

No. \_\_\_\_\_

IN THE  
SUPREME COURT OF THE  
UNITED STATES

CHARLIE RAY CARNEY -- PETITIONER

**VS.**

STATE OF VIRGINIA

A P E N D I X     T O  
P E T I T I O N     F O R     A     W R I T     O F  
C E R T I O R A R I     T O  
SUPREME COURT OF VIRGINIA

RESPECTFULLY SUBMITTED BY,

CHARLIE RAY CARNEY, #1008091  
Greensville Correctional Center  
901 CORRECTIONS WAY  
JARRATT, VA 23870

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VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF RICHMOND

CHARLIE RAY CARNEY,  
PLAINTIFF,

V.


Case Nos.: F-86-1530  
The Honorable C.N. Jenkins, Jr.

COMMONWEALTH OF VIRGINIA,  
RESPONDENT.

ORDER

Whereas the Petitioner has failed to show that the judgment was void due to extrinsic fraud or structural error, it is ORDERED that the Petitioner's Motion to Vacate is dismissed.

Date: 2 / 11 / 2018

  
The Honorable C.N. Jenkins, Jr.  
Judge, Circuit Court for the City of Richmond

A Copy  
Teste: EDWARD F. JEWETT, CLERK

By: 

**VIRGINIA:**

*In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Monday the 25th day of November, 2019.*

Charlie Ray Carney,

Appellant,

against

Record No. 190595

Circuit Court No. F-86-1530

Commonwealth of Virginia,

Appellee.

From the Circuit Court of the City of Richmond

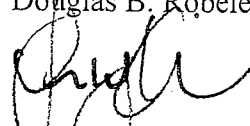
Upon review of the record in this case and consideration of the argument submitted in support of the granting of an appeal, the Court is of the opinion there is no reversible error in the judgment complained of. Accordingly, the Court refuses the petition for appeal.

A Copy,

Teste:

Douglas B. Robelen, Clerk

By:



Deputy Clerk

Public Inquiry

[HOME](#) | [LAST INQUIRY](#) | [LOGOUT](#)

## Case Information

SCV Record # <input type="text" value="190595"/>		
SCV Case Type <input type="text" value="Civil"/>	Lower Tribunal <input type="text" value="Richmond City"/>	Tribunal Case # <input type="text"/>
<b>Appellant Parties</b>		
<b>Appellant</b> CARNEY, CHARLIE RAY	<b>Alias</b>	<b>Alias Name</b>
<b>Attorney</b> CARNEY, CHARLIE RAY		
<b>Appellee Parties</b>		
<b>Appellee</b> COMMONWEALTH OF VIRGINIA	<b>Alias</b>	<b>Alias Name</b>
<b>Attorney</b> PETTIT, BROOKE ELIZABETH, (ESQ.)		
Petition Entry Date <input type="text" value="05-08-2019"/>	Certificate of Appeal Date <input type="text"/>	Record Received Date <input type="text" value="05-24-2019"/>

## Petition for Appeal

<b>Brief in Opposition</b> Received Date <input type="text"/>	<b>Amicus Curiae</b> Received Date <input type="text"/>
<b>Reply to Brief in Opposition</b> Received Date <input type="text"/>	
<b>Disposition Result</b> Disposition <input type="text" value="Refused"/> Disposition Date <input type="text" value="11-25-2019"/>	

<b>Petition for Rehearing</b>	<b>Amicus Curiae</b>
<b>Received Date</b> 12-09-2019	<b>Received Date</b>
<b>Result</b>	
Decision <input type="text" value="Rehearing Refused"/>	Decision Date <input type="text" value="02-14-2020"/>

**Appeal**

<b>Opening Brief</b>	<b>Appendix</b>
Received Date <input type="text"/>	Received Date <input type="text"/>
<b>Appellee Brief</b>	<b>Amicus Curiae</b>
Received Date	Received Date
<b>Reply Brief</b>	
Received Date <input type="text"/>	

<b>Disposition Result</b>		
Disposition Type <input type="text"/>	Disposition <input type="text"/>	Disposition Date <input type="text"/>
<input type="checkbox"/> Order <input type="checkbox"/> Opinion	<input type="checkbox"/> Published <input type="checkbox"/> Unpublished	

<b>Notice of Rehearing</b>
Received Date

<b>Petition for Rehearing</b>	<b>Amicus Curiae</b>
Received Date	Received Date
<b>Result</b>	
Decision <input type="text"/>	Decision Date <input type="text"/>

**Session Rehearing Granted**

<b>Answering Brief</b> <b>Received Date</b>	<b>Amicus Curiae</b> <b>Received Date</b>
<b>Disposition Result</b> Disposition <input type="text"/> Disposition Date <input type="text"/> <input type="checkbox"/> Order <input type="checkbox"/> Opinion	

**SCOTUS Remand**

<b>Opening Brief</b> Received Date <input type="text"/>	<b>Appendix</b> Received Date <input type="text"/>
<b>Response Brief</b> <b>Received Date</b>	<b>Amicus Curiae</b> <b>Received Date</b>
<b>Reply Brief</b> Received Date <input type="text"/>	
<b>Disposition Result</b> Disposition Type <input type="text"/> Disposition <input type="text"/> Disposition Date <input type="text"/> <input type="checkbox"/> Order <input type="checkbox"/> Opinion <input type="checkbox"/> Published <input type="checkbox"/> Unpublished	

**SCOTUS Remand Rehearing**

<b>Notice of Rehearing</b> <b>Received Date</b>	
<b>Petition for Rehearing</b> <b>Received Date</b>	<b>Amicus Curiae</b> <b>Received Date</b>
<b>Result</b> Decision <input type="text"/> Decision Date <input type="text"/>	

<b>Answering Brief</b>	<b>Amicus Curiae</b>
<b>Received Date</b>	<b>Received Date</b>

<b>Disposition Result</b>	
Disposition <input type="text"/>	Disposition Date <input type="text"/>
<input type="checkbox"/> Order <input type="checkbox"/> Opinion	



V I R G I N I A :

IN THE SUPREME COURT

CHARLIE RAY CARNEY,

APPELLANT,

v.

COMMONWEALTH OF VIRGINIA,

APPELLEE.

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RECORD NO.: \_\_\_\_\_

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M O T I O N   T O   O B T A I N   E V I D E N C E

---

COMES NOW the Appellant, Charlie Ray Carney, pro se, and in accordance with Rule 5:4, Rules of Supreme Court of Virginia, moves this Honorable Court to ORDER the Circuit Court of the City of Richmond to provide a copy of the court transcripts from the Appellant's trial of July 22, 1986.

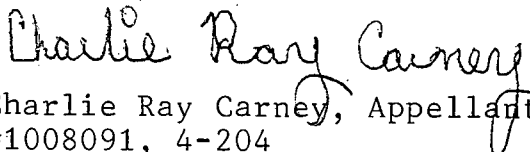
In support of this motion the Appellant respectfully presents the following;

1. On, or about, October 9, 2018 Appellant filed with the Circuit Court of the City of Richmond a "Motion to Vacate/Set Aside" pursuant to §§8.01-428 and 8.01-677, Code of Virginia, 1950, as amended. Appellant argued that a sentence for a conviction of attempted rape (F-86-1360) had been served, and that the Circuit Court had no authority or jurisdiction to revoke that sentence at a trial in 1993, and then resentence the Appellant for that same conviction.

