate in time to the plaintiff's problems with the defendant. In considera-

tion of this testimony, the plaintiff submits that it was in no way an unreasonable inference nor mere speculation for the jury to conclude that the defendant was responsible for the plaintiff's exclusion from dealing with the other three auto auctions with whom he had previously conducted business.

The evidence was also overwhelming that the plaintiff's dramatic decline in business income was the direct result of his being barred from dealing at the wholesale auctions. Plaintiff's own testimony established that his inability to buy and sell at the wholesale auctions had significantly undermined his business. (Tr. 98). This was corroborated by the testimony of his father, Robert Cash, an experienced automobile dealer, who confirmed his son's business had begun to sour only after he was barred from dealing with the wholesale auctions. (Tr. 230-231). The plaintiff's accountant, Mr. Ernest Womack, also testified that in his professional opinion, there was no other reason for the dramatic decline in the plaintiff's business, other than his inability to deal with the wholesale auctions. (Tr. 183, 188).

Ernest Womack stated it most succinctly, without objection by defense counsel, that the incident that took place about the time that it switched from a thriving business to going downhill is when he was arrested and prosecuted or what not on these checks. (Tr. 188).

Finally, two of the plaintiff's former employees, Steve Hamlett and Lonnie Morris, each testified that they had to secure other employment because they could no longer make enough money selling cars for the plaintiff because he could no longer deal with the wholesale auctions. (Tr. 161, 193). Additionally, there was no evidence submitted on behalf of the defendant which would

indicate to the jury that the radical decline in the plaintiff's business fortunes was caused by anything other than his not being allowed to deal with the wholesale auctions.

IV. WHETHER THE VERDICT SHOULD BE SET ASIDE, IN WHOLE OR IN PART, AS BEING EXCESSIVE, AND NOT SUPPORTED BY THE EVIDENCE?

The defendant contends that the jury's verdict awarding plaintiff compensatory damages in the amount of \$130,000.00 and punitive damages in the amount of \$50,000.00 should be set aside as being excessive or either as being unsupported by the evidence. The plaintiff submits that the verdict is undeniably supported by the evidence and cannot be set aside as being excessive.

The law in Virginia is clear that damage awards are not to be set aside unless completely unsupported by the evidence or grossly in excess of the amount justified by the evidence.

". . . The assessment of damages is peculiarly the province of the jury, and when the question before the jury is merely as to the quantum of damages to which plaintiff is entitled, and there is evidence to sustain the verdict, no mere difference of opinion, however decided, can justify an interference with the verdict for that cause. . ."

"In other words, if the verdict is fairly reached, is sustained by the evidence, and there is no standard to measure the damages, it is not then excessive and cannot be disturbed. . ." Smithey v. Refining Company, 203 Va. 142, 147, 122 SE 2d 872 (1961).

"The assessment of damages is peculiarly the province of the jury, and where there is a motion to set aside a verdict because of excessive or inadequate damages, the court must not encroach upon such province of the jury save in strong cases of injustice. No mere difference of opinion, however decided, justifies an interference with the verdict for this cause, but the amount must be so out of the way as to evince passion, prejudice, partiality or corruption in the jury." 5C, Michie's Jurisprudence, Damages, §51.

The Virginia Supreme Court has stated that in order for a trial judge to set aside a jury verdict, the following requirements must be met:

". . . He must be satisfied from the evidence adduced, either that there was no evidence to support the verdict, or that the verdict was plainly contrary to the evidence. . . ."

"(4) In borderline cases the verdict of a jury should prevail and should not be set aside merely because the judge, had he been a member of the jury, would have favored another verdict." Braxton v. Flipppo, 183 Va. 839, 844, 33 SE 2d 757 (1945).

The Virginia Supreme Court has further held that where a jury has been properly instructed, its verdict should not be disturbed unless wholly unsupportable by any logical interpretation of the evidence. Doe v. West, 222 Va. 440, 445, 258 SE 23 517 (1981). It should be noted that the jury in the present case was instructed that their verdict should not be based on any sympathy, bias, guesswork or speculation. (Tr. 393). The defendant has failed to identify in what respect the jury's verdict might have been the result of passion or prejudice, and the plaintiff submits that, as will be argued below, the evidence fully justified the amount of the verdict and it should not be set aside.

With respect to the evidence adduced at trial, the plaintiff submits that it fully substantiated the jury's verdict, awarding him \$130,000.00 in compensatory damages. In fact, the plaintiff would submit that a verdict in this amount is justified solely upon the economic loss to his business, without any consideration for his out-of-pocket expenses or the embarrassment, humiliation, mental suffering or insult he may have suffered as a result of the defendant's actions. The testimony of Ernest Womack, the plaintiff's accountant, established that the difference in the profit of the plaintiff's business in 1984 as opposed to 1985 was a \$97,260.00 decrease in the latter year. (Tr. 176). Mr. Womack further testified that the gross income to plaintiff's business as

a result of the wholesale sales in 1984 as opposed to 1985 was \$520,000.00, this figure being offset somewhat by a slight increase in retail sales. (Tr. 179-180). He further testified that the plaintiff's business would undoubtedly show a loss, rather than a profit, in calendar year 1986. (Tr. 182). This was in contrast to the \$97,000.00 net profit which plaintiff's business had shown in calendar year 1984. (Tr. 177). Mr. Womack gave his professional opinion that the sole reason for the dramatic decline in plaintiff's business income was his inability to attend wholesale auctions. (Tr. 183). Thus the evidence showed that, as a direct result of being barred from the wholesale auctions, the plaintiff's business, during the two years that he had been so barred, had gone from showing an annual profit in the neighborhood of \$100,000.00 to being a wholly unprofitable enterprise. Thus it cannot be maintained that the jury's verdict of \$130,000.00 compensatory damages for the plaintiff is unsupported by the evidence as the evidence clearly established that the pure economic loss to the plaintiff's business had exceeded that figure during the past two years.

Wholly separate from the economic loss, plaintiff's uncontradicted evidence was that he incurred attorney's fees of some \$1,500.00 to defend himself against the criminal charges brought by the defendant. Also, aside from the economic loss, the plaintiff's evidence showed that the defendant's actions had caused him significant embarrassment, humiliation and insult. These factors had been deemed to be peculiarly within the province of the jury and when considered in connection with the economic loss, support the reasonableness of the \$130,000.00 verdict.

"The amount of compensatory damages for pain and mental anguish, being in their nature indeterminate, are peculiarly within the province of the jury, and their verdict will not ordinarily be disturbed unless so small or so gross as to evince partiality, prejudice or misconduct." 5C, Michie's Jurisprudence, Damages, §87.

The plaintiff's evidence fully substantiated an award for embarrassment, humiliation and insult. Plaintiff's insurance agent, Mr. Kelly White, testified the plaintiff had been very upset and obviously affected by the actions of the defendant. (Tr. 200). Plaintiff, himself, testified that his problems with the defendant with regards to the checks and his subsequent arrest and barring from the wholesale auctions had caused him a great deal of anguish and mental suffering. (Tr. 98). The plaintiff also testified that he was embarrassed and humiliated by being arrested on three felony charges due to the fact that he knew many of the Lynchburg police officers and further because word of his arrest had circulated in the Lynchburg business community. (Tr. 98-100, 194, 199). Finally, Darlene Cash, the plaintiff's wife, testified that her husband was extremely upset after his arrest and that he became withdrawn and was not interested in going out or socializing after his problems with the defendant. (Tr. 238). Thus, the plaintiff submits that the verdict for \$130,000.00 in compensatory damages to him was completely justified by the evidence in that it indicated that his actual economic loss was in excess of that and also that he had suffered embarrassment and humiliation as a result of the defendant's actions, which factors were up to the jury to evaluate. The verdict with respect to compensatory damages should thus not be set aside since it is entirely supported by evidence which the jury found credible.

The defendant further complains of the jury's award of \$50,000.00 punitive damages to the plaintiff, either because there was no evidence of malice or that additional damages should not have been awarded because malice was an element of the tort of abuse of process. With respect to the latter contention, the defendant cites no authority to justify its argument and plaintiff submits it is contrary to the law. The law is clear that ". . . Where the abuse of process is accompanied by malice, exemplary or punitive damages may be awarded." 1 Am. Jur. 2d, Abuse of Process, §26. The law also is clear that the intentional misuse of process constitutes malice.

"To maintain the action there must be proof of a wilful and intentional abuse or misuse of the process for the accomplishment of some wrongful object or ulterior purpose not intended by law, and from such use or employment the law itself implies malice, . . . The abuse consists in the unlawful method by which the act is done; the intentional use of this method constitutes malice in law, . . ." 1 Am. Jur. 2d, Abuse of Process, §6.

With respect to punitive damages, defendant in its brief in support of its Motion to Set Aside the Verdict, asserts that there was no evidence that the defendant acted with malice and that the award of punitive damages should not have been permitted due to the fact that malice was one of the elements of the tort. The plaintiff submits that, as argued herein, the evidence was overwhelming that the defendant's actions were intentional and performed with the intention of collecting a debt, a purpose which the Virginia Supreme Court has previously recognized as being unlawful. Mullins v. Sanders, 189 Va. 624, 635, 54 SE 2d 116 (1949). It should be further noted that the defendant did not object to plaintiff's Instruction No. 12, which defines actual malice and, in fact, submitted a nearly identical Instruction J on the issue



of actual malice, which the Court granted. Plaintiff thus submits that the defendant waived any objection regarding the punitive damage issue, as the defense attorney did not object to the Court instructing the jury regarding the requirement of actual malice.

The evidence in the present case clearly substantiated the jury's conclusion that the defendant acted with malice. The plaintiff testified that the defendant, after he had forwarded the titles requested, called him daily to pressure him regarding payment of the checks and advised him that he would be put in jail if payment was not made immediately. (Tr. 75). The evidence was uncontradicted that the defendant had the warrants sworn out after it had been given the titles which the defendant had requested and after the defendant had received partial payment by sale of a vehicle belonging to the plaintiff. (Tr. 75). The evidence further indicated that the defendant's agent, Mr. Lancour, when obtaining the warrants, failed to advise the Assistant Commonwealth's Attorney for Montgomery County that he had received partial payment and security for the checks. (Tr. 301-302). Mr. Sale further admitted that he had been willing not to prosecute the plaintiff if he was given the collateral requested. (Tr. 327). It was thus entirely reasonable for the jury to infer that the defendant gave the plaintiff the impression that if he gave the defendant the titles requested as security for payment, it would be satisfied and that no further action would be taken as long as payment was made within a 30 to 45 day period, which plaintiff indicated would be required. The plaintiff submits that malice could certainly be inferred by the jury from the fact that after this agreement was made, the defendant continued to have its agents harrass the plaintiff regard-

ing payment and when this payment was not properly made, warrants were sworn out only to be dropped, without objection of the defendant, after it had obtained payment on the checks.

With regard to the award of punitive damages, the Virginia Supreme Court previously indicated that punitive damages may be awarded where the defendant ". . . has acted wantonly, oppressively, or with such malice as to evince a spirit of malice or criminal indifference to civil obligations. Wilful or wanton conduct imports knowledge and consciousness that injury will result from the act done." Wallen v. Allen, 231 Va. 289, 297, 343 SE 2d 73 (1986). This definition is actually more expansive than that given the jury in the present case in Instructions 12 and J, and defendant cannot maintain that the jury was improperly instructed on this issue, as the instructions were actually to its advantage. Furthermore, plaintiff submits that the evidence overwhelmingly justified the jury's conclusion that the defendant's agents did act intentionally and with the knowledge that the plaintiff would be injured by the inception of criminal charges against him. In fact, plaintiff would submit that there was no evidence to support any other conclusion other than the self-serving testimony of the defendant's agents, which the jury properly rejected.

With respect to the propriety and amount of the jury's award of punitive damages to the plaintiff, the Court's attention is directed to the case of Hupp v. North Hills Lincoln-Mercury, Inc., Mo. App., 610 SW 2d 349 (1980). In that case, plaintiff had written a bad check as down payment for the purchase of a vehicle and subsequently refused to satisfy the check due to problems with the vehicle. The defendant subsequently swore out a bad check warrant and, after it was dismissed, the plaintiff instituted an

action for abuse of process. The jury awarded him \$10,000.00 in compensatory damages, whereas his out-of-pocket loss was only \$600.00, which was upheld, and further awarded him \$50,000.00 in punitive damages, which was also upheld by the Court. In refusing to set aside the punitive damage award, the Court stated:

"Here the situation as viewed by the jury was that the defendant without just cause abused the criminal process in order to try to wrongfully coerce plaintiff into paying a disputed civil claim. The jury could properly feel that these are circumstances properly calling for punishment by a substantial amount of punitive damages.

"Whether punitive damages are to be awarded and, if so, the amount thereof, is so purely and peculiarly within the province of the jury that only in extreme cases will an appellate court interfere. Punitive damages assessed here are not so extreme as to call for intervention." 610 SW 2d at 357.

Whereas, the Court in the Hupp case upheld a \$50,000.00 punitive damage award where the compensatory award was only \$10,000.00, a \$50,000.00 punitive damage award in the present case where the jury evaluated the plaintiff's loss as justifying a \$130,000.00 compensatory award, cannot be said to be excessive or unreasonable. This is particularly true in the present case where the plaintiff's evidence indicated that his actual economic loss actually exceeded the amount of the compensatory verdict which he was awarded. Where the jury found that the defendant had intentionally and maliciously abused the criminal process for an improper purpose - to collect a debt - and this action in effect destroys the plaintiff's business and causes him great suffering and humiliation and economic loss in excess of \$100,000.00, the \$50,000.00 punitive damage award is anything but excessive.

In further regards the award and the amount of punitive damages, Virginia law is clear that, with the exception of defama-

tion of character, an award of punitive damages can only be made when there is a finding of compensatory damages. O'Brien v. Snow, 215 Va. 403, 405, 210 SE 2d 165 (1974). This requirement was, of course, met in this case, as the jury made a compensatory award to the plaintiff composed of his out-of-pocket loss, which was uncontradicted; the damage to his business; and the embarrassment and humiliation which also was uncontradicted. With respect to the defendant's argument that punitive damages may not be awarded where malice is an element of the tort, the plaintiff would call the Court's attention to the case of Newspaper Publishing Corp. v. Burke, 216 Va. 800, 224 SE 2d 132 (1976), wherein the Virginia Supreme Court acknowledges that punitive damages may be awarded in libel cases where actual malice is shown, even though no compensatory damages are proven. Absent any controlling authority to the contrary, which the defendant has not proffered, plaintiff would submit that this principle would also hold for abuse of process actions, at least to the extent that punitive damages may be awarded where actual malice is shown, even though malice is an actual element of the underlying tort. Furthermore, the plaintiff would submit that the defendant waived this argument by not objecting to the Court's instructions on punitive damages on this ground.

With regard to the amount of punitive damages, the Virginia Supreme Court has stated "The amount of punitive damages awarded should bear some reasonable relationship to the actual damages sustained and to the measure of punishment required. . ." The Gazette v. Harris, 229 Va. 1, 51, 325 SE 2d 713 (1985); cert. den. in \_\_\_\_ U.S. \_\_\_\_, 105 S.Ct. 3513, 87 Law Ed. 2d 643. In that case, the Virginia Supreme Court overturned a \$250,000.00 punitive damage

award supplemented by 7-1/2 years of interest, when the compensatory award was only \$100,000.00. The Court's decision to set this particular award aside was also affected by the First Amendment implications since the defendant was a newspaper. However, in the present case, the plaintiff would submit that the punitive damages awarded do have a reasonable relationship to the actual damages sustained as they are merely a fraction of the compensatory damages which the jury assessed against the defendant. Also, plaintiff would submit, they cannot be viewed as excessive punishment of the defendant based upon the evidence of humiliation and embarrassment and loss to plaintiff's business which directly resulted from the defendant's actions.

V. WHETHER THE VERDICT SHOULD BE SET ASIDE DUE TO THE INSUFFICIENCY OF THE EVIDENCE TO ESTABLISH THE ELEMENTS OF ABUSE OF PROCESS?

The defendant maintains that the verdict should be set aside because the evidence failed to establish either of the elements of abuse of process. These two elements are as follows: ". . . the only essentials of the action of abuse of process are, first, an ulterior motive, and, secondly, an act in the use of the process not proper in the regular prosecution of the proceeding . . . " Glidewell v. Murray-Lacy, 124 Va. 563, 572, 98 SE 665 (1919). Plaintiff submits that the evidence justified the jury's conclusion that each of these elements was present.

The law is clear that a jury verdict cannot be set aside simply because the Court would have reached a different conclusion and can only be set aside where not supportable by the evidence.

"Where a case has been fairly submitted to the jury and a verdict fairly rendered, it should not be interfered with by the court, unless manifest wrong and injustice has been done or unless the verdict is plainly not warranted by the evidence. Hence, a new trial

should not be granted merely because the court would have rendered a different verdict. A verdict should be set aside only when it is contrary to the evidence and without evidence to support it. The fact that the verdict is contrary to the preponderance of the evidence will not change the result. The weight and preponderance of evidence against a verdict must be decided in the sense of pronounced. The verdict must be palpably unjust. A doubtful case, a slight weight and preponderance of evidence against the verdict, is not a sufficient cause for setting it aside." 13B, Michie's Jurisprudence, New Trials, §34.

". . .Where the evidence consists of circumstances and presumptions, a new trial will not be granted merely because the court, if upon the jury, would have given a different verdict. To warrant a new trial in such cases the evidence should be plainly insufficient to warrant the finding of the jury. . . The court cannot invade the province of the jury on a motion for a new trial by attempting to pass upon the credibility of the witness, to reconcile conflicting statements, or to determine the weight to be given the evidence of each. If there are conflicts or discrepancies in the evidence it is the jury's province to reconcile them if possible, and, if not, the jury may give credence to the witness or witnesses who in their opinion are best entitled to it." 13B, Michie's Jurisprudence, New Trials, §36.

The plaintiff submits that the evidence in the present case overwhelmingly supported the jury's conclusion that defendant used the criminal process against the plaintiff with a wrongful purpose. Plaintiff submits that the evidence is overwhelming that the criminal process was used against the plaintiff by the defendant as a means of leverage to collect the checks, rather than an honest intention that the criminal law be enforced.

"The improper purpose usually takes the form of coercion to obtain a collateral advantage, not properly involved in the proceeding itself, such as the surrender of property or the payment of money, by the use of the process as a threat or club. There is, in other words, a form of extortion, and it is what is done in the course of negotiation. . .which constitutes the tort. . .such extortion may be by, among other means, the arrest of the person or criminal prosecution. The ulterior motive or purpose may be inferred from what is said or done about the process. . ." Wood v. Palmer Ford, Inc., 425 A. 2d 671 (Md., 1981).

Clearly in the present case the evidence justified the jury's conclusion that criminal process was used as a threat or club against the plaintiff to coerce him into paying the checks. It was uncontradicted that he was told by the defendant that he would be put in jail if the checks were not paid immediately, even though he had forwarded the titles. (Tr. 75). The jury's conclusion that process was abused for an improper purpose is further supported by the evidence that the defendant's agent did not tell the Assistant Commonwealth's Attorney the entire circumstances of the situation when he obtained the warrants in that he failed to mention that the plaintiff had made partial payment and forwarded collateral for the checks. (Tr. 301-302). Also, the jury's finding in favor of the plaintiff on this element is further supported by the fact that, at the hearing on the criminal charges, the defendant's agents indicated no concern over whether the charges were further prosecuted because the defendant had received payment. (Tr. 327). Furthermore, Mr. Sale admitted that he had been willing not to prosecute if the plaintiff provided collateral for the checks. (Tr. 327). The jury's conclusion is additionally supported by the fact that the criminal warrants were sworn out more than three weeks after the third check was delivered to the defendant. In consideration of this evidence, the jury was fully justified in concluding that the defendant used the criminal process as a means of leverage to collect a civil obligation, rather than in the interest of justice. The jury had every right to infer that the defendant simply became impatient and, even after it had received partial payment and collateral, obtained warrants against the plaintiff in furtherance of its collection efforts, rather than in furtherance of an honest intent to enforce the

criminal law.

The defendant also maintains that the evidence failed to show that it committed any act in the use of the process which was not proper in the regular prosecution of the proceeding. The plaintiff submits that the uncontradicted evidence was that he was threatened with jail if he did not make prompt payment in cash on the checks. (Tr. 75). Plaintiff submits that this clearly is an act not proper in the regular prosecution of the criminal charge and manifests an improper intent. Additionally, the defendant's failure to fully inform the Assistant Commonwealth's Attorney of the factual situation when obtaining the warrants can certainly be construed as nothing other than an act not proper in the regular prosecution of the criminal warrant. It should also be noted that it makes no difference whether the improper act occurred before or after the actual swearing out of the process. In Huggins v. Winn Dixie Greenville, Inc., 249 S.C. 206, 453 SE 2d 693 (1967), the South Carolina Supreme Court held that it was no defense to an abuse of process claim that the acts complained of occurred prior to the actual inception of the prosecution.

In the present case process was issued subsequent to an agreement between the plaintiff and the defendant regarding security for and repayment of the debt represented by the checks. The fact that the defendant reneged on this agreement and obtained the warrants would certainly be an indication of its true motive and an act not proper in the regular prosecution on a criminal warrant.

#### CONCLUSION

For the foregoing reasons, the plaintiff prays that the defendant's motions under advisement be overruled and that the Court



enter judgment in his favor in accordance with the verdict of the jury.

Respectfully submitted,

DANIEL F. CASH

By

  
Counsel

Joseph R. Johnson, Jr., p.q.  
JOHNSON & CUNNINGHAM  
900 Allied Arts Bldg.  
P. O. Box 717  
Lynchburg, Va. 24505

CERTIFICATE

I hereby certify that a true copy of the foregoing Brief was mailed to David W. Mullen, Esq., P. O. Box 845, Christiansburg, Virginia 24073, counsel of record for the defendant, on this 4th day of February, 1987.

  
Joseph R. Johnson, Jr.

FILED IN THE CLERK'S OFFICE OF THE CIR-  
CUIT COURT OF THE CITY OF LYNCHBURG  
DATE 2-4-87 TIME 8:30 A.M.  
TESTE: JUANITA E. SHEILDS, CLERK

BY  DEP. CLK.

561

DAVID W. MULLEN

*Attorney at Law, Inc.*

CHRISTIANSBURG, VIRGINIA 24073

DAVID W. MULLEN

PROFESSIONAL BUILDING

February 16, 1987

P. O. BOX 845  
TELEPHONE 382-8296

The Honorable Richard S. Miller, Judge  
Lynchburg Circuit Court  
Lynchburg, VA 24504

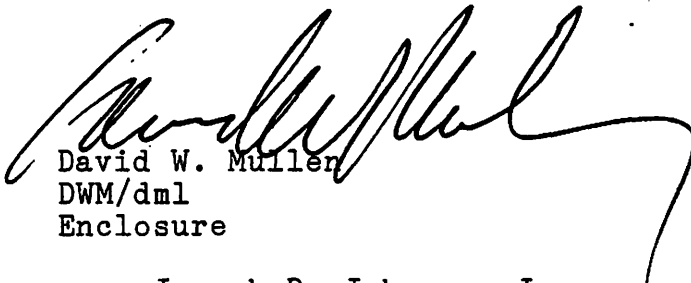
Re: Cash v. Triangle Auto Auction, Inc.

Dear Judge Miller:

Would you please be kind enough to supplement the Brief which I filed in the above styled matter by adding to it a copy of a letter which I received from National Legal Research Group after I filed the Brief? Appended thereto is a copy of the Code Section to which the research refers.

Thank you for this courtesy.

Sincerely,



David W. Mullen  
DWM/dml  
Enclosure

cc: Joseph R. Johnson, Jr.  
Johnson & Cunningham  
P.O. Box 717  
Lynchburg, VA 24505

562

2-19-87  
Received & filed: KSM

DAVID H. NELSON  
W. ANDREW MCCAUCHEY  
ALVIN B.H. MIRMELSTEIN, JR.  
EDWARD A. CERBER  
STEPHEN R. HART  
JAMES P. WITT  
MICHAEL D. JAFFE  
KEITH W. TOELKER  
GARY A. CARGILL  
JOHN M. STONE  
DOUGLAS C. PLANK  
DENNIS T. BURNS  
JOSEPH ROBINSON  
ROBERT M. WALSH  
MAX E. KLINGER  
ROBERT B. MCKINNEY  
EDWARD F. SULLIVAN, III

MARK S. LINDENSMITH  
JOAN L. COBB  
MARY R. CONWAY  
HENRY C. DAMCAARD  
TIMOTHY I. SNIDER  
JAMES K. WYERMAN  
KIRK A. SWANSON  
THOMAS H. ROMER  
BARBARA J. MANTEGANI  
JAMES C. SHUBERT, JR.  
ALFRED W. LATHAN  
MARGARET H. POTTS  
NADINE E. RODDY  
ALBERT L. SHAW  
KEITH A. BRASWELL  
DAVID R. HARTMAN  
CHRISTOPHER C. HUDSON, JR.

## NATIONAL LEGAL RESEARCH GROUP

INCORPORATED  
A RESEARCH GROUP COMPANY

2421 IVY ROAD  
POST OFFICE BOX 7187  
CHARLOTTESVILLE, VIRGINIA 22906 - 7187  
801-446-1870  
IN VIRGINIA 800-552-6723  
804-977-5690

DON BAKER  
DAVID B. JACKSON  
RONALD V. SPENCER  
JEFFREY L. COLE  
ANNE M.H. FOLEY  
WILLIAM E. HOESE  
BRETT R. TURNER  
FRANCIS A. HENNIGAN, JR.  
GEOFFREY C. WREN  
CHARLES B. CHRISTOPHER  
MARK V. RIEBER  
DOUGLAS R. MCKUSICK  
REBECCA I. BELEW  
ELIZABETH E. EWING  
BRUCE E. MCGREGOR  
MARK C. BROCKI  
LAURIE A. MIDDLETON

KATHLEEN A. BARRETT  
COLLEEN E. HARTLEY  
JOHN HOMAN  
RUTH L. STONE  
EDMUND R. MICHAEL  
ASHTON P. TRICE  
JOHN J. RALSTON  
JONATHAN M. CABEL  
REINA W. OOSTINGH  
LAURA ANN LEAVITT  
SALLY BASTIAN SMITH  
PATSY A. BICKERSTAFF  
A. BRADKE CAMPFELD  
MARGARET A. MARTIN  
ROBERT P. ZICCARDI  
MARY ANNE B. MCCOY

December 3, 1986

David W. Mullen, Esquire  
Post Office Box 845  
Christiansburg, Virginia 24073

Re: Virginia/Torts/Abuse of Process/Virginia Statute--  
Legislative History

File: 50-60318-235

Dear Mr. Mullen:

Pursuant to our telephone report of December 3, 1986, enclosed please find a copy of the 1966 version of the statute now codified as Va. Code Ann. § 18.2-185, as it appeared in the Acts of Assembly, ch. 584 (1966). As you will note, the 1966 statute was codified under the Banking Act and, at least as it appears in the Acts of Assembly, does not contain a headnote indicating that its scope is limited to malicious prosecution actions..

As discussed in our telephone report, no legislative history of this statute is available. We have checked with several sources, including the government documents librarian at the University of Virginia Law School and the reference librarians at the Commonwealth's Legislative Service, who explained that the General Assembly does not record or otherwise transcribe and publish committee reports or the like. The only compilation published, entitled House and Senate Journals, is a summary of the daily proceedings of the General Assembly which merely notes the name of the bill introduced, the sponsor of such bill, and the voting record.

We have enjoyed assisting you with this case. Should you have any questions or comments relative to this matter, or desire further research assistance, please do not hesitate to contact us. We will of course be glad to assist you in any way we can.



David W. Mullen  
Page 2

We hope you will afford us a similar opportunity to work with you in the near future.

