

# APPENDIX A

**VIRGINIA:**

*In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Monday the 10th day of May, 2021.*

Kevin Antonio Watson,

Appellant,

against

Record No. 200977  
Circuit Court Nos. CR99-1420, 1422,  
1486 through 1491-00

Commonwealth of Virginia,

Appellee.

From the Circuit Court of Henrico County

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

# APPENDIX B

VIRGINIA:

IN THE CIRCUIT COURT OF THE COUNTY OF HENRICO

COMMONWEALTH OF VIRGINIA

vs.

KEVIN ANTONIO WATSON


ORDER: Case Nos. CR99-1420, 1422, 1486 through 1491-00

Upon mature consideration of a "Motion to Vacate", received and filed on April 21, 2020, by the above defendant, and upon a review of the files and the evidence during the trial and sentencing, this Court finding no basis to grant said "Motion", it is

ORDERED that the "Motion to Vacate" is denied.

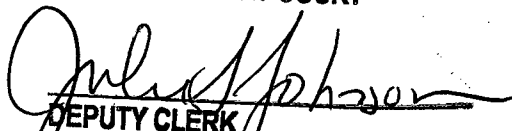
The Clerk is directed to forward a certified copy of this Order to the Attorney for the Commonwealth and to the defendant at River North Correctional Center, 329 Dellbrook Lane, Independence, VA 24348.

ENTER: 517120

  
\_\_\_\_\_  
L.A. HARRIS, JR., JUDGE

/kml

A COPY TESTE:  
HEIDI S. BARSHINGER, CLERK  
HENRICO CIRCUIT COURT

  
\_\_\_\_\_  
DEPUTY CLERK

# APPENDIX C

COPY

1 VIRGINIA:

2 IN THE CIRCUIT COURT OF THE COUNTY OF HENRICO

3  
4  
5  
6 COMMONWEALTH OF VIRGINIA

7 v.

8 KEVIN ANTONIO WATSON,

9 Defendant.

CASE NUMBERS:

CR99-1420-00F

CR99-1421-00F

CR99-1422-00F

CR99-1486-00F

CR99-1487-00F

CR99-1488-00F

CR99-1489-00F

CR99-1490-00F

CR99-1491-00F

10  
11  
12  
13  
14  
15  
16 TRANSCRIPT of the proceedings in the above-styled case,  
17 when heard before The Honorable L. A. Harris, Jr., Judge.

18  
19  
20 *Motion for a Continuance.....October 6, 1999.....Pages 1 - 12*  
21 *Trial.....October 7, 1999.....Pages 13 - 166*  
22 *Trial.....November 12, 1999.....Pages 167 - 289*  
23 *Sentencing.....February 25, 2000.....Pages 290 - 331*  
24  
25

CRANE-SNEAD & ASSOCIATES, INC.

4914 Fitzhugh Avenue, Suite 203

Richmond, Virginia 23230

Tel (804) 355-4335

Fax (804) 355-7922

1     APPEARANCES:

2  
3     **Michael S. Huberman, Esquire**

4     Assistant Commonwealth's Attorney

5     COUNTY OF HENRICO, VIRGINIA

6     4301 East Parham Road

7     Post Office Box 27032

8     Richmond, Virginia 23273

9  
10    **Robert G. Cabell, Jr., Esquire**

11    2800 Patterson Avenue

12    Richmond, Virginia 23221

13       *Counsel for defendant Kevin Antonio Watson*

1 MR. HUBERMAN: The first witness would be  
2 Debbie Isbell, Your Honor.

3 THE COURT: All right. Debbie Isbell. Come  
4 on up, ma'am.

5 THE CLERK: Would you please raise your right  
6 hand. Do you solemnly swear the evidence you present in  
7 the matter now before the Court shall be the truth, the  
8 whole truth, and nothing but the truth, so help you God?