2. On, or about January 3, 2018 the Commonwealth filed with the Circuit Court a "Commonwealth's Motion To Dismiss Petitioner's Motion To Vacate/Set Aside." Within this pleading the Commonwealth admitted to errors in the court records, but denied Appellant's claims of fraud and double jeopardy violations.
3. On, or about, January 15, 2019 the Appellant mailed to the Circuit Court a responsive pleading to the Commonwealth's Motion to Dismiss. Appellant outlined the many errors in the court records, pointed out the Commonwealth's concession as to errors in the record, and moved the Circuit Court for further proceedings in which he could obtain the necessary evidence to support his claims.
4. On February 11, 2019 the Circuit Court summarily dismissed the Appellant's Motion To Vacate without any further proceedings.
5. The Appellant respectfully submits to this Court that prior to the filing of his Motion to Vacate/Set Aside he did make every effort to obtain a copy of the trial transcripts from July 22, 1986, including the direction of a family member to go to the circuit court and make a Freedom Of Information Act request for the transcripts. Every attempt and request was ignored by the Circuit Court.
6. As the transcripts from Appellant's trial of July 22, 1986 are crucial, and central to, the assignments of error in the present appeal, and stand as evidence of fraud and error, this extraordinary measure is necessary.

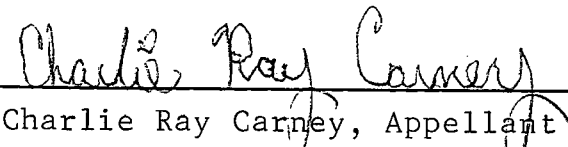
WHEREFORE, Appellant, Charlie Ray Carney, prays this Honorable Court will grant this Motion To Obtain Evidence and ORDER the Circuit Court of the City of Richmond to file, as part of the record to this Court, a copy of the trial transcripts in which the Appellant was a defendant, and which occurred on JULY 22, 1986 in the Circuit Court for the City of Richmond.

I pray for this,

  
Charlie Ray Carney, Appellant  
#1008091, 4-204  
Greensville Correctional Center  
901 Corrections Way  
Jarratt, VA 23870

C E R T I F I C A T E   O F   S E R V I C E

I, Charlie Ray Carney, hereby certify that on this 12 day of April, 2019, a true and correct copy of this Motion To Obtain Evidence was mailed by first-class postage to Brooke E. Petit, Assistant Commonwealth's Attorney, 400 North 9th Street, Richmond, VA 23219.

  
Charlie Ray Carney, Appellant

**VIRGINIA:**

*In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Tuesday the 7th day of May, 2019.*

Charlie Ray Carney, Appellant,

against Circuit Court No. F-86-1530

Commonwealth of Virginia, Appellee.

From the Circuit Court of the City of Richmond

On April 15, 2019, came the appellant, in proper person, and filed a "Motion to Obtain Evidence" in this case.

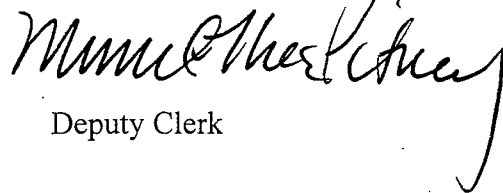
Upon consideration whereof, the Court denies the motion.

A Copy,

Teste:

Douglas B. Robelen, Clerk

By:

  
Deputy Clerk

**VIRGINIA:**

*In the Court of Appeals of Virginia on* Friday *the* 18th  
day of November, 1994.

Charley Ray Carney,

Appellant,

against

Record No. 0063-94-2  
Circuit Court Nos. F-86-1530, F-93-3216,  
F-93-3218, F-93-3220, F-93-3222 and  
F-93-3410

Commonwealth of Virginia,

Appellee.

From the Circuit Court of the City of Richmond  
Before Judge Barrow, Retired Judges Middleton and Williams\*

This petition for appeal is denied for the following  
reasons:

I. "On appeal, we review the evidence in the light most  
favorable to the Commonwealth, granting to it all reasonable  
inferences fairly deducible therefrom." Martin v. Commonwealth, 4 Va.  
App. 438, 443, 358 S.E.2d 415, 418 (1987).

"[G]enerally rape is not a continuous offense, but each act  
of intercourse constitutes a distinct and separate offense." Carter  
v. Commonwealth, 16 Va. App. 118, 127, 428 S.E.2d 34, 42 (1993).

Each act of forcible vaginal intercourse is a separate rape,  
and appellant was properly convicted and sentenced for all three  
offenses if "[t]he evidence as to each separate act of forcible  
intercourse was complete and sufficient to sustain a conviction  
of . . . rape without resort to the evidence necessary to prove either  
of the other rape charges." Id. at 130, 428 S.E.2d at 43 (citation  
omitted).

NOV 23 1994

APPELLANT'S EXHIBIT 3, Page 1

OFFICE OF THE PUBLIC DEFENDER APPENDIX F

The victim testified that appellant dragged her into the front seat of his car, told her he had a gun, and inserted his penis into her vagina. She testified that he withdrew his penis, turned her over, and inserted his penis again. He had her climb into the back seat where he again inserted his penis into her vagina. From this evidence, the trier of fact could reasonably have found three separate acts of penetration. Therefore, the evidence was sufficient to prove beyond a reasonable doubt that appellant committed rape in each of the three separate incidents.

II. "In the absence of evidence that late disclosure prejudiced the defense, or absent an objection and a trial court finding that the prosecutor deliberately violated his discovery duties, it is not an abuse of discretion for the trial court to refuse to exclude the challenged evidence." Moreno v. Commonwealth, 10 Va. App. 408, 420, 392 S.E.2d 836, 844 (1990)(citing Code § 19.2-265.4).

The prosecutor showed defense counsel the victim's shoe as soon as it was available. Defense counsel had the opportunity to view the shoe and a new photo before the trial began. The prosecutor stated that defense counsel had viewed most of the photos earlier in a smaller form. Therefore, there was no evidence that the late disclosure prejudiced the defense. Moreover, the trial judge did not find that the prosecutor deliberately violated his discovery duties. Therefore, the trial court did not abuse its discretion by refusing to exclude the challenged evidence.

III. The revocation of the suspension of a sentence is left to the discretion of the trial court. Slayton v. Commonwealth, 185 Va. 357, 365, 38 S.E.2d 479, 483 (1946). The trial court's findings

of fact and judgment as to an order of revocation are reversible only upon a clear showing of abuse of such discretion. Hamilton v. Commonwealth, 217 Va. 325, 327, 228 S.E.2d 555, 556 (1976).

Appellant has failed to demonstrate that the trial court abused its discretion in revoking the suspended sentence. The evidence established that appellant violated the conditions of suspension by his convictions. Moreover, the trial judge stated that he revoked appellant's suspended sentence not only because of the convictions, but also because of evidence in an earlier rape and abduction case. Thus, the record establishes that the court had sufficient cause to revoke the suspension of the sentence.