Sincerely yours,

*Anne M.H. Foley / P. M.*  
Anne M.H. Foley  
Research Attorney

*Jeffrey L. Cole / P. M.*  
Jeffrey L. Cole  
Senior Attorney

AHMF/JLC/prm  
Enclosure

§ 6.1-112. No person, copartnership or corporation not lawfully engaged in the banking business or trust business in this State and subject to the supervision of the Commission, by the provisions of this chapter or authorized to transact a banking business or trust business under the laws of the United States, shall make use of any office sign having thereon any artificial or corporate name or other words indicating that any such place or office is the place or office of a bank, savings bank, trust company, bank or place of banking. No person, copartnership or corporation shall make use of or circulate any letterheads, billheads, blank notes, blank receipts, certificates, circulars or any written or printed paper whatever having thereon any artificial or corporate name or word indicating that such business is the business of a bank, savings bank, trust company or banker, or a place of banking. No person, copartnership or corporation shall use the word "bank," "savings bank," "banking," "banker," or "trust," or the equivalent thereof in any foreign language, or the plural of any such word or words in any business or in connection with any business other than that of the business of banking.

Any person or persons violating the provisions of this § 6.1-5, either individually or as an interested party, in any copartnership or corporation, shall be guilty of a misdemeanor.

The use of the above-mentioned terms in the name of any corporation or in connection with any other business shall not be prohibited where the context or remaining words show clearly and definitely that the corporation or business is not a bank or trust company, and is not carrying on a banking or trust business.

§ 6.1-113. Any bank or trust company violating the provisions of §§ 6.1-39 or 6.1-41 shall be liable to a fine of one thousand dollars, to be imposed and judgment entered therefor by the Commission, and enforced by its process.

§ 6.1-114. Any such bank or trust company failing to comply with any of the provisions of § 6.1-93, for a period of longer than thirty days, after being called upon by the Commission for a statement, or to do such other act as is therein provided, shall be fined not less than one hundred nor more than one thousand dollars, and the Commission shall give notice of such default in a newspaper published as provided in § 6.1-93. Any officer of any such bank or trust company, who shall refuse to give any examiner the information or refuse to be sworn, as required by § 6.1-87, shall be fined not less than twenty-five nor more than one hundred dollars for such offense.

All records, reports and information concerning any bank, other than those required by law to be public, shall be open only to such officers and employees of the State as may have occasion and authority to inspect them in the performance of their duties, and to any officer or duly authorized agent of such bank or trust company, and the imparting of such information by any employee or officer of the State may be sufficient cause for his removal from the position he occupies under the State government.

§ 6.1-115. Any person who, with intent to defraud, shall make or draw or utter or deliver any check, draft, or order for the payment of money, upon any bank, banking institution, trust company, or other depository, knowing, at the time of such making, drawing, uttering or delivering, that the maker or drawer has not sufficient funds in, or credit with, such bank, banking institution, trust company, or other depository, for the payment of such check, draft or order, although no express representation is made in reference thereto, shall be guilty of larceny.

Any person who, under the provisions of this section, is guilty of grand larceny shall, in the discretion of the jury or the court trying the case without a jury, be confined in the penitentiary not less than one year nor more than five years, or be confined in jail not exceeding twelve months

and fined not exceeding five hundred dollars.

The word credit, as used herein, shall be construed to mean any arrangement or understanding with the bank, trust company, or other depository for the payment of such check, draft or order.

§ 6.1-116. Any person who shall make, draw, or utter, or deliver any check, draft, or order for the payment of money, upon any bank, banking institution, trust company or other depository on behalf of any business firm or corporation, for the purpose of paying wages to any employee of such firm or corporation, or for the purpose of paying for any labor performed by any person for such firm or corporation, knowing, at the time of such making, drawing, uttering or delivering, that the account upon which such check, draft or order is drawn has not sufficient funds, or credit with, such bank, banking institution, trust company or other depository; for the payment of such check, draft or order, although no express representation is made in reference thereto, shall be guilty of a misdemeanor.

The word credit, as used herein, shall be construed to mean any arrangement or understanding with the bank, banking institution, trust company, or other depository for the payment of such check, draft or order.

In addition to the criminal penalty set forth herein, such person shall be personally liable in any civil action brought upon such check, draft or order.

§ 6.1-117. In any prosecution of action under the preceding sections, the making or drawing or uttering or delivery of a check, draft, or order, payment of which is refused by the drawee because of lack of funds or credit shall be prima facie evidence of intent to defraud or of knowledge of insufficient funds in, or credit with, such bank, banking institution, trust company or other depository unless such maker or drawer, or some one for him, shall have paid the holder thereof the amount due thereon, together with interest, and protest fees (if any), within five days after receiving written notice that such check, draft, or order has not been paid to the holder thereof. Notice mailed by certified or registered mail, evidenced by return receipt, to the last known address of the maker or drawer shall be deemed sufficient and equivalent to notice having been received by the maker or drawer.

If such check, draft or order shows on its face a printed or written address, home, office, or otherwise, of the maker or drawer, then the foregoing notice, when sent by certified or registered mail to such address, with or without return receipt requested, shall be deemed sufficient and equivalent to notice having been received by the maker or drawer, whether such notice shall be returned undelivered or not.

When a check is drawn on a bank in which the maker or drawer has no account, it shall be presumed that such check was issued with intent to defraud, and the five-day notice set forth above shall not be required in such case.

§ 6.1-118. In any civil action growing out of an arrest under §§ 6.1-115 or 6.1-116, 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 §§ 6.1-115 or 6.1-116, 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 § 6.1-117, without the amount due under the provisions of such instrument being paid.

§ 6.1-119. Any person who shall willfully and maliciously make, circulate or transmit to another, any statement, rumor or suggestion, written, printed or by word of mouth, which is directly or by reference derogatory to the financial condition or affects the solvency or financial standing of any bank or trust company doing business in this State, or who shall counsel, aid, procure or induce another to start, transmit or circulate any such statement or rumor, shall be guilty of a misdemeanor, and upon conviction thereof, shall be sentenced to pay a fine of not more than one thousand dollars, or to be confined in jail not more than one year, or both.

§ 6.1-120. Whoever, being an officer, employee, agent or director of a bank, certifies a check drawn on such bank and willfully fails forthwith to charge the amount thereof against the account of the drawer thereof, or willfully certifies a check drawn on such bank when the drawer of such check has not on deposit with the bank the amount of money subject to the payment of such check and equivalent to the amount therein specified, shall be guilty of a misdemeanor.

§ 6.1-121. Except as otherwise provided, any officer, director, employee, or attorney of any bank who stipulates for or receives or consents or agrees to receive any fee, commission, gift or thing of value from any person, firm or corporation, for procuring or endeavoring to procure for such person, firm or corporation, or for any other person, firm or corporation, any loan from or the purchase or discount of any paper, note, draft, check, bond, stock, security or bill of exchange by any such bank shall be deemed guilty of a misdemeanor and shall be imprisoned not more than one year in jail or fined not more than one thousand dollars, or both; provided that the above prohibition shall not apply to any officer or director, who is a member of a firm of licensed brokers, in buying for or from or selling to, or for the account of, a banking institution, of which he may be an officer or director, in the ordinary course of business, bonds, stocks or other evidences of debt at the usual rate of commission for such service.

§ 6.1-122. Any officer, director, agent or employee of any bank who embezzles, abstracts, or willfully misapplies any of the moneys, funds or credits of, or in the possession or control of such bank, shall be guilty of larceny and punished as provided by law. Any officer, director, agent or employee of any bank who issues or puts forth any certificate of deposit, draws any order or bill of exchange, makes any acceptance, assigns any note, bond, draft, bill of exchange, mortgage, judgment, decree or other instrument in writing, or who makes any false entry in any book, report or statement of such bank, with intent in any case to injure or defraud such bank, or any other company, body politic or corporate, or any individual person, or to deceive any officer of such bank, or the State Corporation Commission, or any agent or examiner authorized to examine the affairs of such bank, and any person, who, with like intent, aids or abets any such officer, director, agent or employee of such bank, in any such violation, shall be guilty of a felony and upon conviction thereof shall be confined in the penitentiary not less than one year or more than ten years, or be confined in jail not exceeding twelve months and fined not exceeding five thousand dollars.

Any such officer who knowingly makes a false statement of the condition of any such bank or institution, shall be deemed guilty of a felony and upon conviction shall be fined not less than one hundred nor more than five thousand dollars, and be imprisoned in the penitentiary not less than

# JOHNSON & CUNNINGHAM

ATTORNEYS AT LAW  
9TH FLOOR  
ALLIED ARTS BUILDING  
8TH & CHURCH STREETS  
LYNCHBURG, VIRGINIA

JOSEPH R. JOHNSON, JR.  
RICHARD P. CUNNINGHAM

DAVID D. EMBREY

TELEPHONE (804) 845-4541

February 20, 1987

PLEASE REPLY TO:  
POST OFFICE BOX 717  
LYNCHBURG, VIRGINIA 24505

The Honorable Richard S. Miller  
Judge of Lynchburg Circuit Court  
Lynchburg Court House  
Lynchburg, Virginia 24504

In re: Cash v. Triangle Auto Auction, Inc.

Dear Judge Miller:

We have received a copy of David Mullen's letter to you under date of February 16, 1987, enclosing certain information received by him from the National Legal Research Group concerning the Banking Act passed by the Virginia Legislature in 1966. Apparently Mr. Mullen forwards this to the Court with the idea that it sheds some light upon the interpretation of legislative intent, which he assumes was later incorporated into §18.2-185 of the 1950 Code of Virginia, as amended. We would simply like to mention in regards this latest submission from counsel for Triangle Auto Auction, Inc. that it adds nothing to what has already been discussed before, during and after the trial between the Court and counsel in regards §18.2-185 of the Code. Our position can be stated very simply in this regard. The statute in question (§18.2-185 of the 1950 Code) merely provides or supplies "probable cause" for the issuance of a process or writ or warrant and thereby provides a defense to a malicious prosecution allegation. It does nothing more or less than deal with the matter of "probable cause". In an action for abuse of process, "probable cause" is completely immaterial and, therefore, not affected by the statute in question in any manner.

The Court has made this plain in its pre-trial opinion letter of August 12, 1985, wherein the Court specifically pointed out this distinction between the two causes of action, and that compliance with the statute was not a bar to an action for abuse of process, because this involved the unlawful use of process and not the lawfulness of the issuance of process. The Court ruled on this distinction at pre-trial and ruled that the count of malicious prosecution could not proceed to trial because of the above statute but that the abuse of process count could proceed to trial since it was not affected by the statute providing "probable cause".

568

*Received and filed: 2-20-87 RSM*



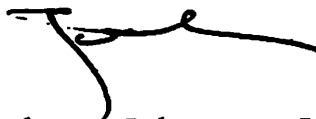
The Honorable Richard S. Miller, Judge  
Page 2  
February 20, 1987

We submit that Your Honor's pre-trial ruling, as well as rulings in this regard during the trial, was completely proper in every respect.

We would ask that the Court consider this memorandum as an answer to the February 16, 1987 letter from opposing counsel.

With best regards, I am

Very truly yours,



~~Joseph R.~~ Johnson, Jr.

JRJ:HMS

cc: David W. Mullen, Esq.  
Attorney at Law  
P. O. Box 845  
Christiansburg, Virginia 24073

TWENTY-FOURTH JUDICIAL CIRCUIT  
OF VIRGINIA

WILLIAM W. SWEENEY, JUDGE  
(804) 847-1491  
RICHARD S. MILLER, JUDGE  
(804) 847-1490  
LYNCHBURG CIRCUIT COURT  
LYNCHBURG, VIRGINIA 24504



COMMONWEALTH OF VIRGINIA  
CITIES OF LYNCHBURG AND BEDFORD  
COUNTIES OF AMHERST, BEDFORD, CAMPBELL AND NELSON

ROBERT C. GOAD, JUDGE  
(804) 263-4069  
LOVINGSTON, VIRGINIA 22949  
J. SAMUEL JOHNSTON, JR., JUDGE  
(804) 847-0961  
RUSTBURG, VIRGINIA 24588

February 20, 1987

Joseph R. Johnson, Jr., Esq.  
Attorney at Law  
P. O. Box 717  
Lynchburg, VA 24505

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

Re: Daniel F. Cash v. Triangle Auto Auction, Inc.

Gentlemen:

Having reviewed the briefs filed by counsel and the transcript in the captioned action, I will enter judgment on the jury's verdict of November 14, 1986, and accordingly overrule the defendant's motion to set aside the verdict and other related motions incident to the case.

The defendant has raised five questions which are addressed in the following:

I. The defendant first says that Section 18.2-185 of the Code of Virginia bars this action and/or is a defense to it because the defendant complied with its provisions, which state in part:

"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

Joseph R. Johnson, Jr., Esq.  
David W. Mullen, Esq.  
February 20, 1987  
Page 2

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 so doing, 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 by Section 18.2-183, without the amount due \*\*\*\*\* being paid."

However, unlike actions for malicious prosecution, the element of want of probable cause is immaterial in an action for abuse of process. Glidewell v. Murray - Lacy & Co., 124 Va. 563, 98 S.E. 665 (1919); Mullins v. Sanders, 189 Va. 624, 56 S.E.2d 116 (1949). It has been said that although the writ was issued upon proper grounds and with probable cause, if it was caused to issue and was used, not for the purpose for which it was intended, but for some collateral object, that is the crux of the tort of abuse of process. See Michie's Jurisprudence, Volume 14B, Process §61; Ross v. Peck Iron & Metal Co., 264 F.2d 262 (4th Cir. 1959).

For the foregoing reason, I hold that Section 18.2-185 does not bar the subject action for abuse of process, since that Code Section deals with an element necessary to maintain an action for malicious prosecution but not to maintain an action for abuse of process.

Joseph R. Johnson, Jr., Esq.  
David W. Mullen, Esq.  
February 20, 1987  
Page 3

II.

Evidence pertaining to the admission of certain letters and telephone calls to Cash were admitted over the heresay objection of Triangle. The evidence was offered by Cash not to prove the truth of the matter asserted, but to show that it was uttered and/or to explain the subsequent conduct of Cash. Such evidence for this purpose, is admissible under Virginia law. See Fuller v. Commonwealth, 201 Va. 724, 729, 113 S.E.2d 667, 671, (1959). For a general discussion see, Law of Evidence in Virginia, Friend, 2nd Ed. §225, and the authorities there cited.

The defendant also questioned the proof of authenticity of a certain letter dated January 31, 1985, from High Point Auto Auction to the plaintiff, offered in evidence by the plaintiff, at the same time as he objected to its admissibility on the grounds of heresay.

In this regard, authentication may be achieved by showing the circumstances surrounding the writing. The plaintiff having previously dealt with and being known by High Point Auto Auction, the letter in question being on its letterhead, and the contents of the letter are factors which I feel, when taken together, make the letter circumstantially reliable so as to authenticate it for consideration by the jury. Counsel for the defendant in his opening remarks to the jury said, "He (referring to Danny Cash) will also tell you that not one single automobile auction has told him he cannot deal there today. They have told him that he must use cash, hard green stuff, and hard titles for his cars." (tr.44). One who invites admission of a document, even if by indirect invitation, cannot later complain that its genuineness has not been established. Bell v. Routh Robbins Real Estate Corporation, 206 Va. 853, 147 S.E.2d 277 (1966). See discussion, Friend, Law of Evidence in Virginia, 2d Ed. §181, p. 403.

Joseph R. Johnson, Jr., Esq.  
David W. Mullen, Esq.  
February 20, 1987  
Page 4

III., IV., V.

With regard to points III, IV and V raised by the defendant in its motion, I agree with the reasoning and statement of facts and law as set forth by the plaintiff in his trial brief on pp. 8 -24 and adopt that as the Court's view and ruling on those three points raised.

Summarizing the evidence in the light most favorable to the plaintiff, the facts depicted an aggravated use of criminal process by the defendant to enforce the collection of a debt, which is the essence of the tort of abuse of process, and the jury so found.

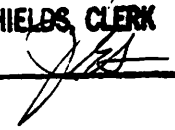
Counsel for the plaintiff should prepare and submit for entry an order in keeping with the foregoing.

Very truly yours,



Richard S. Miller, Judge

RSM/n

FILED IN THE CIR-  
CUT COURT OF LYNCHBURG  
DATE FEB 20 1987 TIME 4:15 P M  
TESTE: JUANITA E. SHIELDS, CLERK  
BY  DEP. CLK.

JRJ:HMS  
2/25/87

VIRGINIA: IN THE CIRCUIT COURT FOR THE CITY OF LYNCHBURG  
MARCH 9, 1987.

DANIEL F. CASH,  
Plaintiff

v.

JUDGMENT ORDER

TRIANGLE AUTO AUCTION, INC.,  
Defendant

This day came again the parties, by counsel, and the Court having maturely considered the Motions heretofore submitted by the defendant for summary judgment, to strike the plaintiff's evidence, and to set the verdict aside as contrary to the law and the evidence, is now of opinion that the Motions should be overruled; wherefore, it is considered by the Court and it is ORDERED and ADJUDGED that the defendant's Motion for summary judgment, the defendant's Motion to strike the plaintiff's evidence, and the defendant's Motion to set aside the jury's verdict, each and all be and the same are hereby, overruled, and that the plaintiff, Daniel F. Cash, recover of the defendant, Triangle Auto Auction, Inc., the sum of ONE HUNDRED THIRTY THOUSAND (\$130,000.00) DOLLARS as compensatory damages, and the sum of FIFTY THOUSAND (\$50,000.00) DOLLARS as punitive damages, for a total sum of ONE HUNDRED EIGHTY THOUSAND (\$180,000.00) DOLLARS, in accordance with the jury's verdict, with lawful interest thereon from 14th day of November, 1986, as well as his costs in this behalf expended, to which action of the Court, the defendant, by counsel, excepted.

The Court doth hereby expressly include and incorporate into this Judgment Order the opinion letter of the Court dated February 20, 1987, which is made a part of the record herein.

And defendant, by counsel, having indicated its intention to take an appeal from this judgment and having moved for a suspension of execution of this judgment pending action thereon by the Supreme Court, it is further ORDERED that execution of this judgment be, and it is hereby, suspended for thirty (30) days from the date of the Order and thereafter until the Supreme Court acts on the defendant's Petition for Appeal, provided that within said period of thirty (30) days, defendant files with the Clerk of this Court an appeal bond in the penalty of Two hundred twenty four - thousand two hundred (\$ 224,200.00 ) DOLLARS, with surety to be approved by this Court, conditioned according to law; and it is further ORDERED that the transcripts of testimony taken at the hearing before this Court in this matter on November 13 and November 14, 1986, be made a part of the record in this case, provided that said transcripts be filed in the Office of the Clerk of this Court within sixty (60) days from the date of this Order.

Enter: 31 9 1 87

*Thomas J. Miller*

Judge

I ASK FOR THIS:

MAR 9 - 1987

*Joseph J. [Signature]*, p.q. *Civil O.Bk. 25,*  
*P 349*  
SEEN AND OBJECTED TO

*Alvin W. Miller*, p.d.

LAW OFFICES

JOHNSON & CUNNINGHAM

9TH FLOOR

ALLIED ARTS BUILDING

POST OFFICE BOX 717

LYNCHBURG, VIRGINIA 24505

VIRGINIA: In the Circuit Court for the City of Lynchburg

DANIEL F. CASH

Plaintiff

v.

NOTICE OF APPEAL

TRIANGLE AUTO AUCTION, INC.

Defendant

TO: THE HONORABLE RICHARD H. MILLER, JUDGE OF SAID COURT:

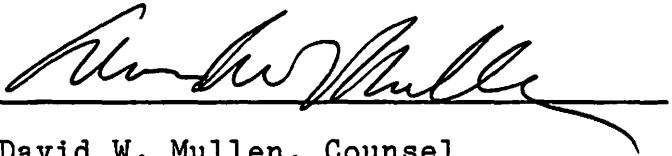
Pursuant to Rule 5:9 of the Rules of the Supreme Court of Virginia, Triangle Auto Auction, Inc., Defendant, hereby gives Notice of Appeal in the above styled case to that final judgment order entered March 9, 1987. Said Notice of Appeal is this day filed with the Clerk of said Court and mailed or delivered to Counsel for Plaintiff.

Notice is further given that the trial transcript and other incidents of trial will be filed with the Clerk of said Court within the time prescribed by the Rules.



Respectfully,

TRIANGLE AUTO AUCTION, INC.

BY   
David W. Mullen, Counsel


C E R T I F I C A T I O N

I, David W. Mullen, Attorney for Triangle Auto Auction, Inc. do hereby certify that I delivered or mailed a copy of the foregoing to Mr. Joseph Johnson, Attorney, Johnson & Cunningham, 725 Church Street, 9th floor Allied Arts Building, Lynchburg, Virginia 24505, Counsel for the Plaintiff.

  
David W. Mullen

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

577

FILED IN THE CLERK'S OFFICE OF THE CIR-  
CUIT COURT OF THE CITY OF LYNCHBURG  
DATE APR 4 1997 TIME 9:25 AM  
TESTE WETA E. SHIELDS CLERK  
 DEP. CLK.

VIRGINIA: In the Circuit Court for the City of Lynchburg

DANIEL F. CASH  
Plaintiff

v.

TRIANGLE AUTO AUCTION, INC.  
Defendant

NOTICE

TO: MR. JOSEPH R. JOHNSON  
ATTORNEY, JOHNSON & CUNNINGHAM  
725 Church Street  
9th floor Allied Arts Building  
Lynchburg, VA 24504

Pursuant to Rule 5:11 of the Rules of the Supreme Court of Virginia you are hereby notified that the transcript was, according to the Clerk's Office of the Circuit Court for the City of Lynchburg, filed in said Clerk's Office on January 20, 1987.


Respectfully,

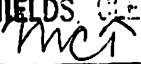
TRIANGLE AUTO AUCTION, INC.

BY   
David W. Mullen, Counsel

C E R T I F I C A T E

I, David W. Mullen, Counsel for Triangle Auto Auction, Inc. do hereby certify that I mailed a copy of the foregoing Notice to Joseph R. Johnson, Attorney, Johnson & Cunningham, 725 Church Street, 9th floor Allied Arts Building, Lynchburg, Virginia 24504 on this 8th day of April, 1987.

  
David W. Mullen

FILED IN THE CLERK'S OFFICE OF THE CIR-  
CUIT COURT OF THE CITY OF LYNCHBURG  
DATE APR 9 - 1987 TIME 10:55 AM **578**  
TESTE: JUANITA E. SHIELDS CLERK  
BY  DEP. CLK.



Juanita E. Shields, Clerk

CLERK'S OFFICE  
LYNCHBURG CIRCUIT COURT  
P. O. Box 4  
Lynchburg, Virginia 24505

WILLIAM W. SWCENEY, JUDGE  
NORMAN K. MOON, JUDGE  
ROBERT C. GOAD, JUDGE  
J. SAMUEL JOHNSTON, JR., JUDGE

April 27, 1987

TO: Joseph R. Johnson, Jr.  
900 Allied Arts Building  
725 Church Street  
Lynchburg, VA 24504

and

TO: David W. Mullen, Esquire  
P. O. Box 845  
Christiansburg, VA 24073

NOTICE

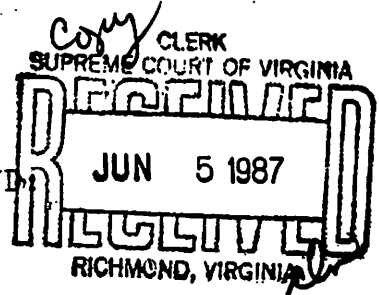
Daniel F. Cash VS. Triangle Auto Auction, Inc.

NOTICE is hereby given, pursuant to Rule 5A:10(4), that the  
following exhibits listed will not be sent to the <sup>Supreme Court</sup> ~~Court of Appeals~~  
of Virginia.

Plaintiff's Chart of loss of income

*Juanita E. Shields*  
Juanita E. Shields, Clerk

870591



IN THE SUPREME COURT OF VIRGINIA AT RICHMOND

TRIANGLE AUTO AUCTION, INC.  
Appellant

v.

DANIEL F. CASH  
Appellee

PETITION FOR APPEAL  
AND ASSIGNMENTS OF  
ERROR

TO THE JUSTICES OF THE SUPREME COURT OF VIRGINIA:

Triangle Auto Auction, Inc. hereby petitions this Honorable Court for appeal of the judgment of the Circuit Court for the City of Lynchburg entered March 9, 1987 in the case of Daniel F. Cash, Plaintiff, v. Triangle Auto Auction, Inc., Defendant and assigns error to the judgment of said Circuit Court as follows: (Triangle Auto Auction, Inc. will be herein referred to as Triangle and Daniel F. Cash will be herein referred to as Cash)

I. The trial court erred in failing to render a ruling on Triangle's Plea of the Statute of Limitations filed in the trial court Clerk's Office on May 21, 1986.

II. The trial court erred in failing to grant Triangle's Motion For Summary Judgment filed in the trial court Clerk's Office on November 12, 1986.

III. The trial court erred in failing to grant or refusing to grant Triangle's Motion in Limine filed in the trial court Clerk's Office on November 12, 1986, which Motion in Limine moved the Court to preclude the introduction of certain testimony regarding Cash's alleged damages and loss of reputation.

IV. The trial court erred in failing to rule or refusing

to rule on Triangle's Motion to Elect filed in the trial court Clerk's Office on May 21, 1986.

V. The trial court erred in failing to grant Triangle's Motion to Dismiss the action filed in the trial court Clerk's Office on May 21, 1986.

VI. The trial court erred in permitting the jury, over objection of Triangle, to consider evidence of Cash's having been barred from certain auto auctions.

VII. The trial court erred in permitting the jury, over objection of Triangle, to consider evidence of reduction of Cash's gross revenues.

VIII. The trial court erred in permitting the jury to consider awarding punitive damages against Triangle.

IX. The trial court erred, as a matter of law, in allowing the jury to consider whether Triangle had an ulterior motive in criminally prosecuting Cash.

X. The trial court erred in failing to grant Triangle's Motion for Remittitur.

XI. The trial court erred in failing to grant Triangle's Motion for a New Trial.

XII. The trial court erred in improperly instructing the jury.

XIII. The trial court erred in failing to grant Triangle's Motion to Strike Cash's evidence at the conclusion of Cash's evidence and at the conclusion of all of the evidence.