9 WITNESS ISBELL: Yes, ma'am.

10 THE COURT: All right, you can have a seat.

11 All right, Mr. Huberman.

12 MR. HUBERMAN: Thank you, Judge.

13  
14  
15  
16 DEBBIE LYNN ISBELL, the witness, having  
17 previously been duly sworn, testified as follows:  
18

19 DIRECT EXAMINATION

20 BY MR. HUBERMAN:

|    |   |  |
|----|---|--|
| 21 | Q | Ma'am, what is your full name?             |
| 22 | A | Debbie Lynn Isbell.                        |
| 23 | Q | Okay. And Ms. Isbell, how old are you?     |
| 24 | A | I'm 15.                                    |
| 25 | Q | Back on November 28th of 1998, were you 14 |



1 at that time?

2 A Yes, sir.

3 Q On that date, did you have occasion to be at a  
4 friend's house at a residence in Henrico County?

5 A Yes, sir.

6 Q Do you know what street that was on?

7 A Um, no, I don't remember.

8 Q Could it be Choate Lane?

9 A Yes.

10 Q And who were you with at this residence?

11 A Um, I was with my friends, Stacy, Chase, Mike,  
12 and Jarrett.

13 Q Okay. And the Stacy you're referring to, is  
14 that Stacy, Stacy Wood?

15 A Yes.

16

17 MR. CABELL: Stacy, Chase, and who is the  
18 third?

19 WITNESS ISBELL: Jarrett.

20

21 BY MR. HUBERMAN:

22 Q Did there come a time when you and Stacy left  
23 the residence, just the two of you?

24 A Yes.

25 Q All right. Approximately what time was that?

1 A Um, about 8:00 o'clock.

2 Q All right. And where did the two of you go?

3 A Um, we went to the woods beside Chase's  
4 house.

5 Q All right. And was it light or dark at the time?

6 A It was pretty dark.

7 Q Was there any lighting out there in those  
8 woods?

9 A No.

10 Q And what were the two of you doing when you  
11 got out to the woods there?

12 A Just talking.

13 Q Is there an area where you can sit down out  
14 there?

15 A Yes, sir.

16 Q Okay. And did there come a time when the  
17 two of you heard or saw someone approaching?

18 A Yes.

19 Q All right, please describe to the Court what  
20 your first contact was when you heard or saw this person.

21 A Um, we heard somebody walking up to where  
22 we were sitting, and we called out who was there, and nobody  
23 answered. He kind of stopped and kept on walking up with their head  
24 bent down.

25 Q Excuse me?

1 A The head bent down.

2 Q Okay. Can you describe the person that  
3 approached you?

4 A Um, he, he wasn't that tall, and he was, he was  
5 bigger than me, and he was wearing a white polo shirt and black  
6 jeans.

7 Q Was this a, it was a male because you're  
8 saying a he?

9 A Yes.

10 Q Was, what was the race of the person?

11 A He was African-American.

12 Q And could you describe his weight?

13 A Um, he seemed to be a little overweight, he  
14 wasn't, yes.

15 Q What about, you said he was taller than you,  
16 how tall are you?

17 A I'm 5'5".

18 Q Okay.

19 A He wasn't much taller than me.

20 Q And what about any facial hair or hair,  
21 anything you noticed about that?

22 A Um, he had hair, but not much.

23 Q Did you notice the person carrying anything?

24 A Um, well, when he sat down next to me, I  
25 noticed he had a gun.

1 Q Do you know the difference between a rifle  
2 and a handgun?

3 A Well, yes.

4 Q What type of a gun was it?

5 A Um, it was a handgun.

6 Q And do you know the difference between a  
7 revolver and a semiautomatic?

8 A No.

9 Q What color was the weapon?

10 A Um, from what I remember, it was black and  
11 silver. It was either silver with black on it or black with silver on it.