It is ordered that the Commonwealth recover of the appellant the costs in this Court, which costs shall include a fee of \$300 for services rendered by the Public Defender on this appeal, in addition to counsel's necessary direct out-of-pocket expenses, and the costs in the trial court.

Costs due the Commonwealth  
by appellant in Court of  
Appeals of Virginia:

Public Defender	\$300.00	plus costs and expenses
Filing fee	25.00	

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\*Retired Judges Thomas J. Middleton and Benjamin A. Williams, Jr. took part in the consideration of this case by designation pursuant to Code § 17-116.01.

A Copy,

Teste:

By:

Richard R. James, Clerk

*Mary K. Ring*  
Deputy Clerk

Virginia:

In the Circuit Court of the City of Richmond, John Marshall Courts Building

the 22nd day of July 19 86

COMMONWEALTH

vs Indictment for Abduction F-86-1360  
Indictment for Firearm/Felony F-86-1361

CHARLES RAY CARNEY, Dft.

The said defendant was this day led to the bar in the custody of the Sheriff of this City. He was represented by Attorney Cary Bowen, retained counsel, and the Commonwealth was represented by James C. Wicker, Jr. The defendant consented to having these cases tried simultaneously.

On motion of the Attorney for the Commonwealth, Indictment F-86-1360 was amended to charge attempted rape; and Indictment F-86-1361 was amended to charge using and displaying in a threatening manner, a firearm, during and in the commission of an attempted rape. Being arraigned on the amended Indictments, the defendant pleaded guilty as charged therein, after consultation with counsel. Whereupon the Court inquired of the defendant if he had been advised of and fully understood the significance of his pleas of guilty, to which inquiry the defendant answered in the affirmative, and the Court accepted said pleas of guilty. The evidence in each case having been summarized by the Attorney for the Commonwealth, and stipulated by the defendant, the Court finds the defendant guilty as charged in each of the amended Indictments, and in accordance with a plea agreement filed herein, the Court doth ascertain his term of confinement in the Penitentiary at Eight Years in the case of F-86-1360; and at Two Years in the Penitentiary in the case of F-86-1361.

Original Order Book

208 1144



Whereupon it being demanded of the said defendant if anything for himself he had or knew to say why the Court should not now proceed to pronounce judgment against him according to law, and nothing being offered or alleged in delay thereof, it is the judgment of this Court that the said Charles Ray Carney be confined in the State Penitentiary for one term of Eight Years, and one term of Two Years, these being the periods ascertained by the Court. Said terms are to run consecutively with each other, and with any other time the defendant is now serving. The defendant is ordered to pay his costs of Court in these cases totaling \$185.00.

It is ordered that the Sheriff of this City do, when required so to do, deliver the said defendant from the jail of this City to the Warden of the State Penitentiary, in said Penitentiary to be confined and treated in the manner prescribed by law.

Thereupon the defendant was remanded to jail.

DOB: 7/20/61  
D/Offenses: 3/25/86

July 22, 1986

ENTER:

Thomas N. Nance

Thomas N. Nance, Judge

Criminal Order Book

208 1145

Virginia:

In the Circuit Court of the City of Richmond, John Marshall Courts Building

the 22nd day of July 19 86

COMMONWEALTH

vs Indictment for Burglary F-86-1530  
Indictment for Possession of Burglary Tools F-86-1531

CHARLEY RAY CARNEY, Dft.

The said defendant was this day led to the bar in the custody of the Sheriff of this City. He was represented by Attorney James Willett, appointed counsel, and the Commonwealth was represented by James C. Wicker, Jr. The defendant consented to having these cases tried simultaneously.

Being arraigned, the defendant pleaded guilty to burglary, as charged in Indictment F-86-1530; and he pleaded guilty to possession of burglary tools, as charged in Indictment F-86-1531, after consultation with counsel. Whereupon the Court inquired of the defendant if he had been advised of and fully understood the significance of his pleas of guilty, to which inquiry the defendant answered in the affirmative, and the Court accepted said pleas of guilty. The evidence in these cases having been summarized by the Attorney for the Commonwealth, and stipulated by the defendant, the Court finds the defendant guilty as charged in each of the said Indictments, and in accordance with a plea agreement filed herein, the Court doth suspend the imposition of sentence during the defendant's good behavior in the case of F-86-1530. In the case of F-86-1531, the Court doth ascertain the defendant's term of confinement in the City Jail at Twelve Months.

Criminal Order Book

268, page 1146

Whereupon it is the judgment of this Court that the said Charley Ray Carney be confined in the City Jail for a term of Twelve Months. The defendant is to pay his costs of Court in these cases totaling \$723.00.

Thereupon the defendant was remanded to jail.

DCB: 7/20/61

July 22, 1986

ENTER:

Thomas N. Nance

Thomas N. Nance, Judge

A Copy,

Teste: BEVILL M. DEAN, CLERK

by Andrena Graves D.C.

Criminal Case No. 208 1147

PS-36  
REVISED 3/89

TRIAL DISPOSITION FORM  
DISTRICT NUMBER ONE

2/9384  
400  
N/A

INCARCERATION 1 YEAR OR MORE [ ☒ X ]  
(SUBMIT 3 COPIES)  
INCARCERATION 12 MONTHS OR LESS [ ☐ ]  
(SUBMIT 1 COPY)  
PROBATION (SUBMIT 1 COPY) [ ☐ ]  
OTHER (SUBMIT 1 COPY) [ ☐ ]

AME Ray Carney

VSP NUMBER N/A

COURT Richmond City Circuit

FIPS CODE 760 JUDICIAL CIRCUIT 13

DATE OF SENTENCING 12-21-93

(MM/DD/YY)

SENTENCE NARRATIVE

- . Indictment F-93-3216, Rape, 7 years.
- . Indictment F-93-3218, Rape, 7 years.
- . Indictment F-93-3220, Rape, 7 years.
- . Indictment F-93-3222, Sodomy, 5 years.
- . Indictment F-93-3226, Abduction, 20 years.

Total 46 years.

On this date, a show cause was conducted by the sentencing Judge. His previous suspended sentence given on July 22, 1986 on Indictment F-86-1360, Abduction, was revoked and he was sentenced to serve 20 years with 10 years for Life. Probation upon release from confinement.

46 years + 10 years = 56 years total.