**DANNY'S AUTO SALES**2100 - 12TH STREET  
LYNCHBURG, VIRGINIA 24501

PLEASE DO NOT PRESENT AGAIN

2359

PAY  
TO THE  
ORDER OF

FIRST VA. BANK SOUTH CENTRAL

INSUFFICIENT FUNDS

UNLESS OTHERWISE NOTED

☐ ACCOUNT CLOSED☐ FUNDS ATTACHED☐ PAYMENT STOPPED☐ UNCOLLECTED FUNDS☐ OTHER

FIRST VA. BANK SOUTH CENTRAL

INSUFFICIENT FUNDS

UNLESS OTHERWISE NOTED

☐ ACCOUNT CLOSED☐ FUNDS ATTACHED☐ PAYMENT STOPPED☐ UNCOLLECTED FUNDS☐ OTHER

#00002359# 051403342 2536 8842#

#0000978800#

**DANNY'S AUTO SALES**2100 - 12TH STREET  
LYNCHBURG, VIRGINIA 24501

PLEASE DO NOT PRESENT AGAIN

2376

ORDER OF

FIRST VA. BANK SOUTH CENTRAL

INSUFFICIENT FUNDS

UNLESS OTHERWISE NOTED

☐ ACCOUNT CLOSED☐ FUNDS ATTACHED☐ PAYMENT STOPPED☐ UNCOLLECTED FUNDS☐ OTHER

FIRST VA. BANK SOUTH CENTRAL

INSUFFICIENT FUNDS

UNLESS OTHERWISE NOTED

☐ ACCOUNT CLOSED☐ FUNDS ATTACHED☐ PAYMENT STOPPED☐ UNCOLLECTED FUNDS☐ OTHER

#00002376# 051403342 2536 8842#

#0000308000#

**DANNY'S AUTO SALES**2100 - 12TH STREET  
LYNCHBURG, VIRGINIA 24501DO NOT  
REDEPOSIT

2393

PAY  
TO THE  
ORDER OF

FIRST VA. BANK SOUTH CENTRAL

INSUFFICIENT FUNDS

UNLESS OTHERWISE NOTED

☐ ACCOUNT CLOSED☐ FUNDS ATTACHED☐ PAYMENT STOPPED☐ UNCOLLECTED FUNDS☐ OTHER

FIRST VA. BANK SOUTH CENTRAL

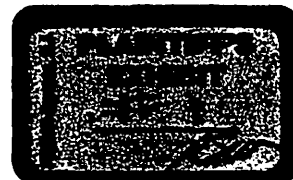
INSUFFICIENT FUNDS

UNLESS OTHERWISE NOTED

☐ ACCOUNT CLOSED☐ FUNDS ATTACHED☐ PAYMENT STOPPED☐ UNCOLLECTED FUNDS☐ OTHER

#00002393# 051403342 2536 8842#

#0000355500#



五

## Deposit Duty

Triangle Auto Auction, Inc.  
for Deposit Only

639-9011

0003-168-9

85993  
C005

00017 MS 92

[illegible]

PAV  
D  
L  
EC

**PAID**

22

三

**NCD**

PAID

**● 中国书画函授大学肇庆分校**

NOV 26 1968 68310

PAY ANY BANK-P.E.G. 05:0-0003-3  
P.E.G. RICHMOND VA 05:0-0003-5  
1114 H ST 024 11 0225 302856374

NO '84 23 9

14-00000

120575Z JAN 68

1000  
 900  
 800  
 700  
 600  
 500  
 400  
 300  
 200  
 100  
 0

05-14-00 12-20-34 05-27-34  
NO '84-22  
FBI  
COMMUNICATIONS SECTION  
7

NO '84-22  
FIRST MARRIAGE  
OPERATIONS  
7

**Abstract**

**00000000000000000000**

NO 84 28

FBI NEW YORK  
 TELETYPE UNIT  
 TELETYPE UNIT  
 TELETYPE UNIT  
 TELETYPE UNIT  
 TELETYPE UNIT

#201055 42

**SECRET**

DEC 7 '84 6 47 PM  
NOV 30 '84

PAID  
CITY OF LOS ANGELES  
COUNTY OF LOS ANGELES  
JAN 10 1964  
400 PAID

**SECRET**

# TRIANGLE AUTO AUCTION, INC.

"Where The Buyer & Seller Get Together"

P.O. BOX 1167 • RADFORD, VA. 24141 • (703) 639-9011

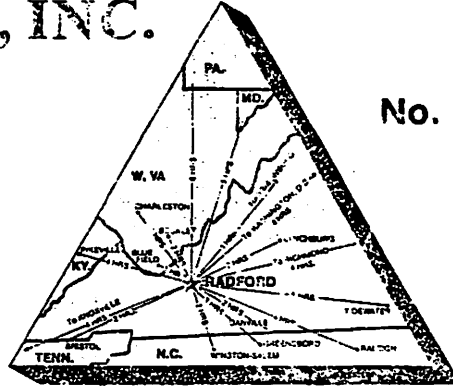
No. 29323

This is not a Negotiable Bill-of-Sale

SALE NO.

430

REGISTRATION FEE PAID



DATE: 11 29 84

YEAR 77	MAKE Dodge	SERIES RAMCHARGER	CYL 4	BODY 4
EQUIPMENT RADIO HEATER AUTO TRANS.	P. STEER	P. BRAKES	AIR COND.	V. ROOF
SERIAL NUMBER 41771101	ODOMETER # 10000	OVER 99,999 MILES YES NO	COLOR GREEN	TIME SOLD

CASH SALE PRICE	\$ 15,000
BUYER'S TITLE FEE	\$ 27.00
TOTAL	\$ 15,270.00
SELLER'S FEE	\$ 43.00
SELLER'S CHECK	\$ 2457.00

\*\* Federal and State regulations require you to state the odometer mileage at the time of transfer (Va. Code 49 C.F.R. § 580.4 Section 46. 1-89.1) (An inaccurate or untruthful statement may make you liable for damages to your transferee, for attorney fees and for civil or criminal penalties pursuant to the Motor Vehicle Information and Cost Savings Act, 15 U.S.C. § 1981-1991.): I certify that to the best of my knowledge the odometer reading is \_\_\_\_\_ and reflects the actual mileage of the vehicle unless one of the following is checked:

- ☐ The odometer reading above is not the actual mileage, but should include additional mileage of \_\_\_\_\_
- ☐ The mileage shown above is in excess of 99,999 miles
- ☐ The odometer reading above is not the actual mileage and the actual mileage is unknown.

Check one box only.

- ☒ I hereby certify that the odometer of said vehicle was not altered, set back, or disconnected while in my possession, and I have no knowledge of anyone else doing so.
- ☐ I hereby certify that the odometer was altered for repair or replacement purposes while in my possession, and that the mileage registered on the repaired or replacement odometer was identical to that before such service.
- ☐ I hereby certify that the repaired or replacement odometer was incapable of registering the same mileage, that it was reset to zero, and that the mileage on the original odometer or the odometer before repair was \_\_\_\_\_ miles.

Seller warrants that the vehicle is insured against all risks including but not limited to vandalism, theft and physical damage or that any loss which may occur while on the premises of Triangle Auto Auction, Inc. will remain the sole responsibility of the seller. The seller shall indemnify Triangle Auto Auction, Inc. (1) against all liability, loss and expense, including reasonable attorney's fee, that Triangle Auto Auction, Inc. may incur by reason of its acting as agent for the sale of the said vehicle, in defending or prosecuting any action or suit; (2) for any sums which Triangle Auto Auction, Inc. may pay or become liable to pay by reason of any of the foregoing; and (3) for any claim which the seller may assert against Triangle Auto Auction, Inc. That he is the true and lawful owner of the below described vehicle, that same is free from all liens, and encumbrances; that he has perfect right and full power to sell and transfer title to the same; and that he will warrant and defend the same against the lawful claims and demands of all persons whomsoever.

SOLD: WITH DRIVE: ☐ DEFECT: ☐  
(UNLESS SOLD FOR \$500 OR LESS)  
AS IS: ☐ TITLE AT: ☒

For value received Triangle Auto Auction, Inc. hereby warrants title to the above car to be free and clear of all liens, theft claims or other encumbrances at the time of execution of this instrument. Limit of liability not to exceed purchase price of car as shown above, this value to be depreciated 2% per month from sale date shown on this instrument.

In the event of any payment under this warranty, Triangle Auto Auction, Inc. shall be subrogated to all the warrantee's rights of recovery, therefore, against any person or organization and the warrantee shall execute and deliver papers and instruments and do whatever else is necessary to secure such rights.

## TITLE ATTACHED

Buyer's checks are deposited immediately by Auction. Assignable title does not accompany car. May require up to (14) days excluding Saturday, Sundays, and National Holidays for buyer to receive title. Title must be received by Auction within (14) days, excluding Saturdays, Sundays, and National Holidays from seller.

Buyer is cautioned not to remove any money on unit, and not to sell unit until title is received. After the (14) day period is the buyer's option to return the unit to wait a reasonable additional period of time for the title. In the event that the title is not received by the Auction within the (14) day period special arrangements must be made with the Auction before the unit is returned. The Auction must be notified twenty-four (24) hours prior to the return of the unit for failure to receive title.



DANIELS AS		SELLER
BY **		
X-AM 11/10/81 Christendom Va 24072		BUYER **
BY: <i>Donna L. Allen</i>		
SOLD UNDER GREEN    RED    YELLOW    BLUE LIGHT		

I the BUYER of the above described vehicle do hereby consider the purchase of this vehicle as fully consummated and accept same in its present condition after road testing and meeting my approval and that the Auction is acting as the mutual agent for both parties and that the Auction shall not be liable to either Buyer or Seller for any mechanical or other defects found in said motor vehicle and that any check issued by me to the Auction for above described vehicle is hereby unconditionally guaranteed by the Buyer and that under no circumstances shall the Buyer have any right to stop payment of check regardless of reason. Copy of mileage certification received.

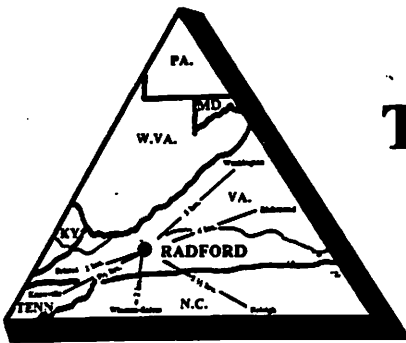
ANNOUNCED CONDITIONS

TITLE RETURNED

SELLER'S COPY

*Process of this sale \$ 2457.00 were retained by Triangle Auto Auction and applied toward bad check we are holding*

*Cyrus R. Lammour  
Manager  
Triangle Auto Auction Inc.*



# TRIANGLE AUTO AUCTION, INC.

P.O. Box 1167  
RADFORD, VA 24141  
(703)639-9011 (703)639-9021

12-4-84

Roger Gallimore Frank Sale

Danny's Auto Sales  
2100 - 12th Street  
Lynchburg, Va. 24501

Dear Sir:

We are in receipt of one check drawn by you on the  
First Virginia Bank, Lynchburg, Va., as follows.

<u>Check#</u>	<u>Dated</u>	<u>Amount</u>
2359	11-12-84	\$9788.00

This check was returned due to insufficient funds.

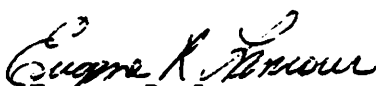
Under the law of the State of Virginia, the issuance of a bad check is prima facie evidence of intent and knowledge to defraud the person to whom the check is given. When the amount is \$200.00 or more, the persons making, drawing, uttering or delivering the check are guilty of a felony.

Under the law of the State of Virginia, in order to prosecute you for the issuance of that bad check, we are required to give you notice by mail with return receipt in order to secure the necessary warrants for prosecution. This letter is your notification that you have five (5) days from the date of this letter within which to pay by cash or certified or cashier's funds the above amount to Triangle Auto Auction, Inc. If you do not, then the necessary warrants will be secured for your prosecution.

This letter is sent to you under the authority of the Code of Virginia, Section 18.2-181 and 18.2-183

Sincerely,

TRIANGLE AUTO AUCTION, INC.

  
Eugene R. Lancour  
Manager

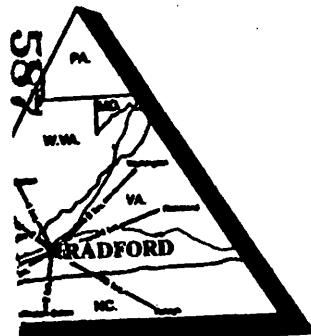
586



Radford Auto Auction, Inc.  
P.O. Box 1167  
Radford, VA 24141

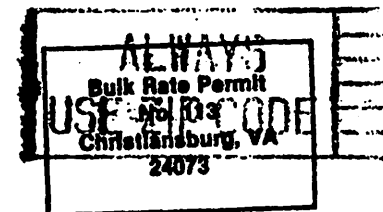
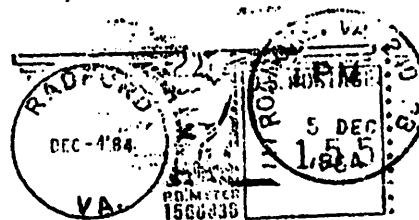
829589

NO POSTAGE  
NECESSARY  
IF MAILED  
IN THE  
UNITED STATES



The Dealer Auction

Detached from  
PS Form 3840-A  
Oct. 1980

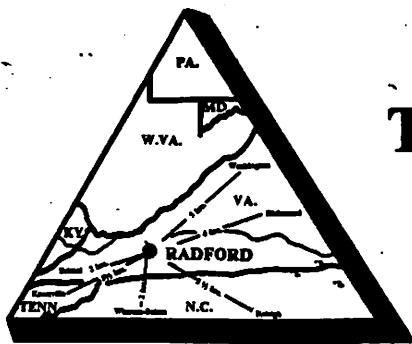


DANNY'S AUTO SALES

2100 - 12th Street

LYNCHBURG, VA. 24501





# TRIANGLE AUTO AUCTION, INC.

P.O. Box 1167  
RADFORD, VA 24141  
(703)639-9011 (703)639-9021

12-6-84

Roger Gallimore Frank Sale

Danny's Auto Sales  
2100 - 12th Street  
Lynchburg, Va. 24501

Dear Sir:

We are in receipt of one check drawn by you on the  
First Virginia Bank, Lynchburg, Va., as follows.

<u>Check#</u>	<u>Dated</u>	<u>Amount</u>
2376	11-19-84	\$3080.00

This check was returned to us due to insufficient funds.

Under the law of the State of Virginia, the issuance of a bad check is prima facie evidence of intent and knowledge to defraud the person to whom the check is given. When the amount is \$200.00 or more, the persons making, drawing, uttering or delivering the check are guilty of a felony.

Under the law of the State of Virginia, in order to prosecute you for the issuance of that bad check, we are required to give you notice by mail with return receipt in order to secure the necessary warrants for prosecution. This letter is your notification that you have five (5) days from the date of this letter within which to pay by cash or certified or cashier's funds the above amount to Triangle Auto Auction, Inc. If you do not, then the necessary warrants will be secured for your prosecution.

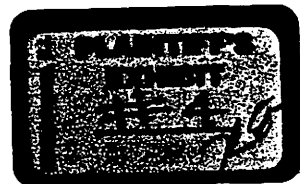
This letter is sent to you under the authority of the Code of Virginia, Section 18.2-181 and 18.2-183

Sincerely,

TRIANGLE AUTO AUCTION, INC.

*Eugene R. Lancour*  
Eugene R. Lancour  
Manager

588



**Radford Auto Auction, Inc.**  
**P.O. Box 1167**  
**Radford, VA 24111**

CLAIM CHECK  
NO.

**834554**

☐ HOLD

DATE

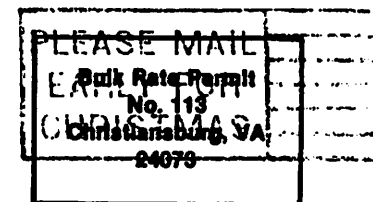
1ST NOTICE

2ND NOTICE

3RD NOTICE

The Dealer A

08/11/90



**Danny's Auto Sales**

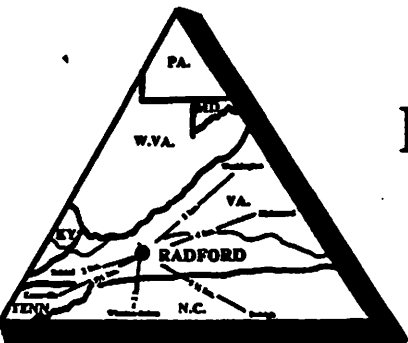
**2100 - 12th Street**

**Lynchburg, Va. 24501**

**CERTIFIED**

**P 703 176 714**

**MAIL**



# RADFORD AUTO AUCTION, INC.

P.O. Box 1167  
RADFORD, VA 24141  
(703)639-9011 (703)639-9021

12-12-84

Roger Gallimore Frank Sale

Danny's Auto Sales  
2100 - 12th Street  
Lynchburg, Va. 24501

Dear Sir:

We are in receipt of a check drawn by you on the "First Virginia Bank South Central, Amherst, Va. 24521.

<u>Check#</u>	<u>Dated</u>	<u>Amount</u>
2393	11-26-84	\$3555.00

This check was returned due to insufficient funds.


Under the law of the State of Virginia, the issuance of a bad check is prima facie evidence of intent and knowledge to defraud the person to whom the check is given. When the amount is \$200.00 or more, the persons making, drawing, uttering or delivering the check are guilty of a felony.

Under the law of the State of Virginia, in order to prosecute you for the issuance of that bad check, we are required to give you notice by mail with return receipt in order to secure the necessary warrants for prosecution. This letter is your notification that you have five (5) days from the date of this letter within which to pay by cash or certified or cashier's funds the above amount to Triangle Auto Auction, Inc. If you do not, then the necessary warrants will be secured for your prosecution.

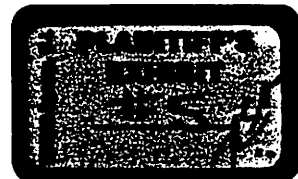
This letter is sent to you under the authority of the Code of Virginia, Section 18.2-181 and 18.2-183

Sincerely,

TRIANGLE AUTO AUCTION, INC.

  
Eugene R. Lancour  
Manager

590



Radford Auto Auction, Inc.  
P.O. Box 1167  
Radford, VA 24141

CLAIM CHECK  
NO.

828089

☐ HOLD

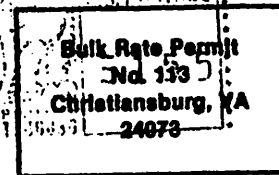
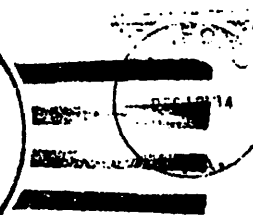
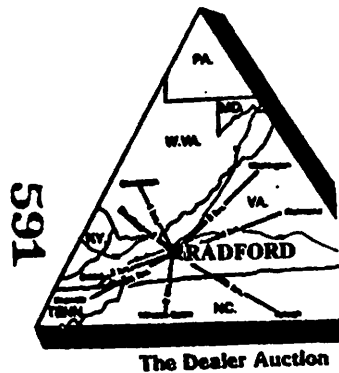
DATE

1ST NOTICE

2ND NOTICE

RETURN

Received from  
Post Office 3040-A  
Dec. 1980



Danny's Auto Sales

2100 - 12th Street

Lynchburg, Va. 24501

**CERTIFIED**

P 703 176 061

**MAIL**

**FEDERAL EXPRESS**

AIRBILL NUMBER

**745**

PLEASE COMPLETE ALL INFORMATION IN THE 6 BLOCKS OUTLINED IN ORANGE  
SEE BACK OF FORM SET FOR COMPLETE PREPARATION INSTRUCTIONS.

YOUR FEDERAL EXPRESS ACCOUNT NUMBER

DATE



**DANIELA**

**DANNY**

**STREET ADDRESS**

**066745072**

**ZIP**

**4501**

**IN TENDERING THIS SHIPMENT, SHIPPER AGREES TO**

**ZIP**

**066745072**

NOTES: REFERENCE NUMBERS (FIRST 17 CHARACTERS WILL ALSO APPEAR ON INVOICE)

**SHIPPER'S COPY**

**SHIPPER'S COPY**

**SERVICES**

**DELIVERY AND SPECIAL HANDLING**

**WEIGHT**

**DECLARED VALUE**

**SHIPMENT**

**PRIORITY**

**DELIVERY AND SPECIAL HANDLING**

**WEIGHT**

**DECLARED VALUE**

**SHIPMENT**

**COURIER**

**DELIVERY AND SPECIAL HANDLING**

**WEIGHT**

**DECLARED VALUE**

**SHIPMENT**

**OVERNIGHT**

**DELIVERY AND SPECIAL HANDLING**

**WEIGHT**

**DECLARED VALUE**

**SHIPMENT**

**STANDARD AIR**

**DELIVERY AND SPECIAL HANDLING**

**WEIGHT**

**DECLARED VALUE**

**SHIPMENT**

**DELIVERY AND SPECIAL HANDLING**

**DELIVERY AND SPECIAL HANDLING**

**WEIGHT**

**DECLARED VALUE**

**SHIPMENT**

**DELIVERY AND SPECIAL HANDLING**

**DELIVERY AND SPECIAL HANDLING**

**WEIGHT**

**DECLARED VALUE**

**SHIPMENT**

**DELIVERY AND SPECIAL HANDLING**

**DELIVERY AND SPECIAL HANDLING**

**WEIGHT**

**DECLARED VALUE**

**SHIPMENT**

**DELIVERY AND SPECIAL HANDLING**

**DELIVERY AND SPECIAL HANDLING**

**WEIGHT**

**DECLARED VALUE**

**SHIPMENT**

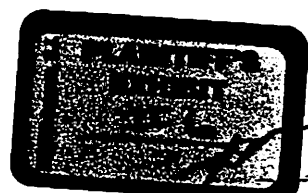
**DELIVERY AND SPECIAL HANDLING**

**DELIVERY AND SPECIAL HANDLING**

**WEIGHT**

**DECLARED VALUE**

**SHIPMENT**





# CONDITIONS OF RELEASE AND RECOGNIZANCE

VA. CODE ANN. § 19.2-123, 19.2-358

HEARING DATE

FILE NO.

The Accused promises to appear before the Montgomery County General District Court

CITY OR COUNTY

- ☒ General District Court ( ☒ Criminal Division ☐ Traffic Division )  
☐ Juvenile and Domestic Relations District Court ☐ Circuit Court

Christiansburg, Va.

(STREET ADDRESS OF COURT)

January 11, 1985 9:30 A.M.

to answer the following charge(s) against the accused.

DATE AND TIME

(3) three counts of grand larceny by worthless check

( ☐ continued on back )

The Accused further promises to appear to answer for the offenses for which he may be charged at all times and places and before any court or judge to which this case may be rescheduled, continued, transferred, certified or appealed. The Accused promises not to depart the Commonwealth of Virginia without leave of such court or judge, to keep the peace and be of good behavior until final disposition of this case.

## OTHER CONDITIONS ON REVERSE SIDE

I, the Accused, hereby promise to fulfill faithfully the conditions given above

*[Signature]*  
 ACCUSED

**WARNING:** Failure to fulfill the terms conditions above or any violation thereof may result in your arrest and forfeiture of the bond on the lower portion of this page (if applicable). Failure to appear may result in your being tried and convicted in your absence. Failure to appear is a separate offense. If bonded to appear in circuit court on a misdemeanor charge, failure to appear constitutes waiver of trial by jury.

☒ The accused is released into the custody of the person/organization named below, on the condition that said custodian make all reasonable effort to ensure that the accused fulfill the conditions given above, and that any violation by or disappearance of the accused be promptly reported to the court.

59  
 NAME OF CUSTODIAN

ADDRESS

SIGNATURE OF CUSTODIAN

**BOND.** The Accused, and Surety(ies) (if any), each hereby acknowledges himself, his heirs and assigns indebted to

☒ Commonwealth of Virginia for ☐ City or Locality named above in the sum of \$ 2,000.00

☒ UNSECURED SECURED by: ☐ CASH DEPOSIT ☐ SURETY BOND ☐ REAL PROPERTY located at

(and if secured by real property, the undersigned, having demonstrated to the officer taking this bond the nature of their interest in the property, also make oath that the equity of the undersigned in the property equals or exceeds the amount of this bond). The undersigned each waives all benefit of homestead exemptions as to this debt and further covenants jointly and severally that none of them shall permit or cause title to or possession of the property pledged to secure this bond to be transferred in any manner to any degree or encumbered to the extent of this obligation. The above terms of the conditions of Release and Recognizance are hereby incorporated by reference.

If the Accused shall faithfully fulfill the conditions of release and recognizance given above, this debt is to be void; otherwise this debt is to remain in full force and effect until declared void by a Court of competent jurisdiction.

SURETY

(SEAL)

SURETY

(SEAL)

ACCUSED

(SEAL)

January 11, 1985 9:30 A.M.

## CONDITIONS OF RELEASE, RECOGNIZANCE, AND BOND

Danny F. Cash

ACCUSED

RETURNABLE TO: TEL NO. ....

Montgomery County

- ☒ General District Court (CRIMINAL)  
☐ General District Court (TRAFFIC)  
☐ Juvenile & Domestic Relations District Court  
☐ Circuit Court

DATE RECEIVED	DATE DISBURSED/DISCHARGED
BOND AMOUNT	RECEIPT NO. (IF CASH DEPOSIT)
\$	

**ADMITTANCE TO BAIL:** The promise to fulfill the conditions of release, and the bond, if any, were subscribed and sworn to before me this day. The Accused is ordered released pursuant to the terms within.

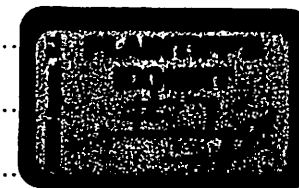
☐ CLERK ☒ MAGISTRATE ☐ JUDGE

JURISDICTION (IF DIFFERENT FROM COURT)

December 31, 1984 10:35 A.M.

DATE AND TIME

**SURETY:** Name(s), address(es), and if corporate surety, name(s) of authorized agent(s).



Montgomery

CITY OR COUNTY

☒ General District Court ☐ Criminal

☐ Traffic

☐ Juvenile and Domestic  
Relations District Court

TO ANY AUTHORIZED OFFICER:

You are hereby commanded in the name of the Commonwealth of Virginia forthwith to arrest the Accused,  
and to bring the Accused before the Court to answer the charge that the Accused, within this city or county, on or about

Nov. 12, 1984

DATE

did unlawfully and feloniously

(make) (draw) (utter) (alter) (deliver) a check drawn on the

First Virginia Bank

(NAME OF BANK, ETC.)

in the amount of

\$ 9788.00... and payable to the order of Triangle Auto Auction, knowing that there

are insufficient funds in the account to pay such check.

594

18,2-181. Code of Virginia.

I, the undersigned, have found probable cause to believe that the Accused committed the offense charged,  
based on the sworn statements of

Eugene R. Lancour, 'C /o Triangle Auto Auction, Rt. 177,  
Christiansburg, Va., Complainant.

12/21/84 1:00 P.M.

DATE AND TIME ISSUED

Danny F. Cash

2100 12th St.

ACCUSED

Lynchburg, Va.

ADDRESS/LOCATION

COMPLETE DATA BELOW IF KNOWN:

RACE	SEX	WGT.	HT. FT.	IN.	EYES	HAIR	BORN MO. DAY YR.
SSN							

**WARRANT OF ARREST  
FELONY**

EXECUTED by arresting the Accused named above  
on this day:

DATE AND TIME

ARRESTING OFFICER

Badge No. agency and jurisdiction  
for

**ATTORNEY FOR THE ACCUSED:**

# 7

# WAIVER OF PRELIMINARY HEARING

Understanding my right to a preliminary hearing before the Court named in this warrant to determine whether there is probable cause to believe that I committed a felony AND, having the consequences of my waiver explained to me by the Judge of this Court, I nevertheless WAIVE MY RIGHT TO A PRELIMINARY HEARING on this warrant.

Certified to the Circuit Court of this jurisdiction

ACCUSED

DATE

ATTORNEY FOR ACCUSED

JUDGE

## DISPOSITION OF CASE

The Accused named within was brought before me or appeared this day, and upon hearing the evidence I order:

- ☐ The case certified to the Grand Jury of this jurisdiction, at its next term date, having found probable cause to believe that the Accused committed the felony charged.
- ☐ That the Accused be discharged.
- ☐ a nolle prosequi on Commonwealth's motion
- ☐ On motion to change bond
- ☐ increased ☐ decreased bond to \$..... (special conditions on Conditions of Release and Bond).
- ☐ the charge reduced to.....

On which the Accused was arraigned and pleaded

- ☐ GUILTY
- ☐ NOT GUILTY ☐ nolo contendere
- and was found
- ☐ not guilty
- ☐ guilty as charged above
- ☐ guilty of.....

On this reduced charge, I impose the following sentence on the Accused:

\$..... fine with \$..... suspended.

..... ☐ DAYS ☐ MONTHS in jail with  
..... ☐ DAYS ☐ MONTHS Suspended.

Restitution of..... payable to.....  
by..... as condition of suspended sentence.