12 Q What did this person do when he sat down?

13 A Um, he knelt down beside me and, um, told us  
14 not to be afraid, and, and he asked us for our money, and I tried to  
15 give him my necklace, and my friend --

16 Q -- Did you have any money?

17 A No, I didn't.

18 Q Did you tell the person that asked for the  
19 money that you didn't have any money?

20 A Yes.

21 Q What was the person, was it, where was the  
22 gun when he wanted the money?

23 A Um, it was in his hand.

24 Q Was it pointed at anywhere in particular?

25 A I don't believe so.

1 Q And what happened when you offered your  
2 necklace?

3 A He said he didn't want that.

4 Q Did you say that there was something else that  
5 was offered to him?

6 A Um, yes, I offered my friend's pager.

7 Q And what did he say about that?

8 A He said he didn't want that.

9 Q Did something, what happened next?

10 A Um, he asked us how old we are, we were, and  
11 I told him I was 14 and so did Stacy. And then, um, our friends Mike  
12 and Jarrett started walking up. And he told us to tell them that he  
13 was just a friend and that to go away.

14 Q Did you do that?

15 A Yes.

16 Q Where was the, where was the person who  
17 came upon you? Where was he situated in relation to you and Stacy  
18 at that time?

19 A He was knelt down beside me.

20 Q And where were Mike and Jarrett?

21 A Um, they were, they walked up toward, to us.

22 Q How far away were they?

23 A Um, maybe a couple of feet, not far.

24 Q Did they leave when they were asked to leave?

25 A Yes.

1 Q What happened after they left?

2 A Um, he, he then asked if he could have sex  
3 with me.

4 Q And he, you're referring to the person you  
5 didn't know that came and knelt down beside you?

6 A Yes.

7 Q And what, what was your response?

8 A I said, no, please don't, I'm a virgin.

9 Q Then what happened?

10 A He said, okay. And then he asked me to  
11 perform oral sex on him.

12 Q What was the word he used?

13 A Um, can I get some head.

14 Q And what was he, where, where, had he moved  
15 his position at all?

16 A Um, yes, he was standing up and he was  
17 pointing the gun at Stacy.

18

19 MR. CABELL: I didn't --

20 THE COURT: -- Stood up and pointed the gun  
21 at Stacy.

22 MR. CABELL: All right.

23

24 BY MR. HUBERMAN:

25 Q Is that when he was asking you for --

1 A -- Yes --

2 Q -- oral sodomy or was, what about when he'd  
3 asked for sex?

4 A No, he was sitting next to me when he asked  
5 me for sex.

6 Q And what happened when he stood up and  
7 pointed the gun at Stacy and asked you for oral sodomy, what  
8 happened next?

9 A Um, he pulled his pants down and held his  
10 penis towards me, and I felt that there was nothing else I could do, so  
11 I did it.

12 Q And when you say you did it, did he place a  
13 certain body part of his?

14 A Yes, his penis was in my mouth.

15 Q And how long did that occur?

16 A Not long.

17 Q What, what happened next?

18 A Um, he, he finished in my mouth and asked  
19 me if I'd ever done this before, and I said, no, and pulled back and  
20 spit what was in my mouth onto the dirt.

21 Q And when you say he finished, you're  
22 referring to ejaculating in your mouth?

23 A Yes.

24 Q And what you spit out was his ejaculation?

25 A Yes.

1 Q What happened next?

2 A Um, he said he knew where we lived and not  
3 to tell anybody, and then he turned around and walked away.

4 Q Do you know approximately what time it was  
5 by, by the end of this incident?

6 A It was probably about 8:15.

7 Q And what did you do at that point?

8 A Um, then Stacy and I walked back over to our  
9 friend Chase's house and told him.

10 Q Were the police then called?

11 A Yes, sir.

12 Q Did there come a time after the police were  
13 there and involved that you were taken to a hospital?

14 A Yes, sir.

15 Q And was that Saint Mary's Hospital?

16 A Yes, sir.

17 Q Did they, did they perform some tests on you  
18 that you recall?

19 A Yes, sir.

20 Q Did those include taking some samples from  
21 your mouth?

22 A Yes, sir.

23 Q Okay. Did they take a, did they have you rinse  
24 something out in your mouth?

25 A I believe so.



1 Q Took some swabs as well?

2 A Yes, sir.

3 Q In between when the police, when you walked  
4 back to the house and by the time you got to Saint Mary's, had you  
5 done anything to try to get this --