AFSjr/rce

IS THIS OFFENDER A U.S. CITIZEN? YES ☒ X NO ☐ UNKNOWN ☐

WAS THIS OFFENDER REPORTED TO IMMIGRATION/NATURALIZATION SERVICE? YES ☐ NO ☒

1-R RECEIPT

CASE CIRCUMSTANCE (CHECK ALL THAT APPLY)

1. NO PROBATION/PAROLE VIOLATION [ ☐ ]
2. PROBATION VIOLATION RESENTENCING [ ☐ ]
3. PROBATION REVOCATION AND NEW OFFENSE CONVICTION [ ☒ X ]
4. NEW OFFENSE CONVICTION - PENDING PROBATION REVOCATION HEARING [ ☐ ]
5. PAROLE VIOLATION AND NEW OFFENSE CONVICTION [ ☐ ]
6. NEW OFFENSE CONVICTION - PENDING PAROLE REVOCATION [ ☐ ]
7. OTHER [ ☐ ]

EXHIBIT #5 PAGE 1

APPENDIX I

ail#: 23932 Name: LEY, CHARLEY R

Date Commit: 08/03/93

2.

ddress: 1115 NORTH 29TH STREET

DOB: 07/20/61 Eyes: BR Ht: 5'09"

SN: 230-15-5976

Age: 33 Hair: BL Wt: 200

Race: B Sex: M

IC	Description of Charge	DD	MM	YY	Court	Court Date	Offense Disposition	Bond Amount
008	Abduction	00	00	00	DC1	08/19/93	DISMISSED	0
000	Sex Assault-Rape F93	00	00	07	CC1	12/21/93	Guilty	0
121	Forcible Sodomy F93-	00	00	05	CC1	12/21/93	Guilty	0
100	RAPE #F93-3216	00	00	07	CC1	12/21/93	Guilty	0
252	Use of Firearm in Fe	00	00	00	CC1	12/21/93	Not Guilty	0
252	Use of Firearm in Fe	00	00	00	CC1	12/21/93	Not Guilty	0
100	Sex Assault-Rape F93	00	00	07	CC1	12/21/93	Guilty	0
252	Use of Firearm in Fe	00	00	00	CC1	12/21/93	Not Guilty	0
252	Use of Firearm in Fe	00	00	00	CC1	12/16/93	NOT GUILTY	0
008	ABDUCTION F93-3224	00	00	00	CC1	12/16/93	DISMISSED	0
252	Use of Firearm in Fe	00	00	00	CC1	12/16/93	NOT GUILTY	0
252	POSS OF F/A W/FEL CO	00	00	00	CC1	12/16/93	NOT GUILTY	0
000	COURT REQUEST (PER	00	00	00	CC1	08/31/93	NULL CODE	0
008	Abduction #F93-3410	00	00	20	CC1	12/21/93	Guilty	0
016	CAPIAS #F86-1530,153 20 YRS W/10 SUSPENDED	00	00	10	CC1	12/21/93	Guilty	0

\*\*\* KEEP SEPARATE FROM:

\*\*\* SERVING STATE TIME \*\*\*

EXHIBIT #5, PAGE 2

APPENDIX I

1 VIRGINIA:

2 IN THE CIRCUIT COURT OF THE CITY OF RICHMOND

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7 COMMONWEALTH OF VIRGINIA,

8 vs.

9 CHARLIE RAY CARNEY,

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12  
13 Complete transcript of the testimony and the  
14 incidents in the above, when heard on December 21,  
15 1993, before the Honorable Thomas N. Nance, Judge.  
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CRANE-SNEAD & ASSOCIATES, INC.

1 APPEARANCES:

2 JOHN K. HONEY

3 Assistant Commonwealth's Attorney  
4 Circuit Court of the City of Richmond  
5 John Marshall Courts Building  
6 800 East Marshall Street  
7 Richmond, Virginia 23219

8 SCOTT I. PICKUS

9 406 West Broad Street  
10 Richmond, Virginia 23220  
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Crane-Snead & Associates, Inc.

## I N D E X

## D I R E C T .

Mr. Scott

12

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1 THE CLERK: Case of Commonwealth  
2 verse Charlie Ray Carney. The defendant is  
3 present in court represented by Mr. Scott  
4 Pickus. Mr. Pickus, are you prepared?

5 MR. PICKUS: Yes, ma'am.

6 THE CLERK: Commonwealth is  
7 represented by John Honey. Mr. Honey, are  
8 you prepared for the Commonwealth?

9 MR. HONEY: Yes, ma'am.

10 THE CLERK: Proceeding on a  
11 presentence report. The probation officer is  
12 present in court. The report has been filed.  
13 Also proceeding on a show cause, Your Honor.

14 MR. PICKUS: Your Honor, if I may,  
15 before we begin, I also filed a motion of --  
16 with regard to the three rape charges, I  
17 filed a motion to set aside two of the  
18 verdicts on the basis of multiplicity.

19 THE COURT: Wasn't that heard  
20 before?

21 MR. PICKUS: Your Honor, that was  
22 raised as an objection on a motion to strike.  
23 I wanted to do a little more research. I  
24 read through the Carter vs. Commonwealth case  
25 which the Court relied on, and all of the

1 other cases that's been cited within that  
2 case, specifically the case from North  
3 Carolina which is 360 Southeast second, page  
4 507. A 1987 case Harold vs. State 277,  
5 northwest second and 462, Henry McGrue, from  
6 California, 427 Pacific second, page 161, and  
7 all of those cases there were significant  
8 periods of time between each act of  
9 intercourse and here the circumstances,  
10 certainly with at least two of the offenses,  
11 that it was in essence one continuous act  
12 with no time interval between the occurrences  
13 of the location, the place, the time, the  
14 people; everything is absolutely identical.  
15 There is absolutely no intervening time  
16 period between the two which are alleged to  
17 have occurred on the front seat, and we submit  
18 that to the extent -- to the act of  
19 intercourse that occurs in the back seat,  
20 that is all part of one continuous incident.  
21 Furthermore, as distinguishable from all of  
22 these cases, and the Carter case, in all of  
23 those cases, there were substantial periods  
24 of time at a -- five minutes between each act  
25 of intercourse.

1                   Furthermore, equally significant,  
2                   the fact that in all of those other cases  
3                   there were additional acts of force, threat  
4                   or intimidation, or violence, which is one of  
5                   the elements of the crime of rape. In this  
6                   circumstance, there is no such additional  
7                   acts of violence, any acts of force, threat,  
8                   or intimidation, and the jury's verdict of  
9                   acquittal on all of the firearms charges tell  
10                  us that they don't believe the victim when  
11                  she says that there was a gun. Without any  
12                  gun being present, and the jury clearly  
13                  disbelieving that part of her testimony,  
14                  there is no additional act of force, threat,  
15                  or intimidation that would be necessary to  
16                  sustain the additional rape charges, or --  
17                  excuse me, two additional rape convictions,  
18                  and because of the lack of evidence on that  
19                  element, we submit that there can only be one  
20                  conviction of rape based on the evidence at  
21                  the trial, looking at it in the light most  
22                  favorable to the Commonwealth.

23                         Also, Your Honor, I have those  
24                         other cases from North Carolina, Wisconsin  
25                         and California if the Court would like to

1 peruse those.

2 THE COURT: No, I'm familiar with  
3 them. I read them before when the case was  
4 tried. I deny your motion.

5 Have you gone over this report?

6 MR. HONEY: Yes, sir, judge. There  
7 is one thing that I believe needs to be  
8 changed from the offense of conviction. The  
9 defendant was not convicted of the possession  
10 of firearms listed as five, six, seven,  
11 eight, and nine, and I believe that for one  
12 of those possession of firearms, it needs to  
13 be struck and the possession of a firearm  
14 having been convicted of a felony would be  
15 ten.