☐ BOND FORFEITED in the sum of \$.....

☐ BOND applied to fine and costs

OTHER:

APPEAL

DATE NOTED

BOND SET

DATE WITHDRAWN

\$.....

☐

CLERK

☐

JUDGE

\$.....

FINE

COSTS

Misdemeanor  
Conviction

112 TRIAL FEE  
113 BAIL FEE  
305 FILING FEE  
132 CICF  
120 CT. APPT. ATTY. (state)  
113 WITNESS FEE

Preliminary Hearing  
Assessments

119 COMM. ATTY. (state)  
203 COMM. ATTY. (local)  
120 CT. APPT. ATTY. (state)  
113 WITNESS FEE

Other (specify):

\$.....

TOTAL

ATTORNEY(S) PRESENT: ☐ COMMONWEALTH ☐ DEFENSE

DATE

RECEIPT NO.

DATE PAID

Understanding my right to a preliminary hearing before the Court named in this warrant to determine whether there is probable cause to believe that I committed a felony AND, having the consequences of my waiver explained to me by the Judge of this Court, I nevertheless WAIVE MY RIGHT TO A PRELIMINARY HEARING on this warrant.

Certified to the Circuit Court of this jurisdiction

BOND SET	DATE WITHDRAWN
<div><input type="checkbox"/> CLERK <input type="checkbox"/> JUDGE</div>	

ACCUSED

DATE

\$

FINE

COSTS

ATTORNEY FOR ACCUSED

JUDGE

### DISPOSITION OF CASE

The Accused named within was brought before me or appeared this day, and upon hearing the evidence I order:

- ☐ The case certified to the Grand Jury of this jurisdiction, at its next term date, having found probable cause to believe that the Accused committed the felony charged.
- ☐ That the Accused be discharged.
- ☐ a nolle prosequi on Commonwealth's motion
- ☐ On motion to change bond increased ☐ decreased bond to \$ (special conditions on Conditions of Release and Bond).
- ☐ the charge reduced to

On which the Accused was arraigned and pleaded

- ☐ GUILTY
- ☐ NOT GUILTY ☐ nolo contendere and was found
- ☐ not guilty
- ☐ guilty as charged above
- ☐ guilty of

On this reduced charge, I impose the following sentence on the Accused:

\$ fine with \$ suspended.

☐ DAYS ☐ MONTHS in jail with

☐ DAYS ☐ MONTHS Suspended.

Restitution of payable to by as condition of suspended sentence.

☐ BOND FORFEITED in the sum of \$.

☐ BOND applied to fine and costs

OTHER:

\$

\$

Misdemeanor Conviction

112 TRIAL FEE  
113 BAIL FEE  
305 FILING FEE  
132 CICF  
120 CT. APPT. ATTY. (state)  
113 WITNESS FEE

Preliminary Hearing Assessments

119 COMM. ATTY. (state)  
203 COMM. ATTY. (local)  
120 CT. APPT. ATTY. (state)  
113 WITNESS FEE

Other (specify):

\$

TOTAL

ATTORNEY(S) PRESENT: ☐ COMMONWEALTH ☐ DEFENSE

DATE

JUDGE

RECEIPT NO.

DATE PAID

**WARRANT OF ARREST - FELONY**

VA. CODE ANN. § 19.2-71-72

Montgomery

CITY OR COUNTY

☒ Criminal  
☒ General District Court ☐ Traffic  
☐ Juvenile and Domestic  
Relations District Court

**TO ANY AUTHORIZED OFFICER:**

You are hereby commanded in the name of the Commonwealth of Virginia forthwith to arrest the Accused,  
and to bring the Accused before the Court to answer the charge that the Accused, within this city or county, on or about

November 19, 1984

DATE

did unlawfully and feloniously

(make) (draw) (utter) (alter) (deliver) a check drawn on the

First Virginia Bank

in the amount of

(NAME OF BANK, ETC.)

\$ 3080.00 and payable to the order of Triangle Auto Auction

, knowing that there

are insufficient funds in the account to pay such check.

597

18,2-181, Code of Virginia.

I, the undersigned, have found probable cause to believe that the Accused committed the offense charged,  
based on the sworn statements of

Eugene R. Lancour, Triangle Auto Auction, Rt. 177, Radford, Va.  
Complainant.

12/21/84 1:00 P.M.

DATE AND TIME ISSUED

*Eugene R. Lancour*

HEARING DATE

FILE NO.

Danny F. Cash

ACCUSED

2100 12th St

ADDRESS/LOCATION

Lynchburg, Va.

COMPLETE DATA BELOW IF KNOWN:

RACE	SEX	WGT.	HT. FT.	IN.	EYES	HAIR	BORN MO. DAY YR.
SSN							

**WARRANT OF ARREST  
FELONY**

EXECUTED by arresting the Accused named above  
on this day:

DATE AND TIME

ARRESTING OFFICER

Badge No. agency and jurisdiction  
for

Sherrif

**ATTORNEY FOR THE ACCUSED:**

# 7

Understanding my right to a preliminary hearing before the Court named in this warrant to determine whether there is probable cause to believe that I committed a felony AND, having the consequences of my waiver explained to me by the Judge of this Court, I nevertheless WAIVE MY RIGHT TO A PRELIMINARY HEARING on this warrant.

Certified to the Circuit Court of this jurisdiction

ACCUSED

DATE

ATTORNEY FOR ACCUSED

JUDGE

### DISPOSITION OF CASE

The Accused named within was brought before me or appeared this day, and upon hearing the evidence I order:

- ☐ The case certified to the Grand Jury of this jurisdiction, at its next term date, having found probable cause to believe that the Accused committed the felony charged.
- ☐ That the Accused be discharged.
- ☐ a nolle prosequi on Commonwealth's motion
- ☐ On motion to change bond increased ☐ decreased bond to \$..... (special conditions on Conditions of Release and Bond).
- ☐ the charge reduced to.....

On which the Accused was arraigned and pleaded

- ☐ GUILTY
- ☐ NOT GUILTY ☐ nolo contendere
- ☐ and was found
- ☐ not guilty
- ☐ guilty as charged above
- ☐ guilty of.....

On this reduced charge, I impose the following sentence on the Accused:

\$..... fine with \$..... suspended.

..... ☐ DAYS ☐ MONTHS in jail with  
..... ☐ DAYS ☐ MONTHS Suspended.

Restitution of..... payable to.....  
by..... as condition of suspended sentence.

☐ BOND FORFEITED in the sum of \$.....

☐ BOND applied to fine and costs

OTHER:

ATTORNEY(S) PRESENT: ☐ COMMONWEALTH ☐ DEFENSE

DATE

JUDGE

BOND SET	DATE WITHDRAWN
<input type="checkbox"/> CLERK <input type="checkbox"/> JUDGE	

### FINE COSTS

#### Misdemeanor Conviction

112 TRIAL FEE  
113 BAIL FEE  
305 FILING FF  
132 CICF  
120 CT. APPT. ATTY. (state)  
113 WITNESS FEE

#### Preliminary Hearing Assessments

119 COMM. ATTY. (state)  
203 COMM. ATTY. (local)  
120 CT. APPT. ATTY. (state)  
113 WITNESS FEE

Other (specify):

\$ TOTAL

RECEIPT NO.	DATE PAID
-------------	-----------

**WARRANT OF ARREST - FELONY**

VA. CODE ANN. § 19.2-71 - 72

Montgomery

CITY OR COUNTY

☒ General District Court ☒ Criminal  
☐ Juvenile and Domestic  
Relations District Court ☐ Traffic

**TO ANY AUTHORIZED OFFICER:**

You are hereby commanded in the name of the Commonwealth of Virginia forthwith to arrest the Accused,  
and to bring the Accused before the Court to answer the charge that the Accused, within this city or county, on or about

11/26/84  
DATE

did unlawfully and feloniously

(make) (draw) (utter) (alter) (deliver) a check drawn on the

First Virginia Bank

(NAME OF BANK, ETC.)

in the amount of

\$500.00 and payable to the order of Triangle Auto Auction Inc., knowing that there

are insufficient funds in the account to pay such check.

569

18,2-181, Code of Virginia.

I, the undersigned, have found probable cause to believe that the Accused committed the offense charged,  
based on the sworn statements of

Eugene R. Lancour, C/o Triangle Auto Auction, Inc. Rt. 177, Christiansburg, Va. Complainant.

12/21/84 1:00 P.M.  
DATE AND TIME ISSUED

HEARING DATE

FILE NO.

Daniel F. Cash  
ACCUSED2100 12th St.  
ADDRESS LOCATIONLynchburg, Va.  
COMPLETE DATA BELOW IF KNOWN:

RACE	SEX	WGT.	HT. FT.	IN.	EYES	HAIR	BORN MO.	DAY	YR.
SSN									

**WARRANT OF ARREST  
FELONY**

EXECUTED by arresting the Accused named above  
on this day:

DATE AND TIME

ARRESTING OFFICER

Badge No. agency and jurisdiction  
for

Sheriff

**ATTORNEY FOR THE ACCUSED:**

STICK POSTAGE STAMPS TO ARTICLE TO COVER FIRST CLASS POSTAGE,  
CERTIFIED MAIL FEE, AND CHARGES FOR ANY SELECTED OPTIONAL SERVICES. (see front)

1. If you want this receipt postmarked, stick the gummed stub on the left portion of the address side of the article leaving the receipt attached and present the article at a post office service window or hand it to your rural carrier. (no extra charge)
2. If you do not want this receipt postmarked, stick the gummed stub on the left portion of the address side of the article, date, detach and retain the receipt, and mail the article.
3. If you want a return receipt, write the certified-mail number and your name and address on a return receipt card, Form 3811, and attach it to the front of the article by means of the gummed ends or space permits. Otherwise, affix to back of article RETURN RECEIPT REQUESTED adjacent to the number.
4. If you want delivery restricted to the addressee, or to an authorized agent of the addressee, endorse RESTRICTED DELIVERY on the front of the article.
5. Enter fees for the services requested in the appropriate spaces on the front of this receipt. If return receipt is requested, check the applicable blocks in Item 1 of Form 3811.
6. Save this receipt and present it if you make inquiry.

(City, State, and ZIP Code)  
3100 1st St  
DANIEL'S AUTO SALES  
(Name of Sender)  
3100 1st St  
P.O. Box or R.D. No.)  
Rymond, VA 24451  
(No. and Street, Apt., Suite, P.O. Box or R.D. No.)

PENALTY FOR PRIVATE USE \$300



**SENDER INSTRUCTIONS**  
OFFICIAL BUSINESS  
UNITED STATES POSTAL SERVICE

- Print your name, address, and ZIP Code in the space below.
- Complete items 1, 2, 3, and 4 on the reverse.
- Attach to front of article if space permits.
- Otherwise affix to back of article.
- Endorse article "Return Receipt Requested" adjacent to number.

RETURN TO

3. Article Addressed to: TRANSLE Auto Auction P.O. Box 1107 Radford VA 24141		4. Type of Service: <input checked="" type="checkbox"/> Registered <input type="checkbox"/> Certified <input type="checkbox"/> Express Mail	Article Number 482811148
Always obtain signature of addressee or agent and DATE DELIVERED			
5. Signature of Addressee [Signature]		6. Signature - Agent [Signature]	
7. Date of Delivery 12-29-88			
8. Addressee's Address (ONLY if requested and fee paid)			

DOMESTIC RETURN RECEIPT

P 482 811 148

RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED—  
NOT FOR INTERNATIONAL MAIL

(See Reverse)

Sent to	Tr. Auto Auc.
Street and No.	Box 1107
P.O., State and ZIP Code	Radford Va.
Postage	\$ 20
Certified Fee	75
Special Delivery Fee	
Restricted Delivery Fee	
Return Receipt Showing to whom and Date Delivered	60
Return Receipt Showing to whom, Date, and Address of Delivery	
TOTAL Postage and Fees	\$155

Postmark or Date



600



12/28/1984

Dear; Mr. Lancour,

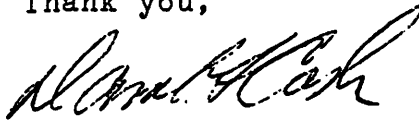
Enclosed is a cashiers check for \$2000.00 to serve as a partial payment on the three (3) checks you are holding for the amount of \$19051.00, this will make the balance \$17051.00.

You are also hold Titles to six (6) automobiles to hold as collateral 1971 International Road Tractor, 1978 Dodge\_- Challenger, 1979 Mustang, 1977 Toyota Landcruiser, 1980 Mazda, 1979 Pontiac s/w.

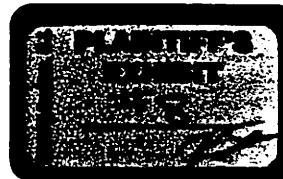
Begining Balance;		Total Balance
\$21,508.00	21,508.00	\$21,508.00
Payt. 1979 Ramcharger	2,457.00	\$19,051.00
Cashiers Check	2,000.00	\$17,051.00

The balance will be paid as quickly as I recieve the funds .

Thank you,



Daniel F. Cash  
Dannys Auto Sales



602



**FIRST VIRGINIA BANK**

SOUTH CENTRAL

SERVING BROOKNEAL, LYNCHBURG, MADISON HEIGHTS  
AMHERST, VIRGINIA 24521

49475

**Amount \$2000.00**

December 28 84

68-33420  
514

**\$2000.00\*\***

# CASHIER'S CHECK

**Danny Cash & Triangle Auto Auction**

**NOT NEGOTIABLE**

Partial Payment on 3 checks

\$17051.00 @0514033420 2210 054700



# CASHIER'S CHECK

No 10498

68-443  
514

P. O. Box 195 • Forest, Virginia 24551

Feb 7 19 85

PAY

\$ \*\*11,966.00\*\*

TO THE  
ORDER  
OF

Triangle Auto Auction

Re: Danny's Auto Sales

AUTHORIZED SIGNATURE

⑈ 10498⑈ ⑆051404435⑆

⑈000 003 5⑈

Triangle Auto Auction Inc  
PO Box 1167  
Raleigh NC 24141

To Whom It May Concern:

then we to certify that I have on this date  
delivered a cashier check # 10499 payable  
through the Community Bank of Forest, Forest VA 24551  
and received the following titles from the  
Triangle Auto Auction on Feb 7, 1985:

West VA title K819906	79 Ford	9F054177271
NC title 425831053A	77 Toyota	FJ40243387
VA title 30897554	71 INT'L	2594719444080
VA title 27192120	78 DODGE	2H29K84310762
VA title 23159525	79 Pontiac	2F35A9B123662

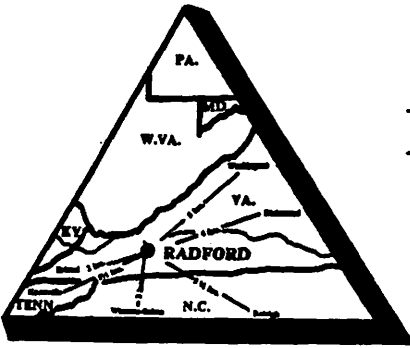
\$11,966.00 and Mr. Cash must be  
aware a separate billing for interest due  
will be forwarded under separate cover.

Sincerely

---

Robert L. McBride  
Robert L. McBride  
Eugene R. Somers Manager Triangle Auto  
Auction.





# RADFORD AUTO AUCTION, INC.

P.O. Box 1167  
RADFORD, VA 24141  
(703)639-9011 (703)639-9021

Roger Gallimore Frank Sale

Mr. Danny Cash  
Danny's Auto Sales  
2100 12th St.  
Lynchburg, Va. 24501

Dear Mr. Cash:

The below itemized listing of interest due on the three checks returned against our account is provided per agreement between this office and Mr. Joseph R. Johnson, Jr. your attorney.

CHECK#	DATE our Account Charged	AMOUNT	Balance Due
CK# 2359	29 Nov 84	9788.00	9788.00
CK# 2376	5 Dec.84	3080.00	12868.00
CK# 2393	12 Dec.84	3555.00	16423.00
Paid on acct.	14 Dec.84	2457.00	
Paid on Acct.	31 Dec.84	2000.00	
Paid on Acct.	7 Feb.85	11,966.00	

Interest @ 1½% per mo. on unpaid balance.

29 Nov. 84 thru 4 Dec. 84 on \$9788.00	6 days	\$28.92
5 Dec. 84 thru 11 Dec. 84 on 12868.00	7 days	44.38
12 Dec. 84 thru 14 Dec. 84 on 16423.00	3 days	24.27
15 Dec. 84 thru 31 Dec. 84 on 13966.00	17 days	116.96
1 Jan 85 thru 7 Feb. 85 on 11966.00	38 days	224.20.
		<u>\$438.74</u>

7 Feb. 85 Cashier's check received \$11,966.00.

Request your check in the amount of \$438.74 be submitted to cover this balance.

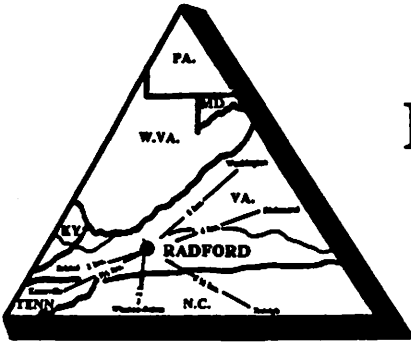
Thanking you in advance.

Sincerely,

*E. R. Lancour*  
E. R. Lancour  
Manager

605





# RADFORD AUTO AUCTION, INC.

P.O. Box 1167  
RADFORD, VA 24141  
(703)639-9011 (703)639-9021

2-27-85

Roger Gallimore Frank Sale

Johnson & Cunningham  
Attorney at Law  
P.O. Box 717  
Lynchburg, Va. 24505

In re: Danny's Auto Sales, Lynchburg, Va.

Dear Mr. Johnson:

This will acknowledge receipt of your company check #3121  
in the amount of \$438.74 on the account of Danny Cash T/A Danny's  
Auto Sales.

With this amount paid the Auction considers Danny Cash to  
have satisfied all obligations.

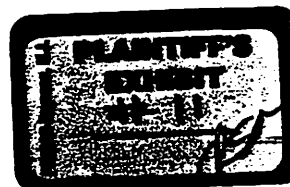
Thank you for your help and understanding.

Sincerely,

E. R. Lancour  
Manager

ERL:dp

606



**JOHNSON & CUNNINGHAM**

ATTORNEYS AT LAW

1104 SOVRAN BANK BUILDING

LYNCHBURG, VIRGINIA 24505

JOSEPH R. JOHNSON, JR.  
RICHARD P. CUNNINGHAM

January 30, 1985

Post Office Box 717  
TELEPHONE (804) 845-4541

—  
DAVID D. EMBREY

Mr. Danny Cash  
2100 12th Street  
Lynchburg, Virginia

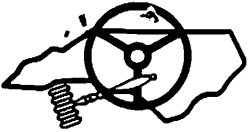
---

FOR PROFESSIONAL SERVICES RENDERED Joseph R. Johnson, Jr.

To fee for representation in Montgomery General  
District Court,

\$1,500.00





# HIGH POINT AUTO AUCTION



Interstate 85 & Prospect Street  
P. O. Box 2081  
High Point, N. C. 27261  
Phone (919) 886-7091

January 31, 1985

Mr. Robert H. Cash  
Dannys Auto Sales & Service  
2100 12th St.  
Lynchburg, Va. 24501

Dear Mr. Cash:

This is to inform you that you are no longer an authorized dealer at the High Point Auto Auction.

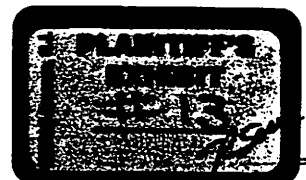
This means that you will not be permitted to buy nor sell automobiles at the auction in the future. I am sure you understand the reason for us having to take this action.

Sincerely,

Mike Slay  
Auction Manager  
High Point Auto Auction

MS/tr

CERTIFIED MAIL - RETURN RECEIPT REQUESTED





609

**HIGH POINT AUTO AUCTION**

Interstate 85 & Prospect St.  
P.O. Box 2081  
N. C. 27261

**CERTIFIED MAIL**

P 145 218 035

CLAIM CHECK NO. **830382**

☐ HOLD

DATE **2/2/85**

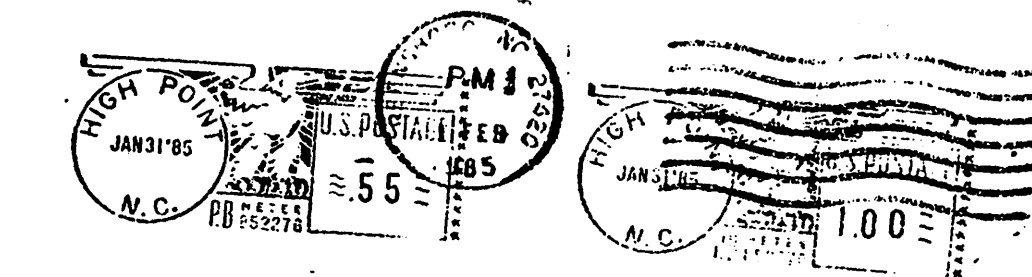
☐ 1ST NOTICE

☐ 2ND NOTICE

☐ RETURN

Detached from  
PS Form 3848-A  
Oct. 1980  
edition, Inc.

a monheim auto  
**CO**  
Commur



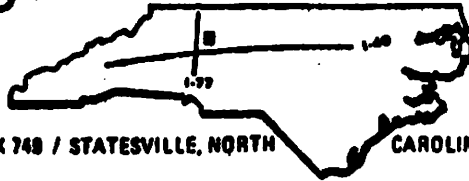
Mr. Robert Cash  
Danny's Auto Sales & Service  
2100 12th St.  
Lynchburg, Va. 24501

"We make it a POINT—to serve you better"

LARRY HEDRICK  
OWNER/MGR.

TERRY BLEVINS  
ASS'T GEN'L MGR.

# STATESVILLE AUTO AUCTION, INC.



POST OFFICE BOX 749 / STATESVILLE, NORTH

CAROLINA 28677 / PHONE (704) 876-1111

February 7, 1985

Danny's Auto Sales  
PO Box 2501  
Lynchburg, VA 24501

Dear Mr. Cash:

We have been advised by our insurance company, Auction Insurance Agency of Alabama, that they are no longer in a position to insure your transactions.

If you have any questions concerning the above, please contact Auction Insurance Agency of Alabama, 2130 Highland Avenue, Birmingham, Alabama, 35255. Until we receive word from this insurance agency, we will not be able to transact business.

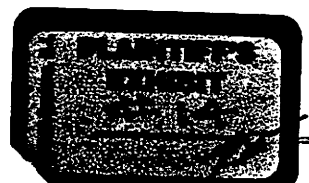
Sincerely,

STATESVILLE AUTO AUCTION, INC.

A handwritten signature in cursive script, reading "Larry S. Hedrick".

Larry S. Hedrick  
Owner/Manager

LSH/lrs



*Donnerup Auto Sales*  
*Comparison Statement of operations*  
*fiscal years 1984 + 1985*

Prepared By  
 Approved By

	1984	1985	increase (Decrease)
<u>Sales</u>			
<i>to retail</i>	32144400	53007520	20865120
<i>Wholesale</i>	65988100	13768000	(52020100)
	98132500	66777520	(31154980)
<i>Less: Sales Allowances</i>	- -	676000	(676000)
<i>Total Sales</i>	98132500	66301520	(31830980)
 <i>Cost of Sales</i>	 80100702	 57772333	 22328569
 <i>Gross Profit</i>	 18031598	 8529187	 (9502411)
 <u>Expenses</u>			
<i>Fuels + Supplies</i>	3986764	2771790	(1215974)
<i>Miscellaneous</i>	631188	240122	(391066)
<i>Utilities</i>	167541	300912	133371
<i>Interest</i>	130142	2630367	2500225
<i>Bank Charges</i>	244417	189925	(55442)
<i>Over + Subscriptions</i>	4800	12100	7300
<i>Taxes + Licenses</i>	104724	54601	(502623)
<i>Telephone</i>	301698	282322	(19316)
<i>Auto-Show Expense</i>	433852	44504	(389348)
<i>Insurance</i>	513760	361341	(152619)
<i>Advertising</i>	14169	108790	94621
<i>Office</i>	23965	24366	401
<i>Legal + Professional</i>	323272	362283	39011
<i>Commissions</i>	597485	1281018	683533
<i>Auction Fees</i>	324500	56000	(268500)
<i>Rent</i>	146223	5000	(141223)
<i>Uniforms</i>	79916	- -	(79916)
<i>Repair + Maintenance</i>	219376	- -	(219376)
<i>Fixed Equipment</i>	163351	- -	(163351)
<i>Contributions</i>	89100	- -	(89000)
 <i>Total Expenses</i>	 8500343	 8723901	 223558
 <i>Net Profit from operations</i>	 9531255	 (194714)	 (9725969)
 <u>Other Income</u>			
<i>Miscellaneous Income</i>	- -	108734	108734
<i>Interest Income</i>	21979	258773	236794
<i>Dealer Reserve Income</i>	148370	837317	688947
 <i>Total other income</i>	 170349	 1204824	 1034475
 <i>Net Income</i>	 9701604	 1010110	 (8691494)

(804) 525-2128

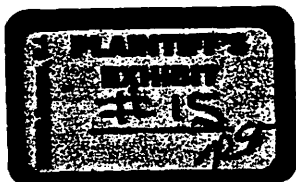


WOMACK'S BOOKKEEPING & TAX SERVICE  
 P.O. BOX 11943  
 LYNCHBURG, VA 24506

ERNEST W. WOMACK

O. MAXINE FONTAINE

611



Dannup Into Sales  
Statement of Operations  
Twelve Months Ending December 31, 1984

(Before adjustments)

COLUMN WRITE	1	2	3	4	5	6
		Month		YTD		
1	Sales					1
2	Retail	1860000		32144400		2
3	Wholesale	2000000		65988100		3
4	Total Sales	3860000		98132500		4
5						5
6	Cost of Sales					6
7	Beginning Inventory	8730170		3916400		7
8	Purchases	1070000		71557499		8
9	Trade Ins	380000		12208190		9
10	Overallowances	-0-		350000		10
11		10200170		88032089		11
12	Less: Ending Inventory	7931187		7931187		12
13	Cost of Sales	2268983		80100902		13
14	Gross Profit	1591017		18031598		14
15						15
16	Expenses					16
17	Postage & Supplies	46025		3986764		17
18	Utilities	-0-		167541		18
19	Freight Fees	5000		324500		19
20	Auto - Fuel	2500		433852		20
21	Rent	-0-		146223		21
22	Legal & Professional	-0-		323272		22
23	Depreciation	-0-		79916		23
24	Miscellaneous	37000		631188		24
25	Repair & Maintenance	160355		219376		25
26	Telephone	27272		301698		26
27	Insurance	-0-		513960		27
28	Bank Charges	21818		244417		28
29	Commissions	-0-		597485		29
30	Tax & Licenses	-0-		104724		30
31	Rental Equipment	-0-		163351		31
32	Office	-0-		23965		32
33	Advertising	-0-		14169		33
34	Contingencies	-0-		89000		34
35	Deer & Subscriptions	-0-		4800		35
36	Interest	24471		130142		36
37	Total Expenses	325491		8500343		37
38						38
39	Net Profit from operations	1265526		9531255		39
40						40
41	Other Income					41
42	Dividend Income	-0-		148370		42
43	Interest Income	-0-		21979		43
44	Total Other Income	-0-		170349		44
45						45
46	Net Profit 12/31/84	1265526		9701604		46
47						47
48						48
49						49
50						50

Drum's Auto Sales  
Statement of operations  
Twelve Months Ending December 31, 1985

Initials Date  
Prepared By  
Approved By

< Before Adjustments >

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35  
36  
37  
38  
39  
40

Sales - Retail	530,095.20
Sales - Wholesale	139,680.00
	<u>669,775.20</u>
Less: Sales Allowances	6,760.00
Total Sales	<u>663,015.20</u>

Cost of Sales	
Beginning Inventory	79,318.7
Purchased	409,407.67
Trade In + Repairs	15,479.76
	<u>643,511.74</u>
Less: Ending Inventory	65,993.81
Cost of Sales	<u>577,723.33</u>
Gross Profit	<u>85,291.87</u>

Expenses	
Fuel & Supplies	27,707.90
Miscellaneous	240.22
Utilities	8,009.12
Interest	26,303.67
Bank charge	189.925
News & Subscriptions	12.100
Taxes & Licenses	540.01
Telephone	28,238.2
Auto/Bus Expense	445.4
Insurance	3613.41
Advertising	10,879.0
Office	243.66
Legal & Professional	3622.83
Commissions	12,810.18
Auction Fees	560.00
Travel	50.00
Total Expenses	<u>872,390.1</u>

Net Profit from operations	< 19,471.4 >
----------------------------	--------------

Other Income	
Miscellaneous Income	10,873.4
Interest Income	2587.73
Rental Income	8373.17

Total other income	<u>120,482.4</u>
--------------------	------------------

Net Income 12/31/85	<u>101,011.0</u>
---------------------	------------------

Defendants  
Exhibit No. 1  
KSA

*Defendant's Exhibit #1*  
*RS*

2261

BAL BROT FORD

9-28 1984

TO

FOR

TOTAL

THIS CHECK

BALANCE

DEPOSITS

2262

9-28 1984

TO

FOR

81 Subaru

TOTAL

THIS CHECK

BALANCE

DEPOSITS

9-30-84

3260 20

50. 00

1537 59

*701 Pa (2N) 10-1-84*

2263

10-1 1984

TO

FOR

*Payment on 2100 12th St.*

TOTAL

THIS CHECK

BALANCE

DEPOSITS

356. 90

885

2261

88-33491  
614 21

9-28 1984

\$100.00

DOLLARS

*291.00*

DANNY'S AUTO SALES

2100 - 12TH STREET  
LYNCHBURG, VIRGINIA 24501



PAY TO THE ORDER OF

*One Hundred*

FIRST VIRGINIA BANK

SOUTH CENTRAL  
SERVING INDUSTRIAL, LYNCHBURG, VIRGINIA  
AMHERST, VIRGINIA 24501



FOR

000002261 0514033420 2

2264		BAL. BRO'T FORD	
10-2 19 84			
TO <u>Cardinal Chevrolet</u>		DEPOSITS	
FOR <u>84 Blazer</u>			
✓		TOTAL	
701		THIS CHECK	11000 00
		BALANCE	

2265			
10-2 19 84			
TO <u>Wanacks Backeary</u>		DEPOSITS	
FOR			
✓		TOTAL	
807		THIS CHECK	95. 00
		BALANCE	

2266			
10-3 19 84			
TO <u>Unifirst Corp.</u>		DEPOSITS	
FOR <u>Uniform Lease</u>			
✓		TOTAL	
881		THIS CHECK	18. 46
		BALANCE	



6

2267

BAL.  
SHEET  
FORD

10-3 1984

TO City of Lynchburg

FOR Water Bill 84 819 10-3-84 12000.00

TOTAL

THIS  
CHECK

37 07

879

BALANCE

2268

10-3 1984

TO Appalachian Power Co.