6 A -- Yes --

7 Q -- out of your mouth?

8 A I used mouth wash.

9 Q Mouth wash. Would there be any reason why  
10 there would be sperm in your mouth that wasn't this person's?

11 A No, sir.

12

13 MR. HUBERMAN: No further questions.

14 THE COURT: Questions, Mr. Cabell?

15

16 CROSS-EXAMINATION

17 BY MR. CABELL:

18 Q What kind of mouth wash did you use, do you  
19 know?

20 A Um, I believe it was cinnamon.

21 Q Was what?

22 A I don't, I believe it was cinnamon, I don't  
23 remember the brand.

24 Q Is there alcohol in it like most mouth washes?

25 A I would imagine so.

1 THE COURT: If you would wait in the hall,  
2 please do not discuss the matter with anyone.  
3

4 -----  
5 WITNESS STOOD ASIDE.  
6

7  
8  
9 MR. HUBERMAN: Call Stacy Wood.

10 THE COURT: Stacy Wood.

11 MR. CABELL: Judge, can I ask if she would  
12 remain, I may want her?

13 THE COURT: Yes, she's going to remain in the  
14 hall.

15 THE CLERK: Would you please raise your right  
16 hand. Do you solemnly swear the evidence you present in  
17 the matter now before the Court shall be the truth, the  
18 whole truth, and nothing but the truth, so help you God?

19 WITNESS WOOD: I do.

20 THE COURT: All right, have a seat, please. All  
21 right.  
22  
23  
24  
25

Hearings

1                                STACY LYNN WOOD, the witness, having  
2 previously been duly sworn, testified as follows:

3  
4                                DIRECT EXAMINATION

5 BY MR. HUBERMAN:

6                                Q                                What is your full name?

7                                A                                Stacy Lynn Wood.

8                                Q                                Okay. And Ms. Wood, how old are you?

9                                A                                Fifteen.

10                              Q                              Back on November 28th, 1998, you were 14  
11 then?

12                              A                              Yes.

13                              Q                              Is that correct? On that date, did you have  
14 occasion to be with Debbie Isbell at a friend's house off of Choate  
15 Lane?

16                              A                              Yes, I did.

17                              Q                              And did the two of you at some point in time  
18 then leave the residence and go to a wooded area?

19                              A                              Yes.

20                              Q                              Do you know approximately what time that  
21 was?

22                              A                              A little bit before 8:00.

23                              Q                              And while, was it just the two of you that was,  
24 that was in this wooded area?

25                              A                              Yes.

Hearings

1 Q Did something happen where another person  
2 approached?  
3 A Yes.  
4 Q Okay. What was the first that you heard or  
5 saw of this person?  
6 A We heard someone walk up.  
7 Q Okay, and what, did you do any, anything in  
8 response to hearing this person walk up?  
9 A I said, who's there, because I thought it would  
10 be one of our friends. The person stopped and then kept walking.  
11 Q Stopped and then continued to walk?  
12 A Kept walking, yes.  
13 Q Okay. And could you describe the person that  
14 you saw when they got to, to where the two of you were sitting?  
15 A He was black and maybe about 5'6, 5'7,  
16 because he was a little bit taller than I was, he was a little like chunky,  
17 and he didn't, had no hair or was shaved, like short hair.  
18 Q What was the person wearing?  
19 A A white polo shirt and black jeans.  
20 Q And did this person have anything in their  
21 hands?  
22 A Yes.  
23 Q And what was that?  
24 A A gun.  
25 Q Could you describe what the gun looked like?

Hearings

1 A It was black, and I saw a little bit of silver.  
2 Q All right. And what type of a gun was it?  
3 A It was a semiautomatic.  
4 Q Are you familiar with guns?  
5 A Somewhat.  
6 Q It was a handgun?  
7 A Yes.  
8 Q What happened once this person approached  
9 the two of you?  
10 A He walked up, and he said, don't be scared,  
11 don't worry, it's okay, and he asked if we had any money.  
12 Q Did you have any money?  
13 A No.  
14 Q What did you tell the person?  
15 A I said I didn't have any money.  
16 Q Then what happened?  
17 A And then Debbie offered him my brother's  
18 pager instead, but he said, no, he already had one, he didn't need it.  
19 Q Is, is your brother Michael?  
20 A Yes.  
21 Q And he's here?  
22 A Yes, sir.  
23 Q And what happened after she offered these  
24 things and he said he didn't need them?  
25 A Then he asked Debbie for sex, but she said,

Hearings

1 no, please, don't take my virginity.