16 THE COURT: You totally lost me.  
17 Pardon me.

18 MR. HONEY: I'm sorry. The Court  
19 should look at where the offense information  
20 goes from one through eleven. Of those  
21 offenses, three rapes, sodomy is number four,  
22 five, six, seven, eight and nine are  
23 possession of firearms. Number ten is a  
24 possession of a firearm after having been  
25 previously convicted of a felony. Number

1 eleven is an abduction. The defendant was  
2 convicted of number one, two, three, four,  
3 the three rapes and the sodomy, number five,  
4 six, seven, eight, nine, those are the  
5 possession of firearms, he was -- the jury  
6 found him not guilty. Number eleven --

7 THE COURT: All right. Wait a  
8 minute. Let me strike out five, six, seven,  
9 eight, nine.

10 MR. HONEY: And ten just needs to  
11 be deleted because I think that there is an  
12 extra charge of a possession of a firearm,  
13 and the possession of firearm after having  
14 been convicted of a felony would also be a  
15 not guilty and the abduction was a guilty.

16 THE COURT: Right.

17 MR. HONEY: That will be the only  
18 thing that I have.

19 THE COURT: Gentlemen, on page 2-A,  
20 legal status at the time of the offense, it  
21 says -- I guess that's "other". What does  
22 that mean do you think? Known -- No, it's  
23 "other" I guess. I can't read these forms  
24 any more.

25 MR. PICKUS: Judge, I think it's

1                   supposed to be page two, and then it says --

2                   THE COURT: Legal status at the  
3                   time of the offense.

4                   PROBATION OFFICER: He's not on  
5                   probation or anything.

6                   THE COURT: Nothing? Is that  
7                   supposed to be eight or nine.

8                   PROBATION OFFICER: It's supposed  
9                   to be nine where it says "known".

10                  THE COURT: Offender's role in the  
11                  offense is supposed to be alone?

12                  PROBATION OFFICER: Yes, sir.

13                  THE COURT: Victim relationship to  
14                  offender, "known"?

15                  PROBATION OFFICER: Yes, sir,  
16                  "known".

17                  THE COURT: Victim physically  
18                  handicapped?

19                  PROBATION OFFICER: Known.

20                  THE COURT: Sex was what, a female?

21                  PROBATION OFFICER: Yes, sir.

22                  THE COURT: Race, caucasian?

23                  PROBATION OFFICER: Yes, sir.

24                  THE COURT: Age? I don't remember.

25                  MR. PICKUS: 26.

1 THE COURT: Have you gone over this  
2 with Mr. Carney?

3 MR. PICKUS: Yes, Your Honor, I  
4 have. Also on page 2-A where there is the  
5 restitution of the various verdicts about the  
6 middle of the page, it says we the jury find  
7 the defendant not guilty. There are four of  
8 those and there needs to be six, five for the  
9 use of a -- display of a firearm charge and  
10 one more for the possession of a firearm.

11 MR. PICKUS: Your Honor, just for  
12 me to be clear for myself, on page 1-A on the  
13 second half of the page where it talks about  
14 offense and conviction, am I understanding it  
15 correctly when the Court says items listed as  
16 number as five, six, seven, eight, nine, ten  
17 and eleven --

18 THE COURT: Yeah.

19 MR. PICKUS: All right, judge.  
20 Also judge, I think on page two where it says  
21 resisting arrest, that ought to be "no".

22 THE COURT: All right. Type of  
23 offense, "person"?

24 MR. PICKUS: That would be great.

25 THE COURT: Weapon used according

1 to the verdict there was "known".

2 MR. PICKUS: With regard to the  
3 alcohol drug use at the time of the offense,  
4 I don't recall that there was any.

5 MR. HONEY: I recall Mr. Carney  
6 saying that he had been drinking. That was  
7 his testimony.

8 THE COURT: He said he had been  
9 drinking.

10 MR. PICKUS: I don't recall it  
11 being a significant matter, judge.

12 THE COURT: All right.

13 MR. PICKUS: That would be it, Your  
14 Honor.

15 THE COURT: Do you want to be  
16 heard?

17 MR. HONEY: Judge, I don't want to  
18 take too much of the Court's time. The Court  
19 is well aware of the situation, but I'd like  
20 for the Court to recall the way that the  
21 victim testified and how upset she was and  
22 how this has affected her and her life in  
23 regards to this, and I also ask the Court to  
24 look at the fact that this is not the first  
25 time that this gentleman has had an offense



1 on a person, and he was convicted in this  
2 court of attempted rape previously.

3 It just goes right in line with  
4 what he is now -- Since he has been out, he  
5 was given eight years, I believe it was, in  
6 the penitentiary, and upon his release he is  
7 now subsequently convicted of a similar type  
8 offense, and I ask the Court to consider that  
9 in making it's sentencing determination.

10 MR. PICKUS: Your Honor, I'd like  
11 to call Mr. Scott, just to testify briefly.

12 THE COURT: All right.

13  
14  
15  
16  
17  
18 MR. SCOTT, a witness called by the Defense,  
19 having been first duly sworn, testified as follows:

20 DIRECT EXAMINATION

21 BY MR. PICKUS:

22 Q Mr. Scott, how are you employed,  
23 sir?

24 A State probation and parole officer,  
25 assigned to the City of Richmond.

Scott - Direct

1 Q Have you been working in that  
2 capacity for the past several months, I take it?

3 A Yes, sir.

4 Q In that capacity, have you had an  
5 occasion to meet the defendant, Charles Carney?

6 A Yes, I have.

7 Q The purpose of your meeting him was  
8 for what?

9 A Presentence investigation ordered  
10 by the Court.

11 Q Did you conduct an interview with  
12 him?

13 A Yes, I did.

14 Q You reviewed, I take it, an earlier  
15 presentence report?

16 A Yes, sir.

17 Q Prepared by another probation and  
18 parole officer?

19 A Yes, sir.

20 Q Did you become aware of Mr. Carney  
21 having been sent to Central State while this case was  
22 pending?

23 A Yes, sir.

24 Q Did you review the presentence  
25 report?

Scott - Direct

1           A           Yes, we went over the previous  
2           presentence report prepared by Mr. Robertson.

3           Q           All right. Was there anything in  
4           that other presentence report with regard to  
5           Mr. Carney's mental health, his mental state? Any  
6           kind of evaluation?

7           A           There was an evaluation that was  
8           not in the presentence report but in the  
9           classification report prepared by the Department of  
10          Corrections.

11          Q           What was that about?

12          A           The report basically summarized or  
13          came to the same conclusion that the present mental  
14          health evaluation conducted by Central State Hospital,  
15          by the Department of Corrections, stated the same type  
16          of symptoms that he has currently.

17          Q           When you met with Mr. Carney, how  
18          long was your meeting?

19          A           To the best of my recollection, it  
20          was about two and a half, maybe three hours.

21          Q           How many of these reports are you  
22          doing at one given time on an average?

23          A           On a monthly basis?

24          Q           Yes.

25          A           Approximately 60 to 70.

Scott - Direct

1           Q           Would you say you're loaded down  
2 pretty heavily?

3           A           Sometimes.

4           Q           Do you normally have an interview  
5 to last that long?

6           A           Not that long.

7           Q           Was there anything significant or  
8 unusual about your interview with Mr. Carney?

9           A           Mr. Carney became agitated on  
10 several different circumstances which I had to try to  
11 repeat and be calm about what my purpose was in  
12 conducting the interview.