FOR 100 12<sup>th</sup>.

TOTAL

THIS  
CHECK

116 71

879

BALANCE

2269

10-3 1984

TO A.A.A. Auto Sales

FOR Corvette Wheel

Cash out  
paid

101

TOTAL

THIS  
CHECK

200.00

BALANCE

23868 60  
1933 43

9-86

2270		BAL BROT FORD		
10-4 1984				
TO	Central Federal Bank	DEPOSITS		
FOR	Roll Back Co.			
	Truck Payment			
	✓	TOTAL		
		THIS CHECK	492.	27
701		BALANCE		

2271				
10-3 1984				
TO	Hillcrest Motors	DEPOSITS		
FOR	Siulona			
	✓			
		TOTAL		
		THIS CHECK	2300	00
701		BALANCE		

2272				
10-4 1984				
TO	Southern Maintenance	DEPOSITS		
FOR	Champion Supply			
	✓			
		TOTAL		
		THIS CHECK	57	17
895		BALANCE		

6

2273

BAL  
BROT  
FORD

10-5 1984  
TO Baby's Auto Parts

FOR

DEPOSITS

	TOTAL		
✓	THIS CHECK	39	04
701	BALANCE		

2274

10-6 1984  
TO National Life

FOR

DEPOSITS

	TOTAL		
	THIS CHECK	53	18
812	BALANCE	<del>20,826.43</del>	(1,008.73)

8-83

1

2275

10-6 1984  
TO Kenneth's Auto Parts

FOR

DEPOSITS

79 Pontiac 5/w	TOTAL		
77 Chrysler 5/w	THIS CHECK	2400	00
72 1+D ✓	BALANCE		
701			

2276		BAL. BROT FOR'D	
10-8 1984			
TO Foreland Realty		DEPOSITS	
FOR			
/			
		TOTAL	
		THIS CHECK	360 00
132 Stevenson lot		BALANCE	

2277			
10-8 1984			
TO Donna		DEPOSITS	
FOR Void cancel			
		TOTAL	
		THIS CHECK	275. 00
? 55540		BALANCE	

2278			
19			
TO Bob Cash		DEPOSITS	
FOR			
		TOTAL	
		THIS CHECK	550 00
885		BALANCE	4341. 43 <del>(4,59373)</del>

2279

BAL  
BROT  
FORT

10-9 1984

TO Stonewall TravelFOR Camp Office

TOTAL

THIS  
CHECK

35 00

893

BALANCE

DEPOSITS

2280

10-10 1984

TO Amherst MotorsFOR Graph from 10/10/84

TOTAL

THIS  
CHECK

961.26

250 00

701

BALANCE

10/11 1700 00

DEPOSITS

2281

10-10 1984

TO Unifirst Corp.

FOR

TOTAL

THIS  
CHECK

8 06

881

BALANCE

DEPOSITS

2282		BAL BROT FORD	
10-13 19 84			
TO <i>James Party</i>		DEPOSITS	
FOR <i>Repair PO V&amp;V</i>			
<i>Conrad V&amp;V</i>		TOTAL	
		THIS CHECK	54 65
VOID - See CK # 2309		BALANCE	

2283			
10-16 19 84			
TO <i>Schwal Furniture Co.</i>		DEPOSITS	
FOR <i>Credit Mat. Fed</i>			
<i>✓</i>		TOTAL	
55540		THIS CHECK	45 69
		BALANCE	

2284			
10-16 19 84			
TO <i>Contract Furniture</i>		DEPOSITS	
CASH <i>VOID</i>			
FOR <i>Home Store</i>		TOTAL	
CASH on PI <i>W&amp;S</i>		THIS CHECK	<del>100</del> -
622		BALANCE	

6

2285

BAL  
BROT  
FORD

10-16 1984		DEPOSITS	
TO <i>Arrest Mover</i>			
FOR <i>St. Louis Post-Dispatch</i>			
1800.00 4800.00		TOTAL	
701		THIS CHECK	3000.00
		BALANCE	

623

2286

10-12 1984		DEPOSITS	
TO <i>Central Fidelity</i>			
FOR <i>Loan Stmt</i>			
<i>VOID</i>		TOTAL	0.00
		THIS CHECK	<del>144.03</del>
		BALANCE	

2287

10-17 1984		DEPOSITS	
TO <i>Central Fidelity</i>			
FOR <i>Loan Stmt</i>			
		TOTAL	
		THIS CHECK	144.03
132 Steve Hamlett		BALANCE	<del>144.03</del> 144.03

623

2288		BAL. BROT FORD	
10-17 1984			
TO	Cash	DEPOSITS	
FOR	cash ✓ paid		
		TOTAL	
		THIS CHECK	145 31
55540		BALANCE	

2289			
10-17 1984			
TO	Kenneth Hammy Mann	DEPOSITS	
FOR	1980 Regal		
		TOTAL	
✓		THIS CHECK	3500 00
701		BALANCE	

2290			
10-17 1984			
TO	Hillman Gage	DEPOSITS	
FOR	✓		
		TOTAL	
		THIS CHECK	400 00
701		BALANCE	10400 00 (9,391 84)



2291

BAL  
BROT  
FORD

10-17 19 84

TO *Glenn A Trent*

FOR *TOWING*

DEPOSITS

TOTAL

THIS  
CHECK

47 24

BALANCE

701

2292

10/16

658 92

10/17

1700 00

10-17 19 84

TO ~~*Glenn A Trent*~~

FOR

(1980  
Regal)

DEPOSITS

10/17/84

4000.00

TOTAL

THIS  
CHECK

~~17 00~~

BALANCE

VOID

2293

10 18 19 84

TO *D.M.V.*

FOR

DEPOSITS

TOTAL

THIS  
CHECK

45 00

BALANCE

817

2294		BAL. BROT FORD		
10-19 19 84				
TO Lynette Trice		DEPOSITS		
FOR				
✓			TOTAL	
701		THIS CHECK	241 85	
		BALANCE	+16,085.96	
			(4,922.53)	

2295				
10-19 19 84				
TO Peggy Trice		DEPOSITS		
FOR				
✓			TOTAL	
701		THIS CHECK	12 00	
		BALANCE		

2296				
10-19 19 84				
TO United Van Band		DEPOSITS		
FOR Interest on Note				
✓			TOTAL	
871		THIS CHECK	600.00	
		BALANCE		

2297		BAL. BROT FORD	
10-19 1984			
TO	D.M.U.	DEPOSITS	
FOR	Bury		
		TOTAL	
		THIS CHECK	5000
977		BALANCE	

2298			
10-22 1984			
TO	C+I Telephone Co	DEPOSITS	
FOR	2100 12 54		
		TOTAL	
		THIS CHECK	214 15
980		BALANCE	

2299			
10-22 1984			
TO	<del>Kenneth Hamel</del> Stewart Parnell	DEPOSITS	
FOR	80 Bui		
		TOTAL	2600 00
		THIS CHECK	2700 -
701		BALANCE	12609 87 (824868)

2300		BAL BROT FORD		
10-23-1984				
TO Southern States		DEPOSITS		
FOR				
✓			TOTAL	
		THIS CHECK	27 89	
55540		BALANCE	30 00	

2301				
10-23-1984				
TO OKIN Extramary		DEPOSITS		
FOR 1720 Calver Ave				
✓			TOTAL	
		THIS CHECK	100 -	
55540		BALANCE		

2302				
10-24-1984				
TO Cardinal Chuslet		DEPOSITS		
FOR St Chusette				
			TOTAL	
		THIS CHECK	1700 00	
701		BALANCE		

2303		BAL. BROT FORD		
10-24 1984				
TO Fort Avenue Groco.		DEPOSITS		
FOR <i>Car</i>				
		TOTAL		
		THIS CHECK	31	80
853		BALANCE		

8-83

2304				
10-25 1984				
TO East Coast		DEPOSITS		
FOR <i>N</i>				
		TOTAL		
		THIS CHECK	14	50
853		BALANCE	17	00

2305				
10-25 1984				
TO Electricity		DEPOSITS		
FOR Office Vacuum				
		TOTAL		
		THIS CHECK	94	46
SSSYD		BALANCE	17,636.33	(10,417.33)

2306		BAL BROT FOR'D	
10-25 1984			
TO Cambridge Toyota		DEPOSITS	
8500 <sup>00</sup>			
FOR 83 Honda Prelude			
900.81 Chevrolet		TOTAL	
		THIS CHECK	9400 -
701		BALANCE	

2307			
10-25 1984			
TO Chevrolet Motors		DEPOSITS	
FOR 84 Chevrolet 4x4			
		TOTAL	
		THIS CHECK	8200.00
		BALANCE	

2308			
10/25 1984			
TO D.M.V.		DEPOSITS	
FOR Title 81 Nissan			
		TOTAL	
		THIS CHECK	10.00
877		BALANCE	7900.00 926.53 (194233)

10/23 700.00  
10/25/84

2309		BAL. BEST FOR'D		
10/25 19 84				
TO James Putz		DEPOSITS		
FOR				
	TOTAL			
	THIS CHECK	84.	65	
701	BALANCE			

2310				
10-26 19 84				
TO Gretta Motow		DEPOSITS		
FOR 77 Berwick Va				
	TOTAL			
	THIS CHECK	1200	-	
701	BALANCE			

2311				
10/25 19 84				
TO Randy Moss		DEPOSITS		
FOR 77 Van Buren Bldg				
	TOTAL			
	THIS CHECK	700.	00	
701	BALANCE	1058.10	(2141.98)	

2312		BAL. BRO'T FOR'D		
10-26-		1984		
TO Kenneth Hamersley		DEPOSITS		
FOR 1977 Vega				
1974 Olds				
		TOTAL		
		THIS CHECK	600	00
701		BALANCE		

2313				
10-26		1984		
TO D. M. V.		DEPOSITS		
FOR Temporary Tag				
		TOTAL		
		THIS CHECK	20.	00
877		BALANCE		

2314				
10-26		1984		
TO Andrew Mota		DEPOSITS		
FOR				
		TOTAL		
		THIS CHECK	250	-
701		BALANCE		



2315

BAL.  
BROT  
FORD

10-26 1984  
TO Hillcrest Garage

FOR Repairs

DEPOSITS

TOTAL

THIS  
CHECK

350.00

BALANCE

701

2316

10-26 1984  
TO Repair LTD

FOR 80 Audi

DEPOSITS

TOTAL

THIS  
CHECK

15 00

BALANCE

2317

10-26 1984  
TO Billy Lindsey

FOR Commission on Sale

DEPOSITS

TOTAL

THIS  
CHECK

200 00

BALANCE

104

~~2423 10~~  
(22846 98)

2318		BAL. BRO'T FOR'D	
10-26 19 84			
TO Steve Hamlett		DEPOSITS	
FOR			
		TOTAL	
		THIS CHECK	100 -
102		BALANCE	

2319			
10-26 19 84			
TO David Carter		DEPOSITS	
FOR			
		TOTAL	
		THIS CHECK	130 -
893		BALANCE	

2320			
10/27 19 84			
TO Billy Craft Honda		DEPOSITS	
FOR 1980 Honda Accord			
		TOTAL	
		THIS CHECK	4000 -
761		BALANCE	

6

2321		BAL BROT FORD	
10-27 1984			
TO <u>Carriage Toyota</u>		DEPOSITS	
FOR <u>1979 Toyota</u>			
<u>Void Payment</u>			
		TOTAL	
		THIS CHECK	<u>1800 -</u>
		BALANCE	

8-83

2322			
10-27 1984			
TO <u>Imperial</u>		DEPOSITS	
FOR <u>god</u>			
		TOTAL	
		THIS CHECK	<u>26 00</u>
853		BALANCE	

2323			
19			
TO <u>T / action</u>		DEPOSITS	
FOR			
		TOTAL	
		THIS CHECK	<u>30 00</u>
701		BALANCE	

636

OPT 2 (REV. 2/84)

Central Fidelity Bank

We DEBIT your account and RETURN  
to you the unpaid items, as listedRETURN  
ITEMS

Key to Reason for Non-payment	
1. Account Closed	6. No Account
2. Amounts Differ	7. Post Dated
3. Endorsement Irregular	8. Payment Stopped
4. Endorsement Missing	9. Signature Irregular
5. Insufficient Funds	10. Signature Missing
11. Other -	

Oak Ridge Toyota, Inc.  
P.O. Box 10247  
Lynchburg, Va. 24506

Date Nov. 5, 1984

Key	Drawn on	Amount
8	Danny's Auto Sales	180000

TOTAL 180000

ACCOUNT  
NUMBER

0	1	1		8	3	4	7		8
---	---	---	--	---	---	---	---	--	---

637

52225 9000

PAY TO THE ORDER OF

CENTRAL

FIRST CITY BANK

LYNCHBURG, VIRGINIA

6-23 1973

PAYMENT STOPPED

NOV 05 1973

11 0805

024 11 0305

502131253

88-33421

614

10-27 19 54

INSUFFICIENT FUNDS

UNLESS OTHERWISE NOTED

DOLLARS

ACCOUNT CLOSED

FUNDS ATTACHED

PAYMENT STOPPED

UNCOLLECTED FUNDS

OTHER

FOR DEPOSIT ONLY

OAKRIDGE TOYOTA, INC.

PAYMENT STOPPED

NOV 05 1973

11 0805

024 11 0305

502131253

88-33421

614

10-27 19 54

INSUFFICIENT FUNDS

UNLESS OTHERWISE NOTED

DOLLARS

ACCOUNT CLOSED

FUNDS ATTACHED

PAYMENT STOPPED

UNCOLLECTED FUNDS

OTHER

FOR DEPOSIT ONLY

OAKRIDGE TOYOTA, INC.

PAYMENT STOPPED

NOV 05 1973

11 0805

024 11 0305

502131253

88-33421

614

10-27 19 54

INSUFFICIENT FUNDS

UNLESS OTHERWISE NOTED

DOLLARS

ACCOUNT CLOSED

FUNDS ATTACHED

PAYMENT STOPPED

UNCOLLECTED FUNDS

OTHER

FOR DEPOSIT ONLY

OAKRIDGE TOYOTA, INC.

PAYMENT STOPPED

NOV 05 1973

11 0805



DANNY'S AUTO SALES  
2100 - 12TH STREET  
LYNCHBURG, VIRGINIA 24501

NOV 05

2321

10-31 1973

024 11 0305

502131253

88-33421  
614

10-27 19 54

PAY  
TO THE  
ORDER OF

OAKRIDGE TOYOTA

Eighteen Hundred



FIRST VIRGINIA BANK  
CENTRAL  
SERVING BROOKLYN, LYNCHBURG, MADISON HEIGHTS  
1001 N. 1ST, VIRGINIA 24501

FOR 1879 TOYOTA

FIRST VA. BANK SOUTH CENTRAL  
INSUFFICIENT FUNDS  
UNLESS OTHERWISE NOTED  
DOLLARS

- ☐ ACCOUNT CLOSED
- ☐ FUNDS ATTACHED
- ☒ PAYMENT STOPPED
- ☐ UNCOLLECTED FUNDS
- ☐ OTHER

00002321 051403342 2536 8842

0000180000

2324

BAL  
BROOK  
FORD

10-29 19 84

TO Robert H. Gsl

FOR

DEPOSITS

10/29/84

6830.00

TOTAL

THIS  
CHECK

550

885

BALANCE

~~1950.00~~  
(7962.98)

2325

10/30 19 84

TO Betty Jones

FOR

DEPOSITS

TOTAL

THIS  
CHECK

100.00

701

BALANCE

2326

10-31 19 84

TO Berghel Chevrolet

FOR repair 84 Chevrolet

DEPOSITS

TOTAL

21.58

THIS  
CHECK

22.00

701

BALANCE

6

2327

BAL  
BRO'T  
FORD

19		DEPOSITS	
TO <u>7/10.</u>			
FOR			
	TOTAL		
	THIS CHECK		
	BALANCE		<u>1581.08</u>
42701			

2328

10-31 19 <u>84</u>		DEPOSITS	
TO <u>First Federal</u>			
FOR <u>50-01-013980-3</u> <u>1720 Lakeside Dr.</u>			
	TOTAL		
	THIS CHECK		<u>727.00</u>
	BALANCE		<u>1873.90</u> <u>(1039264)</u>
SS340 pd out of cash?			

2329

10/31 19 <u>84</u>		DEPOSITS	
TO <u>Central Fidelity Bank</u>			
FOR <u>84 Chevrolet Truck</u>			
	TOTAL		
	THIS CHECK		<u>468.83</u>
	BALANCE		
701			

2330		BAL BROT FORD
10-31 1984		
TO <u>Southern Bank</u>		DEPOSITS
FOR <u>PAY. 2106 Tulip</u> <u>+ Auto</u>		
	TOTAL	
	THIS CHECK	566.50
42901-413.96 42902-152.54	BALANCE	

2331		
10-31 1984		
TO <u>St Al Volkswagen</u>		DEPOSITS
FOR <u>1976 Chevlon 1000.00</u> <u>1973 V.W. 700.00</u>		
	TOTAL	
	THIS CHECK	1700.00
	BALANCE	

2332		
10-31 1984		
TO <u>American Federal</u>		DEPOSITS
FOR <u>House part - 2113 Broad Bridge Rd</u>		
	TOTAL	
	THIS CHECK	885.00
(14357.01) EW 10-31-84 55540 adj. 34404	BALANCE	43083.57 (14812.97)



6

2333

BAL  
BRO'T  
FOR'D

15083.57

11-1 19 84		DEPOSITS		
TO <i>Wornack Bookkeeping</i>				
FOR <i>Bookkeeping Service</i>				
	TOTAL			
✓	THIS CHECK		75	00
807	BALANCE			

9-83

2334

11-1 19 84		DEPOSITS		
TO <i>Unifirst Corp.</i>				
FOR				
✓	TOTAL			
	THIS CHECK		44	98
881	BALANCE			

2335

11-1 19 84		DEPOSITS		
TO <i>Unifirst Corp.</i>				
FOR				
✓	TOTAL			
	THIS CHECK		8	06
881	BALANCE			

2336

BAL  
BRO  
FOR'D

11-1 19 84 ~~146353~~

TO Pat Phillips

FOR Page 2100 12th St.

DEPOSITS

	TOTAL		
✓	THIS CHECK	356	90
885	BALANCE		

2337

11/1 19 84

TO Tedewater Good

FOR Cleanup Supply

DEPOSITS

	TOTAL		
✓	THIS CHECK	57.	50
893	BALANCE		

11/1/84  
5435 00

2338

11-2 19 84

TO Midway Muffler

FOR Repair Bill

DEPOSITS

	TOTAL		
✓	THIS CHECK	271.	29
701	BALANCE	19704.84	(939176)

~~560.00~~

6 ✓

2339

BAL  
BRO'T  
FOR'D

11-2 19 84			
TO <i>Tandy and Tandy</i>		DEPOSITS	
FOR			
✓		TOTAL	
		THIS CHECK	1077 00
807		BALANCE	

9-83

✓

2340

10-2 19 84			
TO <i>Hillcrest Garage</i>		DEPOSITS	
FOR <i>Repairs</i>			
✓		TOTAL	
		THIS CHECK	117 70
701		BALANCE	

✓

2341

11/2 19 84			
TO <i>Bobby Cash Auto Parts</i>		DEPOSITS	
FOR <i>Cost.</i>			
✓		TOTAL	
		THIS CHECK	38. 90
701		BALANCE	

2342

BAL  
BROT  
FORD

11-5 1984

TO *American Express*FOR *Co. Acct.*

DEPOSITS

TOTAL

THIS  
CHECK

119. 75

BALANCE

34.26-893

83.49-803

2343

11-5 1984

TO *Appalachian Power**Burnt Bridge Rd*FOR *2100 125 ST.*

DEPOSITS

TOTAL

THIS  
CHECK

103. 22

BALANCE

55540

2344

11-5 1984

TO *Division of Motor Vehicle*FOR *Peace Baptist Church*

DEPOSITS

TOTAL

THIS  
CHECK

49 00

BALANCE

877

644

✓

2345		BAL BROT FORD		
11-5		19 84		
TO	Triangle Auto Center		DEPOSITS	
FOR	Registration			
		TOTAL		
		THIS CHECK	20	-
877		BALANCE		

9-83

✓

2346				
11-5		19 84		
TO	Triangle Auto Center		DEPOSITS	
FOR	1979 Buick Limited <sup>Loose</sup>			
		TOTAL		
		THIS CHECK	3515	00
701		BALANCE		

✓

2347				
11-6		19 84		
TO	Jen Price Chevrolet		DEPOSITS	
FOR	1979 Chevrolet Truck			
		TOTAL		
		THIS CHECK	2500	-
701		BALANCE	12146 27	(16930 27)

2348

BAL.  
BRO'T  
FOR'D

✓ 11-6 1984

TO Palmdale ToyotaFOR 79 Toyota  
69 Volvo

TOTAL

THIS  
CHECK

BALANCE

701

DEPOSITS

11-6-84

6450 64

10,779 63

17616.91

1400 00

2349

✓ 11-6 1984

TO George Hask Jr.FOR 1975 Plymouth Valiant

TOTAL

THIS  
CHECK

BALANCE

701

DEPOSITS

800 00

2350

11-7 1984

TO National LifeFOR the State

TOTAL

THIS  
CHECK

BALANCE

132

Steve Barnett

DEPOSITS

84 15

2351

BAL  
BROT  
FORD

11-7 1984

TO

L. C. Janki

FOR 80 Transac

DEPOSITS

TOTAL

THIS  
CHECK

4000 -

BALANCE

701

2352

11-7 1984

TO

Cardinal Christ

FOR 82 Christ Trsch

DEPOSITS

TOTAL

THIS  
CHECK

4200 -

BALANCE

701

8132 76  
(2096378)

2353

11-7 1984

TO

National Life Ins. Co.