2 Q What was he do --

3  
4 MR. HUBERMAN: -- Strike that, Judge.

5

6 BY MR. HUBERMAN:

7 Q What happened next?

8 A Then he asked her to perform oral sex.

9 Q Do you remember what words he used when --

10 A -- He said, will you do me head?

11 Q And what was, where was he sitting or  
12 standing in relation to the two of you while all of this was going on?

13 A Well, me and Debbie were sitting across from  
14 each other, and he was standing, sitting next to Debbie.

15 Q All right. And what happened after he asked  
16 for oral sodomy?

17 A He stood up and pulled down his pants.

18 Q And what happened next?

19 A She performed oral sex.

20 Q All right. Could you see what he was doing,  
21 did he still have the gun in his hand, this person?

22 A Yes.

23 Q And what was he doing with the gun?

24 A He had it against my chest.

25 Q How do you know it was against your chest?

Hearings

- 1 A I had felt it, but I had my eyes closed the  
2 whole time while she was doing that.
- 3 Q When, when was the first time you closed your  
4 eyes?
- 5 A When he stood up to take down his pants.
- 6 Q All right, so you didn't see anything from that  
7 point on?
- 8 A No.
- 9 Q Okay. When was it that you reopened your  
10 eyes?
- 11 A When I heard him pull up his pants and zip  
12 them back up.
- 13 Q Was the gun at your chest the whole time?
- 14 A Yes.
- 15 Q When, when did the gun become removed  
16 from your chest?
- 17 A When she finished.
- 18 Q Did you feel that you were free to leave at any  
19 point while the gun was pointed at your chest?
- 20 A No.
- 21 Q Did you believe it was a real firearm?
- 22 A Yes.
- 23 Q Did this person say anything to you about the  
24 firearm to give you any indication of whether it was real or not?
- 25 A No.

1 Q How long did this entire episode take?

2 A Um, maybe only about five minutes, it wasn't  
3 that long.

4 Q What happened after Debbie finished, you  
5 said?

6 A He said, don't tell anyone about what  
7 happened, and he left, and we went back to my friend's house.

8 Q And what did you do once you got back to  
9 your friend's house?

10 A They saw that we were upset, and they tried to  
11 calm us down, and once they did, we called the police.

12 Q Did you speak to the police that night?

13 A Yes.

14 Q You gave them a statement --

15 A -- Yes --

16 Q -- about the person that had done this?

17 A Yes.

18 Q Did they ask you for a description?

19 A Yes.

20

21 MR. HUBERMAN: Nothing further.

22 THE COURT: Questions, Mr. Cabell?

23

24

25



1 MR. HUBERMAN: Judge, the first thing I'd  
2 address is the offenses that were charged and whether  
3 those offenses were committed. You've got two  
4 attempted robberies, two firearms that go with those, you  
5 have a sodomy, a firearm, an abduction, and a firearm.

6 As far as the attempted robberies, the  
7 evidence you have before you is that an individual  
8 approaches these girls and the first thing he asks for is  
9 their money and presents a firearm.

10 Then you've got the other offense, two  
11 offenses where the, where the one victim has a gun put in  
12 her chest, I would suggest is evidence of an abduction of  
13 her, and the other girl was forced to sodomize the  
14 individual. And you have a firearm he used in all of those  
15 offenses. So I would suggest to the Court that there is  
16 sufficient evidence that all of these offenses occurred, it's  
17 just a matter of identification of whether this is the  
18 person who, who committed those offenses.

