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Clerk, Supreme Court of Appeals
Richmond, Va.

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Record No. 6155

In the
Supreme Court of Appeals of Virginia
at Richmond

JAMES C. HAMMER

v.

COMMONWEALTH OF VIRGINIA

FROM THE CORPORATION COURT OF THE CITY OF NEWPORT NEWS

RULE 5:12—BRIEFS

§5. Number of Copies. Twenty-five copies of each brief shall be filed with the clerk of this Court and three copies shall be mailed or delivered by counsel to each other counsel as defined in Rule 1:13 on or before the day on which the brief is filed.

§6. Size and Type. Briefs shall be nine inches in length and six inches in width, so as to conform in dimensions to the printed record, and shall be printed in type not less in size, as to height and width, than the type in which the record is printed. The record number of the case and the names and addresses of counsel submitting the brief shall be printed on the front cover.

HOWARD G. TURNER, Clerk.

Court opens at 9:30 a. m.; Adjourns at 1:00 p. m.

IN THE

Supreme Court of Appeals of Virginia

AT RICHMOND

Record No. 6155

VIRGINIA:

In the Supreme Court of Appeals held at the Supreme Court of Appeals Building in the City of Richmond on Wednesday the 9th day of June, 1965.

JAMES C. HAMMER, Plaintiff in Error,

against

COMMONWEALTH OF VIRGINIA, Defendant in Error.

From the Corporation Court of the City of Newport News
Douglas M. Smith, Judge

Upon the petition of James C. Hammer a writ of error and *supersedeas* is awarded him to a judgment rendered by the Corporation Court of the City of Newport News on the 14th day of December, 1964, in a prosecution by the Commonwealth against the said petitioner for a felony (Indictment No. 4); but said *supersedeas,* however, is not to operate to discharge the petitioner from custody, if in custody, or to release his bond if out on bail.

RECORD

* * * * *

JUVENILE AND DOMESTIC RELATIONS COURT

State of Virginia,
City of Newport News, to-wit:

To any and all Sergeants, Sheriffs, and Constables of the said City and State:

WHEREAS, Lt. F. L. Martin, Sgt. H. T. Williams of Newport News Police Dept. has this day made complaint and information on oath before me, E. L. Greene, Clerk of the Juvenile and Domestic Relations Court of the said city, that James C. Hammer, 10371 Warwick Boulevard, Newport News, Va. on the 17th day of April, 1964, in the said City, did Unlawfully and feloniously attempt to rape one Susan Godwin, w/f age 16, at 210 Ferguson Avenue, in the City of Newport News, Va., all against the peace and dignity of the Commonwealth of Virginia.

THESE ARE THEREFORE, in the name of the Commonwealth to command you forthwith, to apprehend and bring before the Judge of the Juvenile and Domestic Relations Court of the said City, the body of the said James C. Hammer to answer the said complaint, and to be further dealt with according to law.

Given under my hand and seal this 21st day of May, 1964.

E. L. GREENE (Seal)
Clerk of the Juvenile and
Domestic Relations Court.

Upon examination of this case I find the accused..... guilty as charged above herein, and assessed against h.... a fine of $..... and $....., costs, Total $.....; and sentence h.... to confinement at the City jail farm (City jail), (on the State Road Force), for a period of....., and I require of h.... a bond in the penalty of $..... for good behavior and that..... refrain from....., for a period of.....months.

I send the accused James C. Hammer on to the grand Jury

of the Corporation Court of said City of Newport News, for further investigation and trial.

Given under my hand and seal this 22nd day of May, 1964.

FORREST B. WALL (Seal)
Judge of the Juvenile and Domestic Relations Court, City of Newport News, Va.

Filed 6/2/64.

F. B. BARHAM, Clerk.

(on back)

GRAND JURY

Commonwealth of Virginia:
Juvenile and Domestic Relations Court, City of Newport News,

v.

James C. Hammer, 10371 Warwick Boulevard, accused.

Charged with Attempt Rape.

Executed this 21st day of May, 1964 at 9:20 o'clock a.m., by arresting James C. Hammer at Jail and delivering him at the Police Station or (to the Judge of the Juvenile and Domestic Relations Court) of the City of Newport News.

Lt. F. L. Martin, Sgt. H. T. Williams, Policeman.

ACCUSED IN JAIL.