FOR Ins. Premium

DEPOSITS

TOTAL

THIS  
CHECK

54 19

BALANCE

132  
Stewart & Lett11-7-84  
9590 26

647

2354		BAL BROU FORD	17668.83
11-8 1984			
TO	CASH		
FOR	ORE 80 BUCK	DEPOSITS	11/7/84
		4451.00	
	TOTAL	6975.77	
	THIS CHECK	300.00	
53540	BALANCE		

2355			
11-9 1984			
TO	Hillcrest Garage		
FOR	Repair	DEPOSITS	
	TOTAL		
	THIS CHECK	252.90	
701	BALANCE		

2356			
11-9 1984			
TO	Robert Camp		
FOR	Clean	DEPOSITS	
	TOTAL		
	THIS CHECK	70.00	
893	BALANCE		



2357

BAL  
BROT  
FORD

11-12 19 84  
TO Fort Ana Anasco

FOR gas

DEPOSITS

TOTAL

THIS  
CHECK

36 00

BALANCE

853

2358

11-12 19 84  
TO Trough A/A

FOR Reg Fee

DEPOSITS

TOTAL

THIS  
CHECK

20 00

BALANCE

877

2359

11-12 19 84  
TO Trough A/A

FOR 80 bush, 77 Jeep  
83 Chevrolet

DEPOSITS

TOTAL

THIS  
CHECK

9788. 00

BALANCE

701

2360

BAL  
BROT  
FORD

11-12 1984

TO Fort Anne Amco

FOR 902

DEPOSITS

TOTAL

39 27

THIS  
CHECK~~42 00~~

BALANCE

853

2361

Nov. 3, 1984

TO James L. Lewis

FOR Refund Deposit

DEPOSITS

TOTAL

THIS  
CHECK

500 00

BALANCE

600

2362

11/12 1984

TO James Lewis

FOR Repair

DEPOSITS

TOTAL

THIS  
CHECK

475 00

BALANCE

701

~~4635 73~~  
(22081 88)

650

6

2363

BAL  
BROT  
FORD

11-13 1987  
TO ~~St~~ Walker Body Shop

FOR PAINT 79 Corolla

DEPOSITS

TOTAL

THIS  
CHECK

250 00

BALANCE

701

2364

11-14 - 1987  
TO Lybco. Tire & Appliances

FOR Tire 1980 MAZDA

DEPOSITS

TOTAL

THIS  
CHECK

41 90

BALANCE

701

2365

11/14 1987  
TO Muffler Man

FOR

DEPOSITS

TOTAL

THIS  
CHECK

109 20

BALANCE

701

9-83

2366		BAL BROT FORD		
11-14 1984				
TO <i>Couette Center</i>		DEPOSITS		
FOR <i>Difference on 84</i>				
<i>Honda</i>				
	TOTAL			
	THIS CHECK		4900.00	
701	BALANCE			

2367				
11-14 1984				
TO <i>Lynchby Tire Appliances</i>		DEPOSITS		
FOR <i>2 Tires &amp; Bal</i>				
<i>✓</i>				
	TOTAL			
	THIS CHECK		92.00	
701	BALANCE			

2368				
11-14 1984				
TO <del><i>Harold's Co.</i></del>		DEPOSITS		
<i>Fast Lube &amp; Oil</i>				
FOR <i>GAS</i>				
	TOTAL			
	THIS CHECK		28.30	
853	BALANCE			

2369

BAL  
BROT  
FORD

11-14 1984

TO *Jim Price Chevrolet*

FOR *89 Buick Regal*

DEPOSITS

TOTAL

THIS  
CHECK

*2900.00*

BALANCE

*701*

2370

11-14 1984

TO *Fat Avenue Auto*

FOR *82*

DEPOSITS

TOTAL

THIS  
CHECK

*15 89*  
*20 00*

BALANCE

*853*

2371

11-15- 1984

TO *Cash John Ledingham*

FOR *Repairs m4 Midget*

DEPOSITS

TOTAL

THIS  
CHECK

*500 00*

BALANCE

*701*

*1903 23*  
*(30919.97)*

2372

BAL BROT FORD 1903 23

11-14 1984

TO Central Facility

FOR Steve Note

DEPOSITS 11/15/84

5350.00

TOTAL 25369.97

THIS CHECK 144 03

132

S. Hamlett

BALANCE

2373

Nov. 16, 1984

TO Hillcrest Garage

FOR Repairs

DEPOSITS

TOTAL

THIS CHECK 225 00

701

BALANCE

2374

11/16 1984

TO River Ridge Auto Body

FOR Paint 82 Chev pickup

DEPOSITS

TOTAL

THIS CHECK 225 00

701

BALANCE

8

2375

BAL  
BROT  
FOR'D

11-19 1984			
TO <i>Twinkl H/A</i>			
FOR <i>Reg. Fee</i>			
	TOTAL	DEPOSITS	
		11/19/84	
		3770.00	
		<del>3339.00</del>	
		<del>10429.20</del>	
	THIS CHECK	20.	00
877	BALANCE		

9-83

2376

11-19 1984			
TO <i>Twinkl H/A</i>			
FOR <i>76 Switch</i>			
	TOTAL	DEPOSITS	
		11/21/84	
		3809.33	
		<del>18589.67</del>	
		<del>4270.53</del>	
	THIS CHECK	3080.	00
701	BALANCE		

2377

11-21 1984			
TO <i>City of Lynch</i>			
FOR <i>water bill</i>			
	TOTAL	DEPOSITS	
	THIS CHECK	32.	22
879	BALANCE		

2378		BAL BROT FORD		
11-19-84				
TO CASH		DEPOSITS		
FOR STEVE HAMLET				
✓				
		TOTAL		
		THIS CHECK	100	00
132 S. Hamlett		BALANCE		

2379				
11-19-84				
TO UNIFORM CORP		DEPOSITS		
FOR				
✓				
		TOTAL		
		THIS CHECK	26-52	
881		BALANCE		

2380				
11-20-84				
TO WOMERS BOOKERY		DEPOSITS		
FOR				
<div style="border: 1px solid black; border-radius: 50%; padding: 10px; display: inline-block;">             Void              Replaced              Nov 84           </div>				
		TOTAL		
		THIS CHECK	450	00
		BALANCE		



2381

BAL  
BROT  
FORD

11/20 19 84			
TO CASH		DEPOSITS	
FOR			
	TOTAL		
	THIS CHECK		400 00
55540	BALANCE		

2382

11-21 19 84			
TO Muffin Man		DEPOSITS	
FOR			
	TOTAL		
	THIS CHECK		47. 84
701	BALANCE		

2383

11-21 19 84			
TO C & P Telephone Co		DEPOSITS	
FOR 2100 12TH ST.			
	TOTAL		
	THIS CHECK		225 63
230	BALANCE		

2384		BAL BROT FORD		
11-21 19 84				
TO Appleson Pave Co.		DEPOSITS		
FOR				
		TOTAL		
		THIS CHECK	32.	66
879		BALANCE		

2385				
11-21 19 84				
TO Tracy Wright		DEPOSITS		
FOR Repair on v.w				
		TOTAL		
		THIS CHECK	31.	55
701		BALANCE		

2386				
11/21 19 84				
TO James A. Scott		DEPOSITS		
FOR Mrs. 2100 1st				
		TOTAL		
		THIS CHECK	1698.	97
873		BALANCE		

6

2387

BAL  
BRO'T  
FOR'D

11-21 1984

TO *David Carter*

FOR

DEPOSITS

TOTAL

THIS  
CHECK

71 00

893

BALANCE

2388

11-21 1984

TO *Steve Hamlet*

FOR

DEPOSITS

TOTAL

THIS  
CHECK

158. 00

102

BALANCE

~~2672 74~~  
(2448 46)

2389

11-26 1984

TO *City of Lynchburg*

FOR

*Water Bill 2113 Bushide*

DEPOSITS

TOTAL

THIS  
CHECK

48. 22

35340

BALANCE

8-83

2390		BAL BROT FORD		
11-26		1984		
TO <u>Stonewall Novels</u>		DEPOSITS		
FOR <u>Cherry office</u>				
		TOTAL		
		THIS CHECK	35	00
893		BALANCE		

2391				
11-26		1984		
TO <u>Court Center</u>		DEPOSITS		
FOR <u>83 Prelude</u>				
		TOTAL		
		THIS CHECK	8500	00
701		BALANCE		

2392				
11-26		1984		
TO <u>Kenneth Hamersley</u>		DEPOSITS		
FOR <u>1981 Oldc Coll/ass</u>				
		TOTAL		
		THIS CHECK	3600	00
701		BALANCE		

2393		BAL. BROT FOR'D	
11-26 19 84			
TO	Tracy A/A	DEPOSITS	
FOR	77 Cuckoo Sunk		
	TOTAL		
	THIS CHECK	3555. 00	
	BALANCE		

2394			
11/27 19 84			
TO	First Va. Bank	DEPOSITS	
FOR	Int. Note	11/27/84	
	TOTAL	<del>5450. 00</del>	
	THIS CHECK	456. 71	
871	BALANCE		

2395			
11/27 19 84			
TO	First Va Bank	DEPOSITS	
FOR			
	TOTAL		
	THIS CHECK	1581 08	
48701	BALANCE		

2396		BAL BROT FOR'D
11-28 1984		
TO <i>Empire Oil Co.</i>		DEPOSITS
FOR <i>Gas.</i>		
853		
	TOTAL	
	THIS CHECK	18. 50
	BALANCE	

2397		
11-28 1984		
TO <i>Unifist Corp</i>		DEPOSITS
FOR <i>Spa</i>		
893		
	TOTAL	
	THIS CHECK	18. 46
	BALANCE	

2398		
11-28 1984		
TO <i>HARRIS Tire Co.</i>		DEPOSITS
FOR <i>ACCT</i>		
701		
	TOTAL	
	THIS CHECK	850. 59
	BALANCE	

2399		BAL. BROT FOR'D		
11-28 1984				
TO C & P Telephone Co		DEPOSITS		
FOR 2113 Burnt Bridge Rd				
	TOTAL			
	THIS CHECK		78.	72
55540	BALANCE			

2400				
11-30 1984				
TO Cash		DEPOSITS		
FOR STEVE HANLET				
	TOTAL			
	THIS CHECK		180	00
132 S Hamlett	BALANCE			

2401				
11-30 - 1984				
TO C & P Telephone		DEPOSITS		
FOR Telephone Bill s.H.				
	TOTAL			
	THIS CHECK		97	51
132 S Hamlett	BALANCE		19451	37
			(3805025)	

2402

BAL  
BROT  
FORD

(38050 25)

11-30-1984

TO

APCO

FOR

Power Bill

Stem

TOTAL

THIS  
CHECK

66 29

BALANCE

132

S Hamlett

Adj. to Balance to Records  
Void Checks (etc)

2403

(416970)

11.30-1984

TO

DAVID CARTER

FOR

TOTAL

THIS  
CHECK

81 38

Balance 11/30/84 En  
893

BALANCE

(34,028 22)

Stat

2404

12/1/84  
11/3/84

1984

TO

D.M.V.

FOR

TOTAL

THIS  
CHECK

56 06

BALANCE



2405

BAL BROT FORD (34,028.44)

12/3 1984

TO D. M. V.

FOR

TOTAL	
THIS CHECK	125.00
BALANCE	

DEPOSITS

2406

12/3 1984

TO Baby Car Care Parts

FOR Account

TOTAL	
THIS CHECK	147.78
BALANCE	

DEPOSITS

2407

12-4 1984

TO K. W. Biddle

FOR Repairs 16 Lincoln

TOTAL	
THIS CHECK	53.45
BALANCE	

DEPOSITS

2408		BAL. BROT FORD	
12/11 1984			
TO <u>East Coast</u>		DEPOSITS	
FOR <u>TRANSFER FROM</u>			
2586-4459			
TOTAL			3900 00
THIS CHECK			30,454.45
BALANCE			35 00

2409			
12/11 1984			
TO <u>Highland Center</u>		DEPOSITS	
FOR			
TOTAL			
THIS CHECK			30. 00
BALANCE			

2410			
12/14 1984			
TO <u>Bernard Maki</u>		DEPOSITS	
FOR <u>Acct</u>			
TOTAL			
THIS CHECK			105 95
BALANCE			30615.40
2 - checks on BOOK I paid IN CASH			26980.40

667



**FIRST VIRGINIA BANK**  
**SOUTH CENTRAL**  
 Brookneal, Virginia

 DATE 11/15/84

OFFICE \_\_\_\_\_

ACCOUNT NUMBER

**CHECKING**  
**CREDIT**

WE CREDIT YOUR		ACCOUNT NUMBER				AMOUNT
DESCRIPTION	The amount from 25864459	1	1	3	6	113,700.10
		5	4	2		
		CODE				
		1				
TOTAL						\$ 311,700.10

TE 25 10/82

Danny's Auto Sales  
 2100 - 12th Street  
 Lynchburg Va 24501

AUTHORITY

CUSTOMER ACKNOWLEDGMENT



TE 54 10 85

DESCRIPTION



899



**FIRST VIRGINIA BANK**  
SOUTH CENTRAL  
Brookneal, Virginia

DATE 12/5/84  
OFFICE 21

ACCOUNT NUMBER

WE CHARGE YOUR

15364451

AMOUNT

DESCRIPTION

Transfer to 7536 4452

CODE

151

\$3700.00

TE 24 10/82

TOTAL

\$3100.00

Daniel J. Hoke

CHC  
AUTHORITY

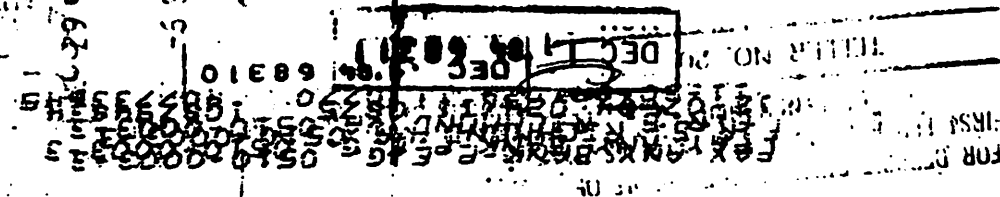
**DEBIT**  
**CHECKING**

**CHECKING**  
**DEBIT**

CUSTOMER ACKNOWLEDGMENT

CUSTOMER ACKNOWLEDGMENT





# DEPOSIT TICKET

68-334A  
514 L

DANNY'S AUTO SALES



**FIRST VIRGINIA BANK**  
SOUTH CENTRAL  
SERVING BROOKNEAL, LYNCHBURG, MADISON HEIGHTS  
AMHERST, VIRGINIA 24521

DATE	DOLLARS	CENTS
12/14/84		
CURRENCY		
COIN	500	00
CHECKS LIST EACH SEPARATELY.		
1		
2		
3		
4		
5		
6		
7		
8		
9		
10		
11		
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		
26		
27		
TOTAL FROM OTHER SIDE OR ATTACHED LIST		
PLEASE RE-ENTER TOTAL HERE	TOTAL	500. 00

DUPLICATE

Checks and other items are received for deposit subject to the provisions of the Uniform Commercial Code or any applicable collection agreement.

2411

BAL BROT FORD

12-14	1984	26908.40
TO Hillcrest Garage		
FOR 12/14/84		
Deposits 810.00	TOTAL	26408.40
	THIS CHECK	757.00
	BALANCE	

2412

12/14	1984	
TO District Center		
FOR		
	TOTAL	
	THIS CHECK	110 -
	BALANCE	

2413

12/17	1984	
TO M.V.		
FOR Woodbridge 77ply		
	TOTAL	
	THIS CHECK	32. -
	BALANCE	27307.40

2414		BAL BRO'T FOR'D	27307.40
12/18 19 84			
TO United Va. Bank		DEPOSITS	
FOR Int on note			
		TOTAL	27307.40
		THIS CHECK	244 71
		BALANCE	<del>27062.69</del> 27552.11

2415			
12/18 19 84			
TO Corvette Center		DEPOSITS	
FOR			
		TOTAL	VOID
		THIS CHECK	
		BALANCE	

*Duplicate Check*

2416			
12/20 19 84			
TO Corvette Center		DEPOSITS	
FOR 84 Honda			
		TOTAL	
		THIS CHECK	8000.00
		BALANCE	27552.11

(DO NOT DEDUCT  
DUPLICATE CHECK)



2417

RAL  
BROT  
FOR'D

12/20/84		27552.11	
TO	<del>Harold Gage</del>	DEPOSITS	
FOR	<del>76</del> 79 Bond		
	TOTAL		
	THIS CHECK		<del>27552.11</del>
	BALANCE		

2418

12-20 1984			
TO	Cardinal Chevrolet	DEPOSITS	
FOR	V.W. Rabbit		
	TOTAL		27552.11
	THIS CHECK		2400.00
	BALANCE		29952.11

2419

12/20 1984			
TO	C&P Telephone Co	DEPOSITS	
FOR	(Transfer from Savings) 12/20/84		
	TOTAL		27952.11
	THIS CHECK		272.97
	BALANCE		28225.03



**FIRST VIRGINIA BANK**  
**SOUTH CENTRAL**  
Brookneal, Virginia

DATE 12/21/84  
OFFICE 21

**CHECKING  
CREDIT**

ACCOUNT NUMBER

WE CREDIT YOUR

25368842

AMOUNT

DESCRIPTION  
Transfer from 1-53974  
CODE  
151

\$2,000.00

TE 25 10/82

TOTAL

\$1,000.00

AUTHORITY  
[Signature]

CUSTOMER ACKNOWLEDGMENT

674



**FIRST VIRGINIA BANK**  
**SOUTH CENTRAL**  
Brookneal, Virginia

DATE 12/21/84  
OFFICE 21

**SAVINGS  
DEBIT**

ACCOUNT NUMBER

WE CHARGE YOUR

☒ STATEMENT/PASSBOOK ☐ GIANT ☐ CLUB

CHRISTMAS

21531236

AMOUNT

DESCRIPTION  
Transfer to 25368842  
CODE  
224

\$2,000.00

TOTAL

\$2,000.00

AUTHORITY  
[Signature]

CUSTOMER ACKNOWLEDGMENT

Daniel J. Cash

2420		BAL. BROT FOR	28225.03
12-18 1984			
TO	Hillcrest Garage	DEPOSITS	
FOR	Repairs 76 mercal		
	78 beise	TOTAL	28225.03
		THIS CHECK	793 10
		BALANCE	29018.13

2421			
12-20 1984			
TO	Division of Motor Vehicle	DEPOSITS	
FOR	Pennette Class		
	31 SUBAN	TOTAL	29018.13
		THIS CHECK	77.00
		BALANCE	29095.13

2422			
12/30 1984			
TO	David Cook	DEPOSITS	
FOR			
		TOTAL	29095.13
		THIS CHECK	130 -
		BALANCE	29225.13

2423		BAL BROT FORD	29225.13
12/20 1984			
TO <i>Fear Upheldy</i>		DEPOSITS	
FOR			
		TOTAL	29225.13
		THIS CHECK	180.00
		BALANCE	29405.13

2424			
12/26 1984			
TO <i>D.M.V.</i>		DEPOSITS	
FOR <i>BUTY ORE</i>			
		TOTAL	29405.13
		THIS CHECK	101.00
		BALANCE	29506.13

2425			
12/27 1984			
TO <i>Dominion Bank</i>		DEPOSITS	
FOR <i>CO. Calculator pay</i>			
		TOTAL	
		THIS CHECK	248.21
		BALANCE	29754.34

2426		BAL. BROT. FORD	29754.34
12/27 1984			
TO UNIFIRST CORP		DEPOSITS	
FOR Suppl			
		TOTAL	
		THIS CHECK	56.52
		BALANCE -	29780.86

2427			
12/27 1984			
TO Cash		DEPOSITS	
FOR			
		TOTAL	
		THIS CHECK	25.00
		BALANCE -	29805.86

2428			
12/27 1984			
TO P.M.V.		DEPOSITS	
FOR Panel			
		TOTAL	
		THIS CHECK	40 -
		BALANCE -	29845.86

# DEPOSIT TICKET

68-33421  
514

DANNY'S AUTO SALES



FIRST VIRGINIA BANK

SOUTH CENTRAL  
SERVING BROOKNEAL, LYNCHBURG, MADISON HEIGHTS  
AMHERST, VIRGINIA 24521

DATE	DOLLARS	CENTS
12/28/84	2300	00
CURRENCY		
COIN		
CHECKS LIST EACH SEPARATELY.		
1		
2		
3		
4		
5		
6		
7		
8		
9		
10		
11		
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		
26		
27		
TOTAL FROM OTHER SIDE OR ATTACHED LIST		
PLEASE RE-ENTER TOTAL HERE	TOTAL	2300.00

DUPLICATE

TOTAL FROM OTHER SIDE  
OR ATTACHED LIST

PLEASE  
RE-ENTER  
TOTAL HERE

TOTAL 2300.00

Checks and other items are received for deposit  
subject to the provisions of the Uniform Commercial  
Code or any applicable collection agreement.

9-83

6  
Duplicate  
Do NOT Deduct  
2429  
12/28 1984  
TO D.M.V.

BAL.  
BRO'T  
FORD

29845.86

FOR

TOTAL

THIS  
CHECK

BALANCE

150.00

29995.86

2430

12/28 1984

TO Corvette Center

FOR

TOTAL

THIS  
CHECK

BALANCE

2300.00

27695.86

500.00

28195.86

2431

12/28 1984

TO D.M.V.

FOR

TOTAL

THIS  
CHECK

BALANCE

28195.86

125.00

28320.86

2432		BAL BROT FORD	28320.86
12/28 19 84			
TO David Carter		DEPOSITS	
FOR			
		TOTAL	28320.86
		THIS CHECK	130.00
		BALANCE	28450.86

2433			
1-2 19 85			
TO Unifirst Corp		DEPOSITS	
FOR			
		TOTAL	28450.86
		THIS CHECK	8.06
		BALANCE	28458.92

2434			
1-2 19 85			
TO Lilla Woody		DEPOSITS	
FOR Co. Payt			
		TOTAL	
		THIS CHECK	
		BALANCE	

6

2435

1-2 1985

TO Pat Phillips

FOR

BAL BROT FORD 28458.92

DEPOSITS

TOTAL	28458.92
THIS CHECK	356.90
BALANCE	28815.82

2436

1-4 1985

TO Southern Maintenance

FOR Clean up Suppl.

BAL BROT FORD 28815.82

DEPOSITS

TOTAL	28815.82
THIS CHECK	8.11
BALANCE	28823.93

2437

1-4 1985

TO National Life

FOR

BAL BROT FORD 28850.17

DEPOSITS

TOTAL	
THIS CHECK	26.24
BALANCE	28850.17



2438		BAL BROTT FORD	28850.17
1-5 1985			
TO Tidewater Bank			
FOR Supper			
		TOTAL	28850.17
		THIS CHECK	89.00
		BALANCE	28939.17

2439			
1-5 1985			
TO Hillcrest Garage			
FOR 79 Buick			
		TOTAL	28939.17
		THIS CHECK	953.75
		BALANCE	29892.92

Return chkl - <757.00>

2440 - 29,135.92

OUTSTANDING <25820.00> R/C - 850.53

1-5 1985 - 30720.00

TO Paint Car			
1-4-84			
FOR			
		TOTAL	22,555.41
		THIS CHECK	130.00
		BALANCE	22,425.41

# DEPOSIT TICKET

68-33421  
514

DANNY'S AUTO SALES



**FIRST VIRGINIA BANK**  
SOUTH CENTRAL  
SERVING BROOKNEAL, LYNCHBURG, MADISON HEIGHTS  
AMHERST, VIRGINIA 24521

DATE 1-4-85

CURRENCY

COIN

CHECKS LIST EACH SEPARATELY.

	DOLLARS	CENTS
Envelope	200.	00
2 Rent (Housing)	214.	00
Just 79 money	2000.	00

DUPLICATE



TOTAL FROM OTHER SIDE  
OR ATTACHED LIST

PLEASE  
RE-ENTER  
TOTAL HERE

**TOTAL** 2414 00

Checks and other items are received for deposit  
subject to the provisions of the Uniform Commercial  
Code or any applicable collection agreement.

⑆05403342⑆ 2536 8842⑆

151



**FIRST VIRGINIA BANK**  
SOUTH CENTRAL  
Brookneal, Virginia

DATE 1/3/85  
OFFICE 31

ACCOUNT NUMBER

WE CHARGE YOUR

213363842

AMOUNT

**CHECKING  
DEBIT**

TE 24 10/82

DESCRIPTION

Return check # 2308

TOTAL

CODE  
11

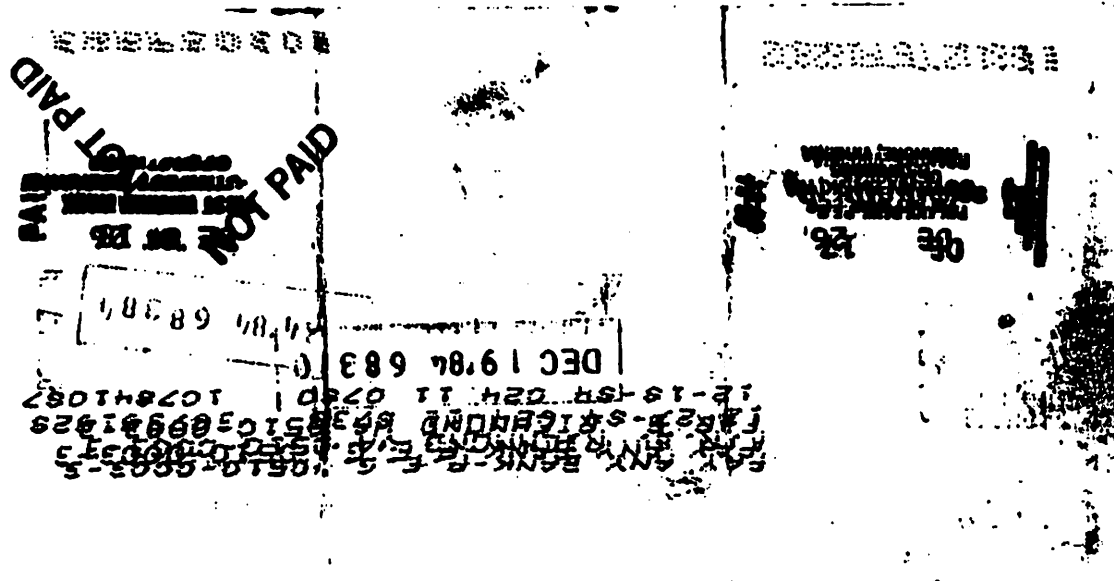
3555.59

AUTHORITY UPL

CUSTOMER ACKNOWLEDGMENT

8000.00  
147.00  
850.00  
400.00  
9788.00  
3080.00  
3555.00

25,820.00





**DANNY'S AUTO SALES**

2100 - 12TH STREET  
LYNCHBURG, VIRGINIA 24501

847-4234

2398

DEC 08

307790824

FIRST VA BANK SOUTH CENTRAL

INDEPENDENT FUN 88-33421

PAY TO THE ORDER OF

*HARRIS Tire Co.*

*Eight Hundred and Fifty*

UNLESS OTHERWISE NOTED

- ☐ ACCOUNT CLOSED
- ☐ FUNDS ATTACHED
- ☐ PAYMENT STOPPED
- ☐ UNCOLLECTED FUN DOLLARS
- ☐ OTHER

**FIRST VIRGINIA BANK**

SOUTH CENTRAL  
SERVING BRANCHES: LYNCHBURG, MADISON HEIGHTS  
AMHERST, VIRGINIA 24501



FOR DEPOSIT

*Paul F. J.*

⑈1278 9352 ⑈143301150⑈ ⑈86300000⑈ ⑈505800000⑈

PAY TO THE ORDER OF  
CENTRAL BANK  
LYNCHBURG, VA  
FOR DEPOSIT ONLY  
HARRIS TIRE CO. INC.  
051-0976-9

60-73  
CENTRAL BANK  
LYNCHBURG, VA

60584303  
HARRIS TIRE CO. INC.  
LYNCHBURG, VA

DEC 3'81 6031C

FOR DEPOSIT ONLY  
CENTRAL BANK  
LYNCHBURG, VA  
051-0976-9  
307790824

2441		BAL. BRO'T FORD	22685.41
1-4 1985			
TO <u>Appalachian Power Co.</u>		DEPOSITS	
1720 <u>Kahoon Dr.</u> 32.26			
FOR 2100 12 <sup>th</sup> 171.35			
2100 12 <sup>th</sup> OUT 58.89 LIGHT		TOTAL	
		THIS CHECK	262.50
		BALANCE	

2442			
1-4 1985			
TO <u>CITY OF Lynchburg</u>		DEPOSITS	
FOR <u>WATER Bill (Home)</u>			
2113 <u>Brentwood Rd.</u>			
		TOTAL	
		THIS CHECK	29.97
		BALANCE	

2443			
1-4 1985			
TO <u>Central Fidelity Bank</u>		DEPOSITS	
FOR <u>Payment for State</u>			
		TOTAL	
		THIS CHECK	352.46
		BALANCE	23,330.34

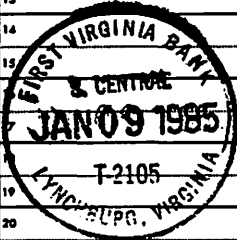
## DEPOSIT TICKET

68-33421  
514

DANNY'S AUTO SALES

FIRST VIRGINIA BANK  
SOUTH CENTRAL  
SERVING BROOKNEAL, LYNCHBURG, MADISON HEIGHTS  
AMHERST, VIRGINIA 24521

DATE	DOLLARS	CENTS
1-9-85		
CURRENCY		
COIN		
CHECKS LIST EACH SEPARATELY		
1 DEAN	101	26
2 HERZOG	90	00
3 WEST	132	00
4 MCRAOL	180	00
5 DEACON	234	00
6		
7		
8		
9		
10		
11		
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		
26		
27		
TOTAL FROM OTHER SIDE OR ATTACHED LIST		
PLEASE RE-ENTER TOTAL HERE	TOTAL	677.26



DUPLICATE

Checks and other items are received for deposit  
subject to the provisions of the Uniform Commercial  
Code or any applicable collection agreement.

2444

BAL.  
BROT  
FORD.