19 You've got three, or excuse me, two sets of  
20 types of evidence you have. You've got the DNA evidence,  
21 which suggests that the defendant is the individual who  
22 committed these offenses. The DNA samples were taken  
23 directly from the victim. You have opinions from, from  
24 scientists from the Division of Forensic Science, as well as  
25 an independent scientist who have both looked at the

1 evidence in this case and, and have come to the  
2 conclusion that the chances of randomly selecting  
3 another person other than the defendant from among the  
4 black population that would have the same profile as the  
5 defendant and as the person who, who committed these  
6 offenses is one in 270 million, which, which exceeds the  
7 population of the United States and certainly exceeds the  
8 population of black males of the age that could have  
9 committed this offense.

10 If you look at the other evidence you have,  
11 which is the circumstantial evidence that the defendant is  
12 the one that committed the offense. Here's the defendant  
13 is as he's leaving Louisa, and we, and, and as a matter of  
14 what time did he leave Louisa, when he leaves Louisa, he's  
15 got a gun, a black gun, which is consistent with the  
16 weapon that was, which was used in this offense. He was  
17 wearing a white polo shirt, which is identical to the shirt  
18 described by the victims in the case. He was wearing  
19 black pants, also consistent, and he meets the description  
20 of the, of the, of both victims in which he is a, not, he's,  
21 he's characterized as a short, slightly overweight or  
22 chunky, as one of the, one of the victims put it, young,  
23 African-American.

24 And he's wearing the clothes, he has the  
25 weapon, and a short time later, he is again committing a

1 similar offense to the attempted robbery. in which he  
2 confronts a woman on Broad Street. And I would suggest  
3 to the Court from the testimony you've heard that the  
4 location of where the sodomy took place is directly  
5 between, not directly, but it can certainly be considered  
6 as between where he left in Louisa and where this other  
7 incident took place --

8 MR. CABELL: -- That isn't in the evidence,  
9 Judge --

10 MR. HUBERMAN: -- on Broad Street.

11 THE COURT: All right. Anything else?

12 MR. HUBERMAN: That'll be all.

13 THE COURT: All right, comments, Mr. Cabell?

14 MR. CABELL: Judge, we've got two cases  
15 before you, one is circumstantial and the other is  
16 scientific evidence of the DNA. I'll address only the  
17 circumstantial evidence, and I'll do so very briefly.

18 Most significantly we have no identification of  
19 the defendant by the alleged victims. They told he was  
20 wearing a white shirt and dark pants, that he was African-  
21 American, but neither one of them were asked to or  
22 attempted to in any way identify the defendant. There is  
23 no evidence if there was a mask involved, a hat involved,  
24 or anything that would interfere with their observations.

25 Further superimpose on that, we have an alibi,

1 and we've heard these people from his family testify that  
2 he was in Louisa County shortly before 8:00 or shortly  
3 before 9:00. Now, we know he was in Louisa, and how do  
4 we know? Because his grandmother gave him a \$100 bill  
5 and let him use the computer, which he put in his car.  
6 When he was arrested and put in jail, Detective Ernie gave  
7 the \$100 bill back to the grandmother, so we know that  
8 the \$100 bill was in the car, we know that the computer  
9 was in the car, which establishes the fact that he was in  
10 Louisa sometime prior to the acts that he's charged with.

11 Now, if that was the case, I would feel very  
12 comfortable in asking the Court to strike the evidence  
13 because there is no proof beyond a reasonable doubt, no  
14 identification, there's an alibi, and there is circumstantial  
15 evidence indicating that his alibi is legitimate and  
16 truthful.

17 And the only thing that the Court can reach  
18 for now is the DNA, and that is why I acknowledged to the  
19 Court my inadequacy in presenting a DNA case and I have  
20 Mr. Linka in the case, and he will argue that aspect.

21 THE COURT: All right, I'll allow him to do  
22 that.

23 MR. LINKA: Thank you, Judge. We have some  
24 statistics to present to you, Judge, by Bode Technologies,  
25 Judge, for someone who hasn't done any of the testing.