13          Q           Did he seem, at any point, detached  
14 or out of it to make you question his mental status?

15          A           If I'm permitted to answer that, I  
16 think that he did seem somewhat detached.

17          Q           Did you become aware he was to be  
18 on medication from Central State?

19          A           Yes, I did.

20          Q           Do you know that he had been  
21 receiving that medication?

22          A           He advised me he was not taking the  
23 medication at the time.

24          Q           Do you know what that medication  
25 was?

Scott - Direct

1                   A           Not to my recollection at this  
2                   time.

3                   Q           Okay. You and I had a discussion  
4                   as far as Mr. Carney getting some kind of mental  
5                   health help. From your experience and contact with  
6                   Mr. Carney, did that appear to be an indication to you  
7                   in any fashion?

8                   A           It appears that he has some  
9                   behavior situation that probably needs attending to at  
10                  some point in time in his life.

11                  Q           Are there any particular facilities  
12                  with the State Department of Corrections, equipped to  
13                  deal with those kind of mental problems?

14                  A           I think that most of the  
15                  correctional units within the State of Virginia have  
16                  ongoing psychiatrists and psychologists on staff, but  
17                  as far as a psychiatric unit with this Department of  
18                  Corrections, I'm not sure that they have that, Your  
19                  Honor.

20                  Q           For some kind of intensive care and  
21                  therapy?

22                  A           There may be one or two  
23                  institutions that may have some type of setup geared  
24                  to that, but at this time, I'm not aware as to which  
25                  one it is at this current time.

Scott - Direct

1 Q Were you aware that Mr. Carney had  
2 been suicidal?

3 A Not until your discussion, and my  
4 discussion, after the presentence had been prepared.

5 Q So, you had never been provided  
6 with a copy of the evaluations from Central State?

7 A No, sir.

8 Q Do you think if you read that, that  
9 that would modify or change in any fashion your  
10 opinion with regard to Mr. Carney?

11 A Well, in knowing that currently he  
12 has attempted several attempts on his life. I think  
13 that would add some credence to it.

14 Q Mr. Scott, do you know where  
15 Mr. Carney is housed at the city jail right now?

16 A I'm trying to review my record. I  
17 think that I mentioned in my report something to that.

18 Q That he was in isolation in A  
19 Building?

20 A Yes, sir.

21 Q Why would that be?

22 A I think for his own protection at  
23 this time.

24 Q He was having problems getting beat  
25 up by other inmates?

Scott - Direct

1 A Yes.

2 Q Did he appear to be able to defend  
3 himself?

4 THE COURT: Does that have anything  
5 to do with this case?

6 MR. PICKUS: As far as sentencing,  
7 judge, I think it does.

8 THE COURT: I don't.

9 MR. PICKUS: As far as Mr. Carney's  
10 mental health, he had a nervous break down.  
11 The Court is well aware he tried to commit  
12 suicide. He is supposed to be on medication  
13 which he has not been regularly getting.

14 THE COURT: Has he been refusing  
15 it, or has he just not been getting it?

16 MR. PICKUS: I don't believe he has  
17 been refusing it, he just hasn't been getting  
18 it. He did get a dosage last night. I had  
19 gone down to see Mr. Carney again.

20 THE COURT: That's easily remedied.  
21 All he has to do is to write the sheriff. If  
22 you have any problems with it, just let me  
23 know. I will take the steps to see that he  
24 gets whatever he needs, but does that have  
25 anything to do with the sentencing in this

1 case?

2 MR. PICKUS: Your Honor, insofar as  
3 Mr. Carney -- Since at least 1986, he has had  
4 some serious mental health problems that  
5 apparently have never really been addressed.  
6 I realize also that the Court is, in all  
7 likelihood going to sentence Mr. Carney to  
8 incarceration, probably along the lines of  
9 the jury's recommendation. I think that  
10 without some kind of treatment or mental  
11 health help, when Mr. Carney is eventually  
12 released from prison --

13 THE COURT: I don't have any  
14 control over that. I really don't. I mean,  
15 I can, if you have something you want me to  
16 recommend. My recommendation to the  
17 Department of Corrections isn't much better  
18 than yours. I don't have any control over  
19 where he goes and how he is treated, unless  
20 he is mistreated, and then I have something  
21 to say about it.

22 MR. PICKUS: I think if some of the  
23 mental health reports are sent, once he is  
24 classified and goes into the Department of  
25 Corrections, that will have an influence



1 on --

2 THE COURT: You can send that down,  
3 but I don't see what it has to do with me  
4 sentencing Mr. Carney today.

5 MR. PICKUS: My purpose is getting  
6 on the record as far as what happens with  
7 Mr. Carney when he leaves the courthouse  
8 today.

9 THE COURT: If you have some  
10 records to send along, just submit them to me  
11 and I will send them.

12 MR. PICKUS: All right. Judge, I  
13 will do that then.

14 Thank you, Mr. Scott.

15 THE COURT: Anything further?

16 MR. HONEY: No, sir.

17 THE COURT: All right. Stand up.  
18 Mr. Pickus, do you have anything further you  
19 want to say, sir?

20 MR. PICKUS: No, sir, not on the  
21 sentencing, judge.

22 THE COURT: Mr. Carney, anything  
23 else you'd like to say, sir?

24 THE DEFENDANT: No, sir.

25 THE COURT: According to the jury's

1 verdict, the Court having found you guilty  
2 and in accordance with the jury's  
3 recommendation, the Court sentences you to  
4 seven (7) years in the Virginia State  
5 Correctional Facility on each of the rape  
6 cases. Five (5) years on the -- five (5)  
7 years for sodomy by force and on the charge  
8 with abduction, the Court sentences you to  
9 twenty (20) years in a Virginia State  
10 Correctional Facility. That's a total of 46  
11 years, Mr. Carney. All of those sentences  
12 are to run consecutively.

13 Now, I have a show cause why he  
14 should not be -- his sentence of July 22,  
15 1986, why it should not be revoked.  
16 Suspended imposition of sentence on a  
17 burglary charge, where he did feloniously and  
18 unlawfully break and enter in the nighttime  
19 the dwelling house of Steven M. McLee, there  
20 situate at 1108 #4 West Gray Street with  
21 intent to commit robbery therein.  
22 Commonwealth relies on conviction?

23 MR. HONEY: Yes, sir, judge.

24 THE COURT: Anything you have  
25 further, Mr. Pickus?

1 MR. PICKUS: With regard to the  
2 underlying basis justifying revocation being  
3 the convictions for which Mr. Carney has just  
4 been sentenced, I don't contest to the Court.  
5 We have ample reason to revoke that.  
6 Mr. Carney was convicted in 1986 of attempted  
7 rape. How the charge of attempted rape came  
8 about from being reduced from abduction, I  
9 don't have the foggiest idea. I did read a  
10 summary provided to me by Mr. Scott and that  
11 contained, at least from the summary I read  
12 judge, contained no indications of any kind  
13 of sexual matters whatsoever. Evidently  
14 there had been a fight or something like that  
15 or disagreement, and the abduction stemmed  
16 from Mr. Carney grabbing a woman about her  
17 wrist and she was trying to run away from him  
18 and there had been some disagreement with  
19 another gentleman involved. I didn't  
20 represent Mr. Carney in 1986, so I'm not  
21 speaking to the facts of that, but from what  
22 I read, there is absolutely nothing in there  
23 that suggested any attempts to commit rape of  
24 any sort.