23,330.34

1-7

1985

TO *Coweth Center*

FOR

TOTAL

23,330.34

THIS  
CHECK

3000.00

BALANCE

26,330.34

2445

1-9

1985

TO *UNIT FIRST CORP.*

FOR

TOTAL

677.26

THIS  
CHECK

25653.08

BALANCE

18.46

2446

1/10

1985

TO *Billy Craft Honda*

FOR

TOTAL

THIS  
CHECK

1000.00

BALANCE

68-334 21  
514



DATE <u>1-11-85</u>		DOLLARS	CENTS
CURRENCY			
COIN			
CHECKS LIST EACH SEPARATELY.			
<u>Shelton 81 Total</u>		<u>1400.</u>	<u>00</u>
2			
3			
4			
5			
6			
7			
8			
9			
10			
11			
12			
13			
14			
15			
16			
17			
18			
19			
20			
21			
22			
23			
24			
25			
26			
27			
TOTAL FROM OTHER SIDE OR ATTACHED LIST			
TOTAL		<u>1400.</u>	<u>00</u>

Checks and other items are received for deposit subject to the provisions of the Uniform Commercial Code or any applicable collection agreement.

2447

BÄL  
PAGT  
FÜR

1-11-1985

TO Southern Bank

1/1/85

**FOR**

81 TOYOTA (she/row)

1400 00

### 3- Payments

**TOTAL**

**THIS  
CHECK**

594.	81
------	----

BALANCE

2448

1-11 1985

TO:

Thousand Tree

**FOR**

## TYPES

**TOTAL**

**THIS**

170-82

BALANCE

2449

1-11 1985

TO

Hilbert Group

FOR

R. L. L. L.

**TOTAL**

**THIS**

70 | 53

**BALANCE**

687

BAL.  
BROT  
FORD.

2450

1-11 1985

TO David Carter

FOR work week 1010

	TOTAL			
	THIS CHECK			
	BALANCE			

DEPOSITS

2451

1-11 1985

TO David Carter

FOR week work

	TOTAL			
	THIS CHECK			
	BALANCE			

DEPOSITS

2452

1-14 1985

TO CASH

FOR FIREWOOD SHOP

	TOTAL			
	THIS CHECK			
	BALANCE			

DEPOSITS



2453

BAL  
BROT  
FORD

1-14 19 85

TO *Frank Jones*

FOR *Refund on Repair on*

*77 Lincoln*

DEPOSITS

TOTAL

THIS  
CHECK

92 90

BALANCE

2454

1-15 19 85

TO *Fort Ave Acres*

FOR *Quit Fee*

DEPOSITS

TOTAL

THIS  
CHECK

23 00

BALANCE

2455

1-15 19 85

TO *D. M. V.*

FOR

DEPOSITS

TOTAL

THIS  
CHECK

BALANCE

68-6

2456

BAL.  
BROT  
FORD

1-15 85

TO D.M.V.

FOR

TOTAL	DEPOSITS
THIS CHECK	
BALANCE	

2457

1-19 85

TO Railroad Guild

FOR interest on money

1-17-85

TOTAL	DEPOSITS
72.67	
THIS CHECK	
300 -	
BALANCE	

from Sale of  
81 Volvo

2458

1-18 85

TO Gregory Carter

FOR

TOTAL	DEPOSITS
THIS CHECK	
BALANCE	

Refund of 11 D

ACCOUNT NUMBER

2536 8842

DOLLARS

07  
CENTS

FIRST VIRGINIA BANK

**FutureFund**

INDIVIDUAL RETIREMENT ACCOUNT

Reduce your taxes  
and save for retirement.  
Ask for details!



Substantial interest penalty required  
for early withdrawal

All items deposited subject to verification, collection and other actions noted on signature cards. T-118

690

2459

BAL.  
BROT  
FORD

1-19 1985

TO *Cardinal Check*

FOR *Duplicate Check*

DEPOSITS

TOTAL

THIS  
CHECK

*2400. 00*

BALANCE

2460

1-19 1985

TO *Elk Lodge 321*

FOR *ELKS Club*

DEPOSITS

TOTAL

THIS  
CHECK

*25. 00*

BALANCE

2461

19

TO

FOR

DEPOSITS

TOTAL

THIS  
CHECK

BALANCE



*A #2 Page 2*  
FIRST VIRGINIA BANK  
SOUTH CENTRAL

DANNYS AUTO SALES  
2100-12TH ST  
LYNCHBURG VA 24501

28

STATEMENT CLOSING DATE

10/26/84

ACCOUNT NUMBER

01 2536-8842

FOR INFORMATION ABOUT  
YOUR ACCOUNT, PLEASE CALL  
THIS NUMBER:

44 237-6296

SOCIAL SECURITY NO.

230-98-7376

SEE REVERSE SIDE FOR  
CHANGE OF ADDRESS FORM.  
PAGE 2

ACCOUNT SUMMARY

TYPE OF ACCOUNT	PREVIOUS BALANCE	ADDITIONS TO ACCOUNT	SUBTRACTIONS FROM ACCOUNT	NEW BALANCE
DESCRIPTION OF ACTIVITY.....AMOUNT..DATE.....BALANCE				
CHECK 2275 RF 3104139		2,400.00-	10-11	14.54-
*RETURN CHECK CHARGE		30.00-	10-11	44.54-
CHECK 2279 RF 3112595		35.00-	10-12	79.54-
CHECK 2276 RF 3112594		360.00-	10-12	439.54-
*RETURN CHECK CHARGE		45.00-	10-12	484.54-
DEPOSIT RF 3105785		658.92+	10-16	174.38
CHECK 2272 RF 3107823		57.67-	10-16	116.71-
CHECK 2268 RF 3107824		116.71-	10-16	.00
DEPOSIT RF 3103889		4,000.00+	10-19	4,000.00
CHECK RF 3028165		14.20-	10-19	3,985.80
CHECK 2283 RF 3028091		45.69-	10-19	3,940.11
CHECK 2290 RF 3028510		400.00-	10-19	3,540.11
CHECK 2289 RF 3028081		3,500.00-	10-19	40.11
*RETURN CHECK CHARGE		45.00-	10-22	4.89-
DEPOSIT RF 3107611		700.00+	10-23	695.11
CHECK 2295 RF 3049772		12.00-	10-23	683.11
CHECK 2293 RF 3050713		45.00-	10-23	638.11
CHECK 2297 RF 3050714		50.00-	10-23	588.11
CHECK 2294 RF 3052156		241.85-	10-23	346.26
*PRE-AUTHORIZED PAYMENT NATL LIFE OF VT INS PREM X		189.08-	10-24	157.18
*RETURN CHECK CHARGE		30.00-	10-24	127.18
DEPOSIT RF 3078105		7,900.00+	10-25	8,027.18
CHECK 2296 RF 3078506		600.00-	10-25	7,427.18
CHECK 2299 RF 3078507		2,600.00-	10-25	4,827.18
CHECK 2300 RF 3026581		27.89-	10-25	4,799.29
CHECK 2301 RF 3026570		100.00-	10-25	4,699.29
CHECK 2298 RF 3027956		214.15-	10-25	4,485.14
CHECK 2285 RF 3026678		3,000.00-	10-25	1,485.14
CHECK 2304 RF 3025703		14.50-	10-26	1,470.64
CHECK 2291 RF 3025650		47.24-	10-26	1,423.40
*INTEREST EARNED		9.78+	10-26	1,433.18
*RETURN CHECK CHARGE		15.00-	10-26	1,418.18

\*\*\*\*\*AVERAGE BALANCE FOR STATEMENT PERIOD IS

2,035.00

\*\*\*\*\*INTEREST EARNED YEAR-TO-DATE

203.62

TO CHANGE OR CORRECT YOUR NAME & ADDRESS PLEASE COMPLETE THIS FORM,  
CUT ALONG THE DOTTED LINE AND SEND OR BRING TO ANY BANK OFFICE.

NAME _____		PHONE _____
NEW ADDRESS _____	CITY _____	STATE _____ ZIP _____
<input type="checkbox"/> CHECKING ACCT. NO. _____	<input type="checkbox"/> CHRISTMAS SAVINGS _____	<input type="checkbox"/> INSTALLMENT LOAN NO. _____
<input type="checkbox"/> SAVINGS ACCOUNT NO. _____	<input type="checkbox"/> SOCIAL SECURITY NO. _____	<input type="checkbox"/> 53254 MASTER CHARGE NO. _____
<input type="checkbox"/> OTHER ACCOUNTS (SPECIFY) _____	<input type="checkbox"/> MORTGAGE LOAN NO. _____	<input type="checkbox"/> 4335 _____
SIGNATURE _____	DATE _____	<input type="checkbox"/> 433200 VISA CARD NO. _____

**BEFORE YOU START**—Please be sure you have entered in your checkbook all preauthorized and bank generated transactions that are identified by an "\*" on the front of the statement.

<b>1.</b>	Place a large (✓) beside the entries in your check register which correspond to the checks returned with this statement.		
<b>2.</b>	Write here the last balance shown on this statement.	\$	
<b>3.</b>	Check the deposits you have made during current period and enter in this space any which do not appear on this statement.	\$	
<b>4.</b>	Total of lines 2 and 3.	\$	
<b>5.</b>	List in 5a below any checks you have issued which are not returned with this statement, and enter total here.	\$	
<b>6.</b>	Subtract line 5 from line 4. This should be your present checkbook balance.	\$	\$

If no error is reported within 15 days your account will be considered correct. The maintenance of this account is subject to the terms, conditions and limitations appearing in the depositors contract.

HINTS FOR FINDING DIFFERENCES

- Enter in your checkbook any checks or deposits that have not been recorded.
- Re-check the arithmetic on the reconciliation and in your checkbook.
- Make sure the carry-over of the balance from page to page of your checkbook is correct.
- Compare the amount of deposits and checks recorded in your checkbook with the amounts posted on your statement.

When all else fails, bring all your records to your most convenient office for assistance.

### HINTS FOR FINDING DIFFERENCES

- Enter in your checkbook any checks or deposits that have not been recorded.
- Re-check the arithmetic on the reconciliation and in your checkbook.
- Make sure the carry-over of the balance from page to page of your checkbook is correct.
- Compare the amount of deposits and checks recorded in your checkbook with the amounts posted on your statement.

When all else fails, bring all your records to your most convenient office for assistance.

Enter in your checkbook any checks or deposits that have not been recorded.

Re-check the arithmetic on the reconciliation and in your checkbook.

Make sure the carry-over of the balance from page to page of your checkbook is correct.

Compare the amount of deposits and checks recorded in your checkbook with the amounts posted on your statement.

When all else fails, bring all your records to your most convenient office for assistance.

Re-check the arithmetic on the reconciliation and in your checkbook.

Make sure the carry-over of the balance from page to page of your checkbook is correct.

Compare the amount of deposits and checks recorded in your checkbook with the amounts posted on your statement.

When all else fails, bring all your records to your most convenient office for assistance.

Make sure the carry-over of the balance from page to page of your checkbook is correct.

Compare the amount of deposits and checks recorded in your checkbook with the amounts posted on your statement.

When all else fails, bring all your records to your most convenient office for assistance.

Compare the amount of deposits and checks recorded in your checkbook with the amounts posted on your statement.

When all else fails, bring all your records to your most convenient office for assistance.

**When all else fails, bring all your records to your most convenient office for assistance.**

[illegible]

TOTAL to be entered in 5 above.	\$	
---------------------------------	----	--

**FINANCE CHARGE CALCULATION:** There is no time period during which you may repay an advance without incurring a monthly finance charge. The finance charge shown on the front of your statement includes:

- 1. A monthly interest charge calculated on your high monthly balance at the "CAM Interest Rate" disclosed on the front of this statement. - Your high monthly balance is determined by identifying your highest balance during the current statement cycle and subtracting any billed finance charges and late charges (credits and payments are not subtracted).
- 2. A monthly credit life insurance premium calculated on your high monthly balance at the "Credit Life Rate" disclosed on the front of this statement, unless this premium has been waived by the bank.

1. A monthly interest charge calculated on your high monthly balance at the "CAM Interest Rate" disclosed on the front of this statement - Your high monthly balance is determined by identifying your highest balance during the current statement cycle and subtracting any billed finance charges and late charges (credits and payments are not subtracted).
2. A monthly credit life insurance premium calculated on your high monthly balance at the "Credit Life Rate" disclosed on the front of this statement, unless this premium has been waived by the bank.

**IN CASE OF ERRORS OR QUESTIONS ABOUT YOUR ELECTRONIC TRANSFERS**

Telephone us at the number listed on the front of this statement or write us at the return address on the statement envelope as soon as you can if you think your statement or any of your Automated Teller Machine (ATM) receipts are wrong or if you need more information about a transfer on the statement or receipt. We must hear from you no later than 60 days after we sent you the FIRST statement on which the error or problem appeared.

Telephone us at the number listed on the front of this statement or write us at the return address on the statement envelope as soon as you can if you think your statement or any of your Automated Teller Machine (ATM) receipts are wrong or if you need more information about a transfer on the statement or receipt. We must hear from you no later than 60 days after we sent you the FIRST statement on which the error or problem appeared.

1. Tell us your name and account number;
2. Describe the error or the transfer you are unsure about and explain as clearly as you can why you believe there is an error or why you need more information.
3. Tell us the dollar amount and date of the suspected error.

We will investigate your complaint and correct any error promptly. If we take more than 10 days to do this, we will recredit your account for the amount you think is in error, so that you will have use of the money during the time it takes us to complete our investigation. If, however, we ask you to put your oral inquiry in writing and we do not receive it within 10 business days, we may decide not to recredit your account.



FIRST VIRGINIA BANK  
SOUTH CENTRAL

*Deposited #2*  
*RS*

DANNYS AUTO SALES  
2100-12TH ST  
LYNCHBURG VA 24501

28

STATEMENT CLOSING DATE

10/26/84

ACCOUNT NUMBER

2536-8842

FOR INFORMATION ABOUT  
YOUR ACCOUNT, PLEASE CALL  
THIS NUMBER:

237-6296

SOCIAL SECURITY NO.

230-98-7376

SEE REVERSE SIDE FOR  
CHANGE OF ADDRESS FORM.  
PAGE 1

ACCOUNT SUMMARY

TYPE OF ACCOUNT	PREVIOUS BALANCE	ADDITIONS TO ACCOUNT	SUBTRACTIONS FROM ACCOUNT	NEW BALANCE
NOW	186.21-	31,790.16	30,185.27	1,418.18

SUMMARY OF ACTIVITY

NOW ACCOUNT 2536-8842

DESCRIPTION OF ACTIVITY.....AMOUNT.....DATE.....BALANCE

PREVIOUS BALANCE		09-26	186.21-
DEPOSIT RF 3068897	600.00+	09-27	413.79
CHECK 2245 RF 3069158	35.00-	09-27	378.79
CHECK RF 3069157	260.72-	09-27	118.07
CHECK 2251 RF 3025484	40.40-	09-27	77.67
*RETURN CHECK CHARGE	15.00-	09-27	62.67
CHECK 2253 RF 3103620	260.00-	09-28	197.33
*RETURN CHECK CHARGE	30.00-	09-28	227.33-
CHECK 2256 RF 3185933	8.06-	10-01	235.39-
CHECK 2254 RF 3185932	51.00-	10-01	286.39-
*RETURN CHECK CHARGE	45.00-	10-01	331.39-
DEPOSIT RF 3100653	3,260.20+	10-02	2,928.81
*PRE-AUTHORIZED PAYMENT			
AMER REP INS CO INS PREM	99.77-	10-02	2,829.04
CHECK 2257 RF 3098788	17.50-	10-02	2,811.54
CHECK 2247 RF 3098787	98.40-	10-02	2,713.14
CHECK 2260 RF 3098786	160.00-	10-02	2,553.14
CHECK 2262 RF 3100362	50.00-	10-02	2,503.14
CHECK 2219 RF 3055361	30.00-	10-02	2,473.14
CHECK 2227 RF 3055360	40.00-	10-02	2,433.14
CHECK 2259 RF 3054464	151.00-	10-02	2,282.14
CHECK 2258 RF 3054512	155.00-	10-02	2,127.14
CHECK 2265 RF 3040014	75.00-	10-03	2,052.14
CHECK 2263 RF 3039976	356.90-	10-03	1,695.24
DEPOSIT RF 3098203	12,000.00+	10-04	13,695.24
CHECK 2271 RF 3127275	2,300.00-	10-05	11,395.24
CHECK 2266 RF 3031965	18.46-	10-05	11,376.78
CHECK 2255 RF 3031363	24.20-	10-05	11,352.58
CHECK 2267 RF 3031986	37.07-	10-05	11,315.51
CHECK 2270 RF 3031782	492.27-	10-05	10,823.24
*RETURN CHECK CHARGE	15.00-	10-05	10,808.24
CHECK 2264 RF 3205835	11,000.00-	10-09	191.76-
*RETURN CHECK CHARGE	30.00-	10-09	221.76-
DEPOSIT RF 3123558	961.26+	10-10	739.50
CHECK 2273 RF 3069467	39.04-	10-10	700.46
*RETURN CHECK CHARGE	15.00-	10-10	685.46
DEPOSIT RF 3107448	1,700.00+	10-11	2,385.46

694

NAME		PHONE	
NEW ADDRESS		CITY	STATE ZIP
<input type="checkbox"/>	CHECKING ACCT. NO.	<input type="checkbox"/>	CHRISTMAS SAVINGS
<input type="checkbox"/>	SAVINGS ACCOUNT NO.	<input type="checkbox"/>	INSTALLMENT LOAN NO.
<input type="checkbox"/>	OTHER ACCOUNTS (SPECIFY)	<input type="checkbox"/>	SOCIAL SECURITY NO.
		<input type="checkbox"/>	MASTER CHARGE NO.
		<input type="checkbox"/>	MORTGAGE LOAN NO.
SIGNATURE		DATE	VISA CARD NO.

**BEFORE YOU START**—Please be sure you have entered in your checkbook all preauthorized and bank generated transactions that are identified by an "\*" on the front of the statement.

1.	Place a large (✓) beside the entries in your check register which correspond to the checks returned with this statement.		
2.	Write here the last balance shown on this statement.	\$	
3.	Check the deposits you have made during current period and enter in this space any which do not appear on this statement.	\$	
4.	Total of lines 2 and 3.	\$	
5.	List in 5a below any checks you have issued which are not returned with this statement, and enter total here.	\$	
6.	Subtract line 5 from line 4. This should be your present checkbook balance.	\$	

## HINTS FOR FINDING DIFFERENCES

**When all else fails, bring all your records to your most convenient office for assistance.**

<b>5a.</b>	Check Number	. Amount
------------	--------------	----------

	\$	
CHECK 5562	\$	
	\$	
CHECK 5521	\$	
	\$	
CHECK 5523	\$	
	\$	
CHECK 5520	\$	
	\$	
*RETURN CHECK	\$	
	\$	
*REF-ADH 17	\$	
	\$	
CHECK	\$	
	\$	
CHECK	\$	
AL to be entered in 5 above.	\$	

TOTAL to be entered in 5 above. \$

1. A monthly interest charge calculated on your high monthly balance at the "CAM Interest Rate" disclosed on the front of this statement. Your high monthly balance is determined by identifying your highest balance during the current statement cycle and subtracting any billed finance charges and late charges (credits and payments are not subtracted).
2. A monthly credit life insurance premium calculated on your high monthly balance at the "Credit Life Rate" disclosed on the front of this statement, unless this premium has been waived by the bank.

1. Tell us your name and account number;
2. Describe the error or the transfer you are unsure about and explain as clearly as you can why you believe there is an error or why you need more information.
3. Tell us the dollar amount and date of the suspected error.

We will investigate your complaint and correct any error promptly. If we take more than 10 days to do this, we will recredit your account for the amount you think is in error, so that you will have use of the money during the time it takes us to complete our investigation. If, however, we ask you to put your oral inquiry in writing and we do not receive it within 10 business days, we may decide not to recredit your account.



**FIRST VIRGINIA BANK  
SOUTH CENTRAL**

**DANNYS AUTO SALES  
2100-12TH ST  
LYNCHBURG VA 24501**

**41**

**STATEMENT CLOSING DATE**

**10/28/84**

**ACCOUNT NUMBER**

**01 2536-8842**

**FOR INFORMATION ABOUT  
YOUR ACCOUNT, PLEASE CALL  
THIS NUMBER:**

**75 237-6296**

**SOCIAL SECURITY NO.**

**230-98-7376**

**SEE REVERSE SIDE FOR  
CHANGE OF ADDRESS FORM.  
PAGE 1**

**ACCOUNT SUMMARY**

TYPE OF ACCOUNT	PREVIOUS BALANCE	ADDITIONS TO ACCOUNT	SUBTRACTIONS FROM ACCOUNT	NEW BALANCE
NOW	1,418.18	60,652.10	61,853.77	216.51

**SUMMARY OF ACTIVITY**

**.....NOW ACCOUNT 2536-8842.....**

**DESCRIPTION OF ACTIVITY.....AMOUNT.....DATE.....BALANCE**

<b>PREVIOUS BALANCE</b>			<b>10-28</b>	<b>1,418.18</b>
<b>DEPOSIT RF 3158991</b>		<b>12,890.00+</b>	<b>10-29</b>	<b>14,308.18</b>
<b>CHECK 2306 RF 3158334</b>		<b>9,400.00-</b>	<b>10-29</b>	<b>4,908.18</b>
<b>CHECK 2287 RF 3032387</b>		<b>144.03-</b>	<b>10-29</b>	<b>4,764.15</b>
<b>CHECK 2312 RF 3032824</b>		<b>400.00-</b>	<b>10-29</b>	<b>4,364.15</b>
<b>CHECK 2302 RF 3033590</b>		<b>1,700.00-</b>	<b>10-29</b>	<b>2,664.15</b>
<b>*RETURN CHECK CHARGE</b>		<b>15.00-</b>	<b>10-29</b>	<b>2,649.15</b>
<b>CHECK 2203 RF 3097347</b>		<b>210.11-</b>	<b>10-30</b>	<b>2,439.04</b>
<b>CHECK 2324 RF 3096235</b>		<b>550.00-</b>	<b>10-30</b>	<b>1,889.04</b>
<b>CHECK 2308 RF 3048665</b>		<b>10.00-</b>	<b>10-30</b>	<b>1,679.04</b>
<b>CHECK 2313 RF 3048664</b>		<b>20.00-</b>	<b>10-30</b>	<b>1,659.04</b>
<b>CHECK 2305 RF 3050010</b>		<b>94.46-</b>	<b>10-30</b>	<b>1,564.58</b>
<b>CHECK 2318 RF 3048627</b>		<b>100.00-</b>	<b>10-30</b>	<b>1,464.58</b>
<b>CHECK 2319 RF 3048528</b>		<b>130.00-</b>	<b>10-30</b>	<b>1,334.58</b>
<b>CHECK 2317 RF 3048612</b>		<b>200.00-</b>	<b>10-30</b>	<b>1,134.58</b>
<b>CHECK 2314 RF 3049047</b>		<b>250.00-</b>	<b>10-30</b>	<b>884.58</b>
<b>CHECK 2315 RF 3048555</b>		<b>350.00-</b>	<b>10-30</b>	<b>534.58</b>
<b>*RETURN CHECK CHARGE</b>		<b>45.00-</b>	<b>10-30</b>	<b>489.58</b>
<b>DEPOSIT RF 3083031</b>		<b>6,830.00+</b>	<b>10-31</b>	<b>7,319.58</b>
<b>CHECK 2323 RF 3081141</b>		<b>30.00-</b>	<b>10-31</b>	<b>7,289.58</b>
<b>CHECK 2327 RF 3083000</b>		<b>1,581.08-</b>	<b>10-31</b>	<b>5,708.50</b>
<b>CHECK 2322 RF 3034022</b>		<b>26.00-</b>	<b>10-31</b>	<b>5,682.50</b>
<b>CHECK 2303 RF 3034090</b>		<b>31.80-</b>	<b>10-31</b>	<b>5,650.70</b>
<b>CHECK 2325 RF 3034034</b>		<b>100.00-</b>	<b>10-31</b>	<b>5,550.70</b>
<b>CHECK 2320 RF 3034104</b>		<b>4,000.00-</b>	<b>10-31</b>	<b>1,550.70</b>
<b>DEPOSIT RF 3088449</b>		<b>5,435.00+</b>	<b>11-01</b>	<b>6,985.70</b>
<b>CHECK 2309 RF 3030555</b>		<b>84.65-</b>	<b>11-01</b>	<b>6,901.05</b>
<b>*PRE-AUTHORIZED PAYMENT</b>				
<b>AMER REP INS CO INS PREM</b>		<b>99.77-</b>	<b>11-02</b>	<b>6,801.28</b>
<b>DEPOSIT RF 3125246</b>		<b>6,450.64+</b>	<b>11-06</b>	<b>13,251.92</b>
<b>DEPOSIT ADJUSTMENT-RTN ITEM</b>		<b>2,767.00-</b>	<b>11-06</b>	<b>10,484.92</b>
<b>RF 3124626</b>				
<b>CHECK 2341 RF 3088003</b>		<b>38.90-</b>	<b>11-07</b>	<b>10,446.02</b>
<b>CHECK 2337 RF 3088004</b>	<b>696</b>	<b>57.50-</b>	<b>11-07</b>	<b>10,388.52</b>
<b>CHECK 2340 RF 3088001</b>		<b>117.70-</b>	<b>11-07</b>	<b>10,270.82</b>
<b>CHECK 2338 RF 3088000</b>		<b>271.29-</b>	<b>11-07</b>	<b>9,999.53</b>
<b>CHECK 2339 RF 3088002</b>		<b>1,077.00-</b>	<b>11-07</b>	<b>8,922.53</b>







FIRST VIRGINIA BANK  
SOUTH CENTRAL

DANNYS AUTO SALES  
2100-12TH ST  
LYNCHBURG VA 24501

41

STATEMENT CLOSING DATE

11/26/84

ACCOUNT NUMBER

01 2536-8842

FOR INFORMATION ABOUT  
YOUR ACCOUNT, PLEASE CALL  
THIS NUMBER:

75 237-6296

SOCIAL SECURITY NO.