1 Who's basically relied on work of others to reach conclusions  
2 -- -- We have testimony that relates to these statistics. We  
3 have a total population in the database of 194 individuals. I  
4 would imagine Mr. Watson would be 195. From that, the  
5 population statistics are inferred. When you look at the  
6 Certificate of Analysis, I think you can see questions that –  
7 Ms. Schiermeier –

8 Additionally, Judge, the extent of a unique situation of  
9 the Commonwealth in terms of the statute. It talks about the  
10 admission of certain DNA evidence shown, but I would  
11 suggest to the Court that Keen v. Commonwealth, 24  
12 VA.App. 795, that – certain determination whether or not the  
13 evidence is reliable, Judge, and I don't believe – statute gives  
14 instructions that the analogy would be for the jury to be given  
15 some instructions concerning the reliability of the DNA,  
16 Judge, and – evidence. So I don't think you can do that, and  
17 the Court has the final determination.

18 And I would suggest to you that given the alibis and  
19 given the other evidence, Judge, that the situation –

20 THE COURT: All right.

21 MR. LINKA: I have a copy of the case to tender to  
22 the Court.

23 THE COURT: All right.

24 MR. CABELL: Judge, for the record, may I in  
25 furtherance of my argument based on the Motion to

1 Strike --

2 THE COURT: I'll accept his Motion to Strike at  
3 the end of their case as well as at the end of your case and  
4 incorporate it all as a final argument in the case.

5 Anything else?

6 MR. HUBERMAN: Judge, just real briefly, I  
7 have a couple of matters I'll respond to about, about the  
8 identification alibi that Mr. Kizer is going to respond as  
9 far as the scientific evidence is concerned

10 As far as whether there was an identification  
11 of the defendant, obviously the two young ladies could  
12 not identify the defendant. We don't have that evidence  
13 before you, but the evidence that you did have was that  
14 this is a wooded area at night with no exterior sources of  
15 light other than whatever light the moon provided that  
16 night, which, which can explain to the Court why there is  
17 not identification. I would suggest to the Court that the  
18 DNA evidence goes beyond and is better in many respects  
19 than eyewitness identification.

20 And as far as the alibi is concerned, the one  
21 missing piece of the alibi of what we have is all family  
22 members of the defendant who are coming in and  
23 testifying and find out for the first time today that there  
24 was actually a person who's not related to the defendant,  
25 his sister's boyfriend was present. Where is he? He's not

1 here today, Judge, he is the one person not related to the  
2 family.

3 MR. LINKA: This is improper because the  
4 burden should be argued, Judge, this is improper.

5 THE COURT: Move along.

6 MR. HUBERMAN: That's all.

7 THE COURT: All right. Anything you want to  
8 say on the DNA, Mr. Kizer?

9 MR. KIZER: Just briefly, I would say that there  
10 is, first, there is no evidence to the contrary that the DNA  
11 is not reliable. In, in fact, you heard both from Ms.  
12 Schiermeier as well as Dr. McElfresh that it is, in fact,  
13 reliable. Dr. McElfresh talked about not only is it used  
14 widespread in forensic cases, but it's also used routinely  
15 in paternity cases and in diagnosing genetically inherited  
16 diseases, so it's used in other fields besides the criminal  
17 field.

18 He, he told you, and I would submit that you  
19 heard his qualifications, again which were not contested,  
20 he is extremely well educated, not only educated, but his  
21 experience for the last 15 years in this field, he's been all  
22 over, and worked for one of the two landmark  
23 corporations that began DNA testing, at least in the  
24 private sector. He talked about the reliability of DNA, but  
25 he also said that he had reviewed the complete case file

1 done by Ms. Schiermeier in connection with this particular  
2 case. And, again, I would submit their theory, there's  
3 absolute no evidence to suggest that anything was done  
4 incorrectly or that the methodology is not sound  
5 methodology.

6 To the contrary, you heard her testify that  
7 there were any number of built-in controls that were run  
8 when she ran these particular tests, one of which was a  
9 blind test that she did not know the answer to and had to  
10 submit to one of her superiors to, to make sure that it was  
11 done correctly and that it was in this particular case, as  
12 well as all, all of the other independent controls, and then  
13 there was peer review done at her lab, another scientist,  
14 and then all of that was reviewed by Dr. McElfresh.