25 THE COURT: You're talking about a

1 case different other than what we're talking  
2 about.

3 MR. PICKUS: It was part in parcel  
4 with the breaking and entering because  
5 evidently an apartment had been broken into  
6 and that stemmed out of this confrontation  
7 between Mr. Carney and these other  
8 individuals, and out of this whole incident  
9 is where the abduction charge -- the burglary  
10 tools, the breaking and entering, and the  
11 firearm charge came from. It was all part of  
12 the same incident.

13 THE COURT: The plea agreement in  
14 this case indicates he was charged with the  
15 burglary charge and a firearm charge and  
16 there was a plea agreement reached where he  
17 received twelve (12) months for the firearm  
18 charge and imposition of sentence suspended  
19 on the burglary charge, and the plea  
20 agreement doesn't mention anything about any  
21 other charges that arose out of this  
22 particular breaking and entering.

23 MR. PICKUS: I think that Mr. Scott  
24 could be of some assistance with regard to  
25 that, but as it is, there is four felony

1 charges that all came out of the same  
2 incident regarding Mr. Carney.

3 MR. HONEY: Judge, just to cut  
4 through, that is not true. That's untrue.  
5 What occurred, this abduction -- I have a  
6 copy of the police report, that Mr. Carney  
7 grabbed the woman, placed a gun to her head,  
8 and said, I am going to rape you, was the  
9 statement. At that time, another gentleman  
10 interceded, took the gun away from  
11 Mr. Carney, and that's where that charge  
12 arose.

13 THE COURT: What is the date of  
14 that offense?

15 MR. HONEY: That occurred on March  
16 25, 1986.

17 THE COURT: This occurred on May  
18 31, 1986?

19 MR. HONEY: Yes, sir.

20 MR. PICKUS: I apologize to the  
21 Court. I was not conversing from the facts.  
22 I apologize. I have just been indicated to  
23 some facts I was not aware of, Your Honor.  
24 Be that as it may, Mr. Carney spends  
25 substantial amount of time on the attempted

1           rape charge, I think that he was sentenced to  
2           eight years to pull, upwards on five years on  
3           that, or thereabouts, with the convictions  
4           which Mr. Carney was just sentenced, and the  
5           time that he got -- the likelihood of  
6           Mr. Carney making first parole in five or ten  
7           or fifteen years, is probably slim to none  
8           and he will be serving a substantial portion  
9           of that time.

10                   Your Honor, I think given  
11           Mr. Carney's mental state, that he has  
12           already tried to kill himself on one  
13           occasion, that he will have a substantial  
14           amount of time to pull. To get an additional  
15           twenty years, Your Honor, would in essence be  
16           giving him a life sentence. I realize that  
17           it's not the Court saying, I sentence you to  
18           incarceration in the Department of  
19           Corrections for a life term, but the  
20           realistic effect is the same and I would ask  
21           the Court to take that into consideration  
22           with regard to the revocation. As I said, we  
23           don't challenge the Court's basis, nor  
24           revocation. We challenge the legitimacy of  
25           the revocation with the underlying

1 convictions. The Court has the full  
2 authority to revoke the suspended sentence  
3 and impose all of the time allowed by  
4 statute, but I ask the Court to take into  
5 consideration the time that Mr. Carney  
6 already has; the fact that he is going to  
7 likely serve a substantial part of that. He  
8 is in his early 30's, and I think given his  
9 mental health status, the additional time --  
10 the likelihood of him ever leaving is  
11 probably very, very small.

12 THE COURT: I want the record to  
13 show that this revocation came about not  
14 because of the convictions only, but on  
15 evidence this Court heard in the prior case,  
16 the prior rape case, the rape and abduction  
17 case. There are dual purposes and dual  
18 reasons for revocation. The Court does  
19 revoke the suspended imposition of sentence  
20 given in this Court on July 22, 1986.

21 THE COURT: Mr. Carney, is there  
22 anything else you'd like to to say?

23 THE DEFENDANT: I'm just scared.  
24 I'm just scared. That's all, I'm scared.

25 THE COURT: Anything further?

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THE DEFENDANT: No, sir.

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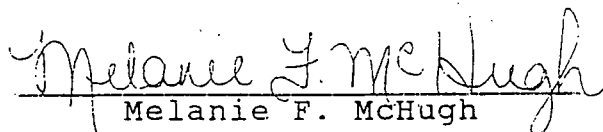


## 1 CERTIFICATE OF COURT REPORTER

2  
3 I, Melanie F. McHugh, hereby certify that I,  
4 having been duly sworn, was the Court Reporter in the  
5 Circuit Court of the City of Richmond, Virginia, on  
6 December 21, 1993, at the time of the hearing herein.

7 I further certify that the foregoing  
8 transcript is a true and accurate record of the  
9 testimony and other incidents of the hearing herein,  
10 to the best of my ability.

11 Given under my hand this 11th day of  
12 February, 1994.

13  
14  
15  
16   
17 Melanie F. McHugh

18  
19 Notary Public for the State  
20 Of Virginia at Large

21 My Commission Expires: July 31, 1995  
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COPY

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VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF RICHMOND  
JOHN MARSHALL COURTS BUILDING

COMMONWEALTH OF VIRGINIA,

vs.

CHARLIE RAY KARNEY,

Defendant

CASE NOS. F86-1530  
F93-3216  
F93-3218  
F93-3220  
F93-3222

FILED  
FEB 1 1994  
FEDERAL BUREAU OF INVESTIGATION  
U.S. DEPARTMENT OF JUSTICE

Transcript of Motion, and other incidents in the  
above, when heard on September 14, 1993, at 2:30 p.m.,  
before the Honorable Thomas N. Nance.

CRANE-SNEAD & ASSOCIATES, INC.  
4914 Fitzhugh Avenue  
Richmond, Virginia 23230  
Tel. No. 804-355-4335  
Fax No. 804-355-7922

## 1 APPEARANCES:

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4 for the City of Richmond  
Counsel for the Commonwealth

5 I. SCOTT PICKUS

6 906 W. Broad Streed  
Richmond, Virginia  
Counsel for Defendant

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1 years ago?

2 THE COURT: Well, if he had paid her for it  
3 in the past, then the statute would not permit him  
4 from testifying in that manner.

5 MR. HONEY: On the discovery, I believe  
6 what's at issue, Mr. Pickus, in fact he believes he  
7 is entitled to our witness's criminal record.

8 I told him before, we would certainly raise,  
9 ask the witnesses whether they had been convicted of  
10 a felony or of a misdemeanor involving lying,  
11 stealing, moral turpitude.

12 At this time, he has brought it to our  
13 attention, if they do not tell the truth, I would  
14 bring that to his attention, that they had that  
15 conviction.

16 THE COURT: I think that is a fair way. I  
17 don't think you are entitled to it unless the  
18 Commonwealth wants to give it to you.