230-98-7376

SEE REVERSE SIDE FOR  
CHANGE OF ADDRESS FORM.  
PAGE 2

ACCOUNT SUMMARY

TYPE OF ACCOUNT	PREVIOUS BALANCE	ADDITIONS TO ACCOUNT	SUBTRACTIONS FROM ACCOUNT	NEW BALANCE
DESCRIPTION OF ACTIVITY.....AMOUNT..DATE.....BALANCE				
CHECK 2345	RF 3087942	20.00-	11-07	8,902.53
CHECK 2332	RF 3041420	885.00-	11-07	8,017.53
CHECK 2347	RF 3041445	2,500.00-	11-07	5,517.53
CHECK 2346	RF 3039995	3,515.00-	11-07	2,002.53
DEPOSIT	RF 3097702	2,060.00+	11-08	4,062.53
DEPOSIT	RF 3097737	2,765.00+	11-08	6,827.53
DEPOSIT	RF 3097741	6,825.26+	11-08	13,652.79
CHECK 2326	RF 3039147	21.58-	11-08	13,631.21
CHECK 2349	RF 3038809	800.00-	11-08	12,831.21
CHECK 2348	RF 3038612	1,400.00-	11-08	11,431.21
CHECK 2351	RF 3038663	4,000.00-	11-08	7,431.21
DEPOSIT	RF 3113288	4,451.00+	11-09	11,882.21
CHECK	RF 3113358	700.00-	11-09	11,182.21
CHECK 2334	RF 3034436	44.98-	11-09	11,137.23
CHECK 2274	RF 3035531	53.18-	11-09	11,084.05
CHECK 2333	RF 3034231	75.00-	11-09	11,009.05
CHECK 2343	RF 3034916	103.22-	11-09	10,905.83
CHECK 2342	RF 3035494	117.75-	11-09	10,788.08
CHECK 2336	RF 3035041	356.90-	11-09	10,431.18
CHECK 2329	RF 3034772	468.83-	11-09	9,962.35
CHECK 2330	RF 3034254	566.50-	11-09	9,395.85
CHECK 2352	RF 3033765	4,200.00-	11-09	5,195.85
*PRE-AUTHORIZED PAYMENT				
NATL LIFE OF VT INS PREM		192.53-	11-13	5,003.32
CHECK 2331	RF 3129246	1,700.00-	11-13	3,303.32
CHECK 2344	RF 3043715	49.00-	11-13	3,254.32
CHECK 2310	RF 3043956	1,200.00-	11-13	2,054.32
*RETURN CHECK CHARGE		15.00-	11-13	2,039.32
CHECK 2358	RF 3124205	20.00-	11-14	2,019.32
CHECK	RF 3073221	14.20-	11-14	2,005.12
CHECK 2357	RF 3073824	36.60-	11-14	1,968.52
CHECK 2355	RF 3070441	252.90-	11-14	1,715.62
CHECK 2354	RF 3075205	300.00-	11-14	1,415.62
*RETURN CHECK CHARGE		15.00-	11-14	1,400.62
DEPOSIT	RF 3103640	5,350.00+	11-15	6,750.62
CHECK 2371	RF 3105485	500.00-	11-15	6,250.62
CHECK 2316	RF 3041942	15.00-	11-15	6,235.62
CHECK 2363	RF 3042148	250.00-	11-15	5,985.62
CHECK 2362	RF 3040707	475.00-	11-15	5,510.62
CHECK 2361	RF 3042076	500.00-	11-15	5,010.62
CHECK 2364	RF 3034055	41.90-	11-16	4,968.72
CHECK 2367	RF 3034054	92.80-	11-16	4,875.92
CHECK 2365	RF 3033752	109.20-	11-16	4,766.72

NAME		PHONE	
NEW ADDRESS		CITY	STATE ZIP
<input type="checkbox"/>	CHECKING ACCT. NO.	<input type="checkbox"/>	CHRISTMAS SAVINGS
<input type="checkbox"/>	SAVINGS ACCOUNT NO.	<input type="checkbox"/>	INSTALLMENT LOAN NO.
<input type="checkbox"/>	OTHER ACCOUNTS (SPECIFY)	<input type="checkbox"/>	SOCIAL SECURITY NO.
		<input type="checkbox"/>	MASTER CHARGE NO.
		<input type="checkbox"/>	MORTGAGE LOAN NO.
SIGNATURE		DATE	
		VISA CARD NO.	

**BEFORE YOU START**—Please be sure you have entered in your checkbook all preauthorized and bank generated transactions that are identified by an "\*" on the front of the statement.

1.	Place a large (✓) beside the entries in your check register which correspond to the checks returned with this statement.		
2.	Write here the last balance shown on this statement.	\$	
3.	Check the deposits you have made during current period and enter in this space any which do not appear on this statement.	\$	
4.	Total of lines 2 and 3.	\$	
5.	List in 5a below any checks you have issued which are not returned with this statement, and enter total here.	\$	
6.	Subtract line 5 from line 4. This should be your present checkbook balance.	\$	

When all else fails, bring all your records to your most convenient office for assistance.

**5a.**

[illegible]

TOTAL to be entered in 5 above. \$

• We will investigate your complaint and correct any error promptly. If we take more than 10 days to do this, we will recredit your account for the amount you think is in error, so that you will have use of the money during the time it takes us to complete our investigation. If, however, we ask you to put your oral inquiry in writing and we do not receive it within 10 business days, we may decide not to recredit your account.



FIRST VIRGINIA BANK  
SOUTH CENTRAL

STATEMENT CLOSING DATE

11/26/84

ACCOUNT NUMBER

01 2536-8842

FOR INFORMATION ABOUT  
YOUR ACCOUNT, PLEASE CALL  
THIS NUMBER:

75 237-6296

SOCIAL SECURITY NO.

230-98-7376

DANNYS AUTO SALES  
2100-12TH ST  
LYNCHBURG VA 24501

41

SEE REVERSE SIDE FOR  
CHANGE OF ADDRESS FORM.

PAGE 3

ACCOUNT SUMMARY

TYPE OF ACCOUNT	PREVIOUS BALANCE	ADDITIONS TO ACCOUNT	SUBTRACTIONS FROM ACCOUNT	NEW BALANCE
DESCRIPTION OF ACTIVITY.....AMOUNT..DATE.....BALANCE				
*RETURN CHECK CHARGE		15.00-	11-16	4,751.72
CHECK 2353 RF 3039718		54.19-	11-19	4,697.53
CHECK 2350 RF 3039719		84.15-	11-19	4,613.38
CHECK 2369 RF 3040225		2,900.00-	11-19	1,713.38
DEPOSIT RF 3098273		3,770.00+	11-20	5,483.38
CHECK 2335 RF 3048658		8.06-	11-20	5,475.32
CHECK 2370 RF 3048189		15.89-	11-20	5,459.43
CHECK 2368 RF 3048191		28.30-	11-20	5,431.13
CHECK 2360 RF 3048190		39.27-	11-20	5,391.86
CHECK 2372 RF 3047429		144.03-	11-20	5,247.83
CHECK 2373 RF 3048263		225.00-	11-20	5,022.83
CHECK 2374 RF 3047374		225.00-	11-20	4,797.83
DEPOSIT RF 3094208		3,809.33+	11-21	8,607.16
CHECK 2375 RF 3096801		20.00-	11-21	8,587.16
CHECK RF 3093857 #2367		8,200.00-	11-21	387.16
*RETURN CHECK CHARGE		30.00-	11-21	357.16
CHECK 2378 RF 3109459		100.00-	11-23	257.16
CHECK 2379 RF 3036451		26.52-	11-23	230.64
*RETURN CHECK CHARGE		15.00-	11-23	215.64
*INTEREST EARNED		15.87+	11-26	231.51
*RETURN CHECK CHARGE		15.00-	11-26	216.51

\*\*\*\*\*AVERAGE BALANCE FOR STATEMENT PERIOD IS

3,804.53

\*\*\*\*\*INTEREST EARNED YEAR-TO-DATE

219.49

*b change  
© 1500*

TO CHANGE OR CORRECT YOUR NAME & ADDRESS PLEASE COMPLETE THIS FORM,  
CUT ALONG THE DOTTED LINE AND SEND OR BRING TO ANY BANK OFFICE.

NAME		PHONE	
NEW ADDRESS		CITY	STATE ZIP
<input type="checkbox"/> CHECKING ACCT. NO.	<input type="checkbox"/> CHRISTMAS SAVINGS	<input type="checkbox"/> INSTALLMENT LOAN NO.	
<input type="checkbox"/> SAVINGS ACCOUNT NO.	<input type="checkbox"/> SOCIAL SECURITY NO.	<input type="checkbox"/> 53254	MASTER CHARGE NO.
<input type="checkbox"/> OTHER ACCOUNTS (SPECIFY)	<input type="checkbox"/> MORTGAGE LOAN NO.	<input type="checkbox"/> 4335	
SIGNATURE		DATE	<input type="checkbox"/> 433200 VISA CARD NO.

**BEFORE YOU START**—Please be sure you have entered in your checkbook all preauthorized and bank generated transactions that are identified by an "\*" on the front of the statement.

1. Place a large (✓) beside the entries in your check register which correspond to the checks returned with this statement.		
2. Write here the last balance shown on this statement.	\$	
3. Check the deposits you have made during current period and enter in this space any which do not appear on this statement.	\$	
4. Total of lines 2 and 3.	\$	
5. List in 5a below any checks you have issued which are not returned with this statement, and enter total here.	\$	
6. Subtract line 5 from line 4. This should be your present checkbook balance.	\$	

[illegible]

TOTAL to be entered in 5 above. \$





*A154*  
*RS*

FIRST VIRGINIA BANK  
SOUTH CENTRAL

DANNYS AUTO SALES  
2100-12TH ST  
LYNCHBURG VA 24501

28

STATEMENT CLOSING DATE

12/26/84

ACCOUNT NUMBER

01 2536-8842

FOR INFORMATION ABOUT  
YOUR ACCOUNT, PLEASE CALL  
THIS NUMBER:

27 237-6296

SOCIAL SECURITY NO.

230-98-7376

SEE REVERSE SIDE FOR  
CHANGE OF ADDRESS FORM.

PAGE 1

ACCOUNT SUMMARY

TYPE OF ACCOUNT	PREVIOUS BALANCE	ADDITIONS TO ACCOUNT	SUBTRACTIONS FROM ACCOUNT	NEW BALANCE
NOW	216.51	11,850.00	11,620.32	446.19

SUMMARY OF ACTIVITY

.....NCW ACCUNT 2536-8842.....

DESCRIPTION OF ACTIVITY.....AMOUNT.....DATE.....BALANCE

PREVIOUS BALANCE		11-26	216.51
DEPOSIT RF 3094419	5,450.00+	11-27	5,666.51
CHECK 2395 RF 3094416	1,581.08-	11-27	4,085.43
CHECK 2385 RF 3048714	31.55-	11-27	4,053.88
CHECK 2384 RF 3048867	32.06-	11-27	4,021.82
CHECK 2382 RF 3049119	47.84-	11-27	3,973.98
CHECK 2356 RF 3049508	70.00-	11-27	3,903.98
CHECK 2387 RF 3049914	71.00-	11-27	3,832.98
CHECK 2388 RF 3049983	150.00-	11-27	3,682.98
CHECK 2383 RF 3048567	225.63-	11-27	3,457.35
CHECK 2386 RF 3049767	1,698.97-	11-27	1,758.38
*RETURN CHECK CHARGE	15.00-	11-27	1,743.38
CHECK 2366 RF 3074232	4,900.00-	11-28	3,156.62-
*RETURN CHECK CHARGE	75.00-	11-28	3,231.62-
DEPOSIT RF 3102423	3,900.00+	12-05	668.38
CHECK 2377 RF 3102565	32.22-	12-05	636.16
CHECK 2389 RF 3102560	48.22-	12-05	587.94
CHECK 2404 RF 3102564	56.00-	12-05	531.94
CHECK 2402 RF 3102559	66.29-	12-05	465.65
CHECK 2403 RF 3102561	81.38-	12-05	384.27
CHECK 2401 RF 3102562	97.51-	12-05	286.76
CHECK 2400 RF 3102563	180.00-	12-05	106.76
CHECK 2396 RF 3048338	18.50-	12-05	88.26
CHECK 2407 RF 3048378	53.45-	12-05	34.81
*RETURN CHECK CHARGE	60.00-	12-05	25.19-
*RETURN CHECK CHARGE	15.00-	12-06	40.19-
CHECK 2397 RF 3125367	18.46-	12-07	58.65-
*CHARGE FOR CHECKS PRINTED			
CHARGES FOR CHECKS PRINTED	3.48-	12-12	62.13-
DEPOSIT RF 3103496	500.00+	12-14	437.87
CHECK RF 3103638	456.71-	12-14	18.84-
*RETURN CHECK CHARGE	15.00-	12-17	33.84-
CHECK 2410 RF 3110375	105.95-	12-18	139.79-
*RETURN CHECK CHARGE	45.00-	12-18	184.79-
*RETURN CHECK CHARGE	15.00-	12-19	199.79-
DEPOSIT RF 3109213	2,000.00+	12-21	1,800.21
CHECK 2420 RF 3027725	793.10-	12-21	1,007.11

702

flow-sang

NAME		PHONE	
NEW ADDRESS		CITY	STATE ZIP
<input type="checkbox"/>	CHECKING ACCT. NO.	<input type="checkbox"/> CHRISTMAS SAVINGS	<input type="checkbox"/> INSTALLMENT LOAN NO.
<input type="checkbox"/>	SAVINGS ACCOUNT NO.	<input type="checkbox"/> SOCIAL SECURITY NO.	<input type="checkbox"/> 53254 MASTER CHARGE NO.
<input type="checkbox"/>	OTHER ACCOUNTS (SPECIFY)	<input type="checkbox"/> MORTGAGE LOAN NO.	<input type="checkbox"/> 4335
SIGNATURE		DATE	<input type="checkbox"/> 433200 VISA CARD NO.

**BEFORE YOU START**—Please be sure you have entered in your checkbook all preauthorized and bank generated transactions that are identified by an "\*" on the front of the statement.

<b>1.</b>	Place a large (✓) beside the entries in your check register which correspond to the checks returned with this statement.		
<b>2.</b>	Write here the last balance shown on this statement.	\$	
<b>3.</b>	Check the deposits you have made during current period and enter in this space any which do not appear on this statement.	\$	
<b>4.</b>	Total of lines 2 and 3.	\$	
<b>5.</b>	List in 5a below any checks you have issued which are not returned with this statement, and enter total here.	\$	
<b>6.</b>	Subtract line 5 from line 4. This should be your present checkbook balance.	\$	

**When all else fails, bring all your records to your most convenient office for assistance.**

**5a.**

[illegible]

We will investigate your complaint and correct any error promptly. If we take more than 10 days to do this, we will recredit your account for the amount you think is in error, so that you will have use of the money during the time it takes us to complete our investigation. If, however, we ask you to put your oral inquiry in writing and we do not receive it within 10 business days, we may decide not to recredit your account.



808-2A  
D's #A

FIRST VIRGINIA BANK  
SOUTH CENTRAL

DANNYS AUTO SALES  
2100-12TH ST  
LYNCHBURG VA 24501

28

STATEMENT CLOSING DATE

12/26/84

ACCOUNT NUMBER

01 2536-8842

FOR INFORMATION ABOUT  
YOUR ACCOUNT, PLEASE CALL  
THIS NUMBER:

27 237-6296

SOCIAL SECURITY NO.

230-98-7376

SEE REVERSE SIDE FOR  
CHANGE OF ADDRESS FORM.  
PAGE 2

ACCOUNT SUMMARY

TYPE OF ACCOUNT	PREVIOUS BALANCE	ADDITIONS TO ACCOUNT	SUBTRACTIONS FROM ACCOUNT	NEW BALANCE
DESCRIPTION OF ACTIVITY.....				AMOUNT..DATE.....BALANCE
CHECK 2417 RF 3041912		121.00-	12-24	886.11
CHECK 2419 RF 3041986		272.92-	12-24	613.19
CHECK 2413 RF 3051230		32.00-	12-24	581.19
CHECK 2422 RF 3051087		130.00-	12-26	451.19
*SERVICE CHARGE		5.00-	12-26	446.19

\*\*\*\*\*AVERAGE BALANCE FOR STATEMENT PERIOD IS 570.05

\*\*\*\*\*INTEREST EARNED YEAR-TO-DATE 219.49

NEW CHARGES EFFECTIVE JAN. 1, 1985. AVERAGE  
MONTHLY BALANCE \$1000 OR MORE NO CHARGES, LESS THAN  
\$1000, \$5.25. ACCOUNTS WITH AN AVERAGE MONTHLY  
BALANCE OF \$750 OR MORE EARN 5 1/4% INTEREST.



NAME _____		PHONE _____	
NEW ADDRESS _____		CITY _____	
<input type="checkbox"/> _____	<input type="checkbox"/> CHRISTMAS SAVINGS	Def #4 Rsu	
<input type="checkbox"/> CHECKING ACCT. NO.	<input type="checkbox"/> _____		
<input type="checkbox"/> SAVINGS ACCOUNT NO.	<input type="checkbox"/> SOCIAL SECURITY NO.		
<input type="checkbox"/> OTHER ACCOUNTS (SPECIFY) _____	<input type="checkbox"/> MORTGAGE LOAN NO.	MASTER CHARGE NO.	
		4335	
SIGNATURE _____		DATE _____	
		433200	
		VISA CARD NO.	

**BEFORE YOU START**—Please be sure you have entered in your checkbook all preauthorized and bank generated transactions that are identified by an "\*" on the front of the statement.

1.	Place a large (✓) beside the entries in your check register which correspond to the checks returned with this statement.		
2.	Write here the last balance shown on this statement.	\$	
3.	Check the deposits you have made during current period and enter in this space any which do not appear on this statement.	\$	
4.	Total of lines 2 and 3.	\$	
5.	List in 5a below any checks you have issued which are not returned with this statement, and enter total here.	\$	
6.	Subtract line 5 from line 4. This should be your present checkbook balance.	\$	

[illegible]

705

Defendant's  
Exhibit 5  
~~75~~

56

**FIRST VIRGINIA BANK  
SOUTH CENTRAL**

DANNY'S AUTO SALES  
2100-12TH ST  
LYNCHBURG VA 24501

28

STATEMENT CLOSING DATE

01/25/85

ACCOUNT NUMBER

01 2536-8842

B. ACCOUNT TYPE

C. ACCOUNT TYPE

D. ACCOUNT TYPE

36 237-6296

SOCIAL SECURITY NO.

230-98-7278

PAGE 2

## ACCOUNT SUMMARY

DESCRIPTION OF ACTIVITY	AMOUNT	DATE	BALANCE
CHECK 2442 RF 3029406	29.97	01-11	1,772.57
CHECK 2431 RF 3031037	188.00	01-11	1,584.57
CHECK 2447 RF 3030405	994.01	01-14	989.76
RETURN CHECK CHARGE	15.00	01-14	974.76
CHECK 2449 RF 3031311	78.50	01-15	904.26
CHECK 2451 RF 3031450	120.00	01-15	784.26
CHECK 2448 RF 3032210	170.89	01-15	613.37
CHECK RF 3033727	14.20	01-16	599.17
CHECK 2453 RF 3034590	92.90	01-16	506.27
RETURN CHECK CHARGE	15.00	01-16	491.27
DEPOSIT RF 3033001	72.07	01-17	563.34
CHECK 2457 RF 3031594	26.24	01-17	537.10
CHECK 2458 RF 3032115	66.00	01-17	471.10
CHECK 2456 RF 3032114	362.00	01-17	109.10
CHECK 2452 RF 3028945	50.00	01-18	59.10
RETURN CHECK CHARGE	30.00	01-18	29.10
RETURN CHECK CHARGE	15.00	01-21	14.10
CHECK 2459 RF 3077047	2,400.00	01-22	2,385.90
DEPOSIT RF 3060530	75.00	01-23	2,310.90
RETURN CHECK CHARGE	15.00	01-23	2,325.90
SERVICE CHARGE	5.25	01-25	2,331.15
RETURN CHECK CHARGE	15.00	01-25	2,346.15

AVERAGE BALANCE FOR STATEMENT PERIOD IS

417.02

INTEREST EARNED YEAR-TO-DATE

00

\*\*\* REMINDER \*\*\*  
YOUR ACCOUNT IS OVERDRAWN  
PLEASE DEPOSIT FUNDS TO COVER THIS OVERDRAW

707

K 2

STATEMENT CLOSING DATE

FIRST VIRGINIA BANK  
SOUTH CENTRAL

01-25-85

01 2536-8842

36 237-6296

28 230-98-7376

SHINIS AUTO SALES  
200-12TH ST  
Lynchburg VA 24501

PAGE

ACCOUNT SUMMARY

PREVIOUS BALANCE	ADDITIONS TO ACCOUNT	DEDUCTIONS FROM ACCOUNT	NEW BALANCE
446.19	6,938.33	9,730.67	2,346.15

SUMMARY OF ACTIVITY

DESCRIPTION OF ACTIVITY	AMOUNT	DATE	BALANCE
PREVIOUS BALANCE		12-26	446.19
CHECK 2421 RF 3029792	75.20	12-27	370.99
RETURN CHECK CHARGE	15.00	12-27	355.99
DEPOSIT RF 3092302	2,300.00	12-28	2,655.99
CHECK 2427 RF 3022131	25.00	12-28	2,630.99
CHECK 2424 RF 3022153	101.00	12-28	2,529.99
CHECK 2412 RF 3022132	110.00	12-28	2,419.99
CHECK 2414 RF 3021284	244.71	12-28	2,175.28
RETURN CHECK CHARGE	15.00	12-28	2,160.28
CHECK 2426 RF 3033660	26.52	12-31	2,133.76
RETURN CHECK CHARGE	15.00	12-31	2,118.76
CHECK 2432 RF 3047110	130.00	01-02	1,988.76
CHECK 2423 RF 3047045	180.00	01-02	1,808.76
CHECK 2430 RF 3047726	500.00	01-02	1,308.76
PRE-AUTHORIZED PAYMENT			
NATL LIFE OF UT INS PREM	192.53	01-03	1,116.23
CHECK RF 3116924	850.59	01-03	265.64
CHECK 2428 RF 3039226	31.00	01-03	234.64
RETURN CHECK CHARGE	15.00	01-03	219.64
DEPOSIT RF 3118460	2,414.00	01-04	2,633.64
CHECK 2425 RF 3116728	248.21	01-04	2,385.43
CHECK RF 3032152	54.19	01-04	2,331.24
CHECK 2429 RF 3032378	150.00	01-04	2,181.24
CHECK 2435 RF 3033639	350.90	01-04	1,830.34
CHECK 2433 RF 3040985	8.00	01-07	1,822.34
CHECK 2439 RF 3039258	953.75	01-07	868.59
CHECK 2436 RF 3057153	8.11	01-08	860.48
CHECK 2438 RF 3056084	89.00	01-08	771.48
CHECK 2440 RF 3057139	130.00	01-08	641.48
CHECK 2441 RF 3058667	262.50	01-08	378.98
CHECK 2443 RF 3055347	352.40	01-08	26.58
DEPOSIT RF 3082637	677.20	01-04	693.78
RETURN CHECK CHARGE	30.00	01-04	663.78
PRE-AUTHORIZED PAYMENT			
NATL LIFE OF UT INS PREM	240.72	01-05	423.06
DEPOSIT RF 3089438	1,400.00	01-11	1,823.06
CHECK 2445 RF 3029695	18.40	01-11	1,804.66

708

101		BALANCE BROUGHT FORWARD		21,908.62
1/28 1985				
TO SAVAN BANK				
FOR Payment for 2106				
TULIP STREET				
TOTAL				21,908.62
AMOUNT THIS CHECK				299.08
BALANCE				21,609.54
102				
1/28 1985				
TO Kenneth Kennedy Linc-Mc				
FOR 80 Mary Magin				
TOTAL				21,609.54
AMOUNT THIS CHECK				3000.00
BALANCE				18,609.54
103				
1-28 1985				
TO Bomas Market				
FOR Pay on Account				
TOTAL				18,609.54
AMOUNT THIS CHECK				70.00
BALANCE				18,539.54

104		BALANCE BROUGHT FORWARD	18539. <del>08</del> 54
1/29 1985			
TO City Collector			
FOR 84 Business license		DEPOSITS	
TOTAL		✓ 18539	54 <del>08</del>
AMOUNT THIS CHECK		260.	59
BALANCE		✓ 18278.	95 <del>08</del>
105			
1/29 1985			
TO C & P Telephone Co.			
Phone 2100 12th St.		DEPOSITS	
FOR deposit 1/29/85		✓ 3200.	00
1980 Mercury margin			
TOTAL		21478.	93 <del>08</del>
AMOUNT THIS CHECK		213.	99
BALANCE		✓ 21264.	96 <del>08</del>
106			
1/29 1985			
TO Hillcoat Garage			
FOR Repair 64 Rolls Royce		DEPOSITS	
76 VW - 7.00		✓ 402.14	
79 Toyota - 7.00			
82 Honda 7.00			
TOTAL		✓ 21264.	96 <del>08</del>
AMOUNT THIS CHECK		423.	14
BALANCE		✓ 20841.	82 <del>08</del>

FOR CREDIT TO THE ACCOUNT OF

DATE 1/29 1985

ADDRESS \_\_\_\_\_

CITY \_\_\_\_\_

CURRENCY	COIN	LIST CHECKS SINGLE BY CHECK NUMBER
		1 <u>Check</u> <u>3200 00</u>
		2
		3
		4
		5
		6
		7
		8
		9
		10
		11
		12
		13
		14
		15
		16
		17
		18
		PLEASE ENTER TOTAL
		<u>3200 00</u>
		TOTAL ITEMS <u>1</u>

AMERICAN BANK STATIONERY CO. CNDT 6349

FOR CREDIT TO THE ACCOUNT OF

DATE 1/29 1985

ADDRESS \_\_\_\_\_

CITY \_\_\_\_\_

CURRENCY	COIN	LIST CHECKS SINGLE BY CHECK NUMBER
		1 <u>Check</u> <u>3200 00</u>
		2
		3
		4
		5
		6
		7
		8
		9
		10
		11
		12
		13
		14
		15
		16
		17
		18
		PLEASE ENTER TOTAL
		<u>3200 00</u>
		TOTAL ITEMS <u>1</u>

AMERICAN BANK STATIONERY CO. CNDT 6349

107		BALANCE BROUGHT FORWARD	20841. <del>82</del>
1/30 1985			
TO <i>Unifirst Corporation</i>			
FOR <i>Shop Supplies</i>		CHECKED ✓	
<i>(1981 CUTLASS 5/w)</i>			
<i>(James A. Downey)</i>			
TOTAL			2350. 00
			23191. <del>82</del>
AMOUNT THIS CHECK			8. 06
BALANCE			23183. <del>80</del>

108			
1/30 1985			
TO <i>Fort Avenue Auto</i>			
FOR <i>Oil and Fuel Truck</i>		CHECKED ✓	
TOTAL			28183. 76
AMOUNT THIS CHECK			20. 00
BALANCE			28163. <del>76</del>

109			
1/31 1985			
TO <i>First Va Bank</i>			
FOR <i>Cp. Room</i>		CHECKED ✓	
<i>20 Tolawado 3600</i>			
<i>81 Chevrolet 2200</i>			
TOTAL			5100. 00
			28963. 76
AMOUNT THIS CHECK			1581. 08
BALANCE			27382. 68







BALANCE  
BROUGHT  
FORWARD26682.<sup>68</sup>

110

1/31 1985

TO C + P Telephone Co.

FOR 2113 Berrut Bridge Rd.

DEPOSITS  
✓

TOTAL

26682.<sup>68</sup>

AMOUNT THIS CHECK

98. 64

BALANCE

26584.<sup>04</sup>

111

2/1 1985

TO Robert H. Cash

FOR Loan on 80 Tornado

DEPOSITS  
✓

TOTAL

26584.<sup>04</sup>

AMOUNT THIS CHECK

2500. 00

BALANCE

24084.<sup>04</sup>

112

2-1 1985

TO Pat Phillips

FOR Payment on  
2100 12th StreetDEPOSITS  
✓

TOTAL

24084.<sup>04</sup>

AMOUNT THIS CHECK

356. 90

BALANCE

23727. 14

Defendant's  
Exhibit 6  
B-6

715

COMMONWEALTH'S ATTORNEY  
MONTGOMERY COUNTY  
CHRISTIANSBURG, VIRGINIA 24073

J. PATRICK GRAYBEAL

PHILLIP E. KEITH  
ASSISTANT  
ROBERT C. VIAR, JR.  
ASSISTANT

P. O. BOX 38

AREA CODE 703  
TELEPHONE (382-1431)  
(382-4891)

Defendant's  
Exhibit 7  
RSM

May 23, 1984

N O T I C E

The statutory law and the decisions of the Supreme Court relating to prosecution for "bad checks" require that the Commonwealth prove a number of elements beyond a reasonable doubt. This means that the facts need to be fully discussed with the Commonwealth's Attorney or his Assistants before a warrant is secured.

If it is the desire of the victim to simply recover the amount of the check and/or associated costs, the case will not be treated as a criminal case by the Commonwealth's Attorney.

If it is your desire to prosecute the check writer for a criminal act, a prosecutor will be available to represent the Commonwealth in the trial of the case.

Based upon these guidelines, please be advised that the Commonwealth Attorney's office wishes to be of assistance to you in criminal matters.

The following checks cannot be prosecuted criminally:

1. Post dated checks
2. Endorsed checks
3. Two party checks
4. Checks for past due debts
5. Checks which have been held by the payee for payment by agreement
6. Checks where the passer cannot be identified or has not admitted passing the check
7. Checks received where the payee has agreed to accept bad checks in exchange for a service fee