15 The, he testified as to the population database  
16 and as to having been over that and checked it himself  
17 and that it is, in fact, a valid statistical population  
18 database. He checked the calculations of his statistics,  
19 and I would submit that there is absolutely no reason not  
20 to believe the DNA evidence in this case, and that is

21 enormous in terms of what it tells in, in that we know  
22 from the victims in this case that it was a black person  
23 who committed the offenses, and we, we know from the  
24 statistics that the likelihood of having a DNA profile such  
25 as Mr. Watson has is one in 270 million in the, in the black



1 population.

2 And, and lastly but certainly not leastly, the  
3 fact that Ms. Schiermeier testified that there was in this  
4 case sufficient sample left over that had anybody wanted  
5 to do, they could have done independent testing to --

6 MR. LINKA: -- Judge, the burden is shifting  
7 argument --

8 MR. KIZER: I'm saying it could have been  
9 done, I'm not saying anybody had any burden to do it, I'm  
10 saying that it is -- -- it could have been done.

11 So I would ask the Court to accept the DNA  
12 evidence and rely upon it.

13 THE COURT: All right. Well, obviously, the  
14 first question is regardless of who committed the crimes,  
15 is to prove sufficient to show that the eight alleged crimes  
16 have been committed, and I think it is. It shows factually  
17 each of the eight crimes were, in fact, committed.

18 Now the question becomes who did it? Is the  
19 proof there beyond a reasonable doubt, and again, I think  
20 the way the evidence is characterized is it's exactly right,  
21 you have the scientific evidence and you have the  
22 circumstantial evidence.

23 And I think what the case shows you take the  
24 scientific evidence on the DNA, as we all know we're  
25 talking about, and, you know, I have to decide reliability

1 of that and the people who testify and what have you, the  
2 same as any other expert that comes before the Court, and  
3 based on the evidence before the Court, I accept their  
4 testimony. I think it's shown that they are reliable, and I  
5 think they have a basis for the opinions they give. I think  
6 from the evidence that has been put forth, the basis for  
7 their opinions are, in fact, legitimate.

8 Then the opinion is that from all testing, quite  
9 frankly, that the defendant's profile is the one in the 270  
10 million. So then you look at that, and you say, well, is  
11 there anything that corroborates it. Well, I think it is.

12 I think, number one, we know from the  
13 evidence, and I agree, Mr. Cabell, there is no positive  
14 identification, but you look at the evidence, you, number  
15 one, you know, it's a black person, the defendant  
16 obviously is black. There has been a description of the  
17 size of the person, the height and weight, you know, no,  
18 not much in 5'6" and 190 pounds, but in general  
19 descriptions is of the height and weight of the person,  
20 and I will say that the defendant certainly matches that.

21 Then you look at the clothes that allegedly  
22 were worn, the defendant, when he's arrested some  
23 couple of hours later, is wearing clothes that really match  
24 almost identically to the person.

25 Then the gun was described, the gun being a, I

1 believe, described as a black and silver gun by the victims  
2 in the case. The gun is thrown out the window, it's  
3 recovered, put back together, being a BB gun, certainly  
4 was a gun that was consistent with that description, the  
5 basically black gun but so worn from my opinion of  
6 looking at it that it certainly, the worn part certainly could  
7 be perceived as the silver or lighter color on that gun that  
8 was described by the, the victims in the case.

9 Then you do have the situation with the  
10 defendant running from the police and throwing the items  
11 out the window, no question could that be partly  
12 contributed to the other crime, certainly. But it certainly  
13 is consistent of when you put it all together.

14 So I think when you put the evidence together  
15 as a whole, then the Commonwealth has proven the  
16 defendant's guilt beyond a reasonable doubt. And I find  
17 him guilty of all the charges.

18 Pre-sentence Report?

19 THE CLERK: January the 11th at 1:30.

20 THE COURT: January 11th at 1:30? Good?

21 MR. HUBERMAN: Yes, sir.

22 THE COURT: All right. Order a Pre-sentence  
23 Report, set sentencing for January 11th at 1:30.

24 MR. CABELL: Judge, Mr. Linka doesn't have to  
25 be here, does he?

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

THE COURT: No.

MR. CABELL: Thank you, Judge.

-----  
**NOTE: CONCLUSION OF TRIAL.**