19 MR. PICKUS: All right.

20 THE COURT: Do you have any other discovery  
21 problem?

22 MR. PICKUS: There was some lab reports, the  
23 PERK test that I have not gotten yet. Mr. Honey said  
24 his office has them, but--

25 MR. HONEY: They all came back but it was

1 nothing found in any of the PERK tests.

2 THE COURT: Regardless of that, if you need  
3 to, have that available for him

4 MR. HONEY: I understand. I will make them  
5 available to him.

6 THE COURT: And let me know if there is a  
7 change in defense between now and then, but I don't  
8 know how if it was concentual or a bargain.

9 MR. PICKUS: Your Honor, also, there was one  
10 other matter which has been on the Bill of  
11 Particulars which have been filed, and that had to do  
12 with evidence regarding the firearm. When the case  
13 first began, there were three charges, one of which  
14 was the firearm charge.

15 The three original charges for which Mr.  
16 Karney was arrested were rape, sodemy, and sexual  
17 with intent to defile.

18 To my knowledge, the Commonwealth gained some  
19 additional knowledge since that time; however, when  
20 the knives came back, there were a number of firearm  
21 charges and--

22 THE COURT: I imagine there is one to match  
23 every charge, in the abduction, sodemy, and the  
24 possession by a felon.

25 MR. PICKUS: Yes, sir, and the victim's

1 testimony in the preliminary hearing with regard to  
2 firearms was limited to the statement: He said he had  
3 a gun, and that was it.

4 I simply ask what other evidence that came to  
5 the Commonwealth's attention is there beside that one  
6 statement, He said he had a gun.

7 THE COURT: Well, I don't have to give you  
8 that, because if you don't recover a gun--

9 MR. HONEY: No, sir, I didn't say he didn't  
10 recover a gun. We intend to go forward on the  
11 witness's testimony.

12 THE COURT: Did the witness see a gun?

13 MR. HONEY: Yes, sir.

14 MR. PICKUS: The testimony was she--

15 THE COURT: I am merely trying to tell you  
16 what they have got, Mr. Pickus.

17 MR. HONEY: Yes, sir, she did see what  
18 appeared to be a gun.

19 THE COURT: Anything further?

20 MR. HONEY: One last item, which is  
21 technical, nonetheless, I thought it should be  
22 brought it to the Court's attention. That has to do  
23 with the fact what the indictment on the abduction,  
24 and the intent to defile charge was brought on the  
25 same charge pending down in General District Court.

1 After the indictment was returned, on the  
2 Commonwealth's motion in General District Court,  
3 felony was dismissed.

4 THE COURT: I understand from that, though,  
5 do you all not agree that a hearing on the evidence  
6 was heard in total, there was no further evidence to  
7 be heard. The only thing was a legal issue for the  
8 judge to rule; is that correct?

9 MR. PICKUS: That's pretty much correct.

10 MR. HONEY: Yes, sir.

11 THE COURT: Rather than wait for the judge to  
12 rule, or, rather that wait, the Commonwealth was  
13 going to the answer. At that point, we went over and  
14 asked the judge to dismiss the case. And so the  
15 court--it is already in the circuit court.

16 MR. HONEY: Yes, sir. We told the judge we  
17 did not intend to respond to the legal issue. The  
18 Court chose to dismiss the charges.

19 THE COURT: They went over the factual basis  
20 and the court did dismiss it.

21 MR. HONEY: And the Court did, yes, sir.

22 THE COURT: Then you reindicted.

23 MR. HONEY: Subsequently, we reindicted.

24 THE COURT: Was there any new indictment  
25 added at the last grand jury?

1 MR. PICKUS: I am not aware of any new  
2 reindictment. I have not been presented with a new  
3 indictment.

4 THE CLERK: There is a capias outstanding on  
5 an abduction charge.

6 THE COURT: What they do rather than get him  
7 from Central and back, pick him up and haul him off  
8 to jail--everybody knows he was reindicted, so when  
9 he comes back in here, they replace one indictment  
10 with the other, and that keeps him from being  
11 rebonded.

12 MR. PICKUS: I was not aware of a new  
13 indictment.

14 THE COURT: They indicated to me they were  
15 going to seek an indictment.

16 MR. HONEY: That may have been my fault,  
17 obviously.

18 THE COURT: Same charge, just paper work.  
19 Anything further?

20 MR. HONEY: I believe Mr. Pickus had one  
21 issue on the possession firearm after having been  
22 convicted of a felony; i.e., attempted rape. He has  
23 some concern about that.

24 I have no problem to strike that.

25 THE COURT: All right. Go ahead.



1 Do you have the file?

2 THE CLERK: No, sir.

3 MR. HONEY: It's not necessary to allege that  
4 fact he had been previously convicted.

5 I might suggest to you that I don't know how  
6 Judge Gates handled it, but generally speaking, I  
7 would allow counsel to stipulate that he had been  
8 convicted of a prior felony without stating what it  
9 was.

10 MR. PICKUS: Yes, sir.

11 That would be my motion, Your Honor. I offer  
12 the stipulation.

13 THE COURT: Do you accept that on that  
14 charge?

15 MR. HONEY: Yes, sir, on that charge.

16 THE COURT: All right.

17 MR. HONEY: I believe on the other charge, I  
18 don't. The firearm of a like offense, having been  
19 convicted of a like offense, we would intend to show  
20 that prior conviction on that charge.

21 THE COURT: I am not familiar with that.

22 All right, good luck to you all.

23 MR. HONEY: There is one other issue. I  
24 don't know if there is an imposition of sentence on a  
25 burglary pending. I guess I could issue a show cause

1 on that.

2 THE COURT: Well, you have plenty of time,  
3 just do it, whichever, execute it.

4 Do you represent him on that, Mr. Pickus?

5 MR. PICKUS: No, sir. I believe Mr. Bonner  
6 (ph) represented him on the original charges.

7 THE COURT: They will contact Mr. Bonner.  
8 You don't represent him?

9 MR. HONEY: He was represented by an  
10 attorney, Gene Willick (ph).

11 THE COURT: Jim Willick?

12 MR. HONEY: Yes, sir.

13 THE COURT: Maybe you can get Mr. Willick to  
14 represent him again.

15 The number two man, commonwealth's attorney  
16 up in Mannassas--

17 MR. HONEY: We would be happy to do that.

18 THE COURT: What's the Commonwealth  
19 Attorney's name up in Mananassas?

20 Anyway, we will appoint Mr. Pickus.

21 If you are not retained, let us know.

22 MR. PICKUS: I doubt I will be retained.  
23 Maybe I had better ask the Court to appoint me on  
24 these charges.

25 THE COURT: When it is done, let us know on

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that point.

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1 CERTIFICATE OF COURT REPORTER  
2  
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4 I, Rosemarie Featherston, hereby certify that I,  
5 having been duly sworn, was the court reporter in the  
6 Circuit Court of the City of Richmond, Virginia, on  
7 September 14, 1993, at the time of the hearing herein.

8 I further certify that the foregoing transcript is a  
9 true and accurate record of the testimony and other  
10 incidents of the hearing herein, to the best of my ability.

11 Given under my hand January 27, 1994.  
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15 Rosemarie Featherston  
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