* * * * *

page 2 } Virginia:

In the Municipal Court for the City of Newport News:

Commonwealth of Virginia,

v.

James C. Hammer.

WAIVER OF PRELIMINARY HEARING

I, James C. Hammer, being arrested and charged with a felony, to-wit: Attempt Rape (3 counts), do hereby waive preliminary hearing on this 22nd day of May, 1964.

JAMES C. HAMMER.

Filed June 2, 1964.

F. B. BARHAM, Clerk.

page 3 }

* * * * *

The Grand Jurors of the Commonwealth of Virginia, in and for the body of the City of Newport News and now attending the said Court, at its June term, nineteen hundred and sixty-four, upon their oaths do present; That James C. Hammer on the.....day of April, in the year one thousand nine hundred and sixty-four, in the said City, with force and arms, in and upon one Susan T. Godwin, feloniously did make an assault, and her, the said Susan T. Godwin, then and there, to-wit on the day and year aforesaid, in the city aforesaid, feloniously did attempt to ravish and carnally know, against her will and by force, against the peace and dignity of the Commonwealth of Virginia. Upon the testimony of, Lt. F. L. Martin, sworn in Court, and sent to the Grand Jury to give evidence.

(on back)

Ind. #4

* * * * *

Indictment for Attempt Rape, A FELONY a true bill.

....., Foreman.

Filed 8 day of June, 1964.

December 14, 1964....
Court Reporter, Morris Schneider Sworn....
Deft. Hammer present in Court with his Appointed Attorney's, H. Bateman & H. Kostel....

Probation Report filed.... heretofore found Guilty as charged....
Sentenced to Thirty (30) years in the State Penitentiary....
Motion of Deft. by Counsel to set aside the verdict as being contrary to law & evidence *Overuled*....Exception....
Deft. remanded to Jail....

* * * * *

page 7 } Virginia:

In the Corporation Court for the City of Newport News, the 2nd day of December, 1964.

* * * * *

On an indictment for a felony, to-wit: Attempt rape-Indictment No. 4 returned by June 1964 Grand Jury.

This day came the attorney prosecuting for the Commonwealth and the prisoner, James C. Hammer (who was represented by Harry Kostel and Herbert Bateman, attorneys heretofore appointed by the Court), was led to the bar in the custody of the jailer of this Court, and Morris Schneider, Court appointed Court Reporter, was sworn to faithfully and accurately take down and transcribe the proceedings herein, and the said James C. Hammer being arraigned, and upon advice of counsel, pleaded not guilty to said indictment, and upon advice of counsel and with the consent of the attorney prosecuting for the Commonwealth, and the Court, waived trial herein by jury, and the Court proceeded to hear and determine this case without the intervention of a jury. And the evidence of the Commonwealth being completed, the defendant, by counsel, moved the Court to dismiss this indictment on the ground that the evidence is not sufficient to support a conviction herein, which said motion being fully argued, the Court doth overrule the same, and to which action of the Court in overruling said motion, the defendant, by counsel, excepted. And the defendant by counsel, moved the Court to dismiss the charge of attempt rape herein on the ground that the evidence does not disclose the use of any force by the defendant, which said motion the Court doth overrule, and to which action of the Court in overruling said motion, the defendant, by counsel, excepted. And the evidence being completely heard, the Court doth find the said James C. Hammer guilty of attempting to rape Susan

T. Godwin, as charged in said indictment. Thereupon, the Court, on its own motion, doth refer this case to the Parole and Probation Officer of this Court and doth direct said Officer to thoroughly investigate and report upon the history of the accused and any and all other facts relevent herein, and this case is continued for further hearing to the 14th day of December, 1964. Thereupon, the said James C. Hammer is remanded to jail. And the record made by the Court Reporter herein of the said proceeding is filed with the papers in the case.

* * * * *

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* * * * *

This day came again the attorney prosecuting for the Commonwealth and the prisoner, James C. Hammer (who was represented by Harry Kostel and Herbert Bateman, attorneys heretofore appointed by the Court), was again led to the bar in the custody of the jailer of this Court, and Morris Schneider, Court appointed Court Reporter, was sworn to faithfully and accurately take down and transcribe the evidence and proceedings herein, and investigation having been made herein by the Parole and Probation Officer of this Court, this case came on again to be heard in the presence of the accused and his attorneys, upon the report of the Parole and Probation Officer, the accused having been advised of the contents of said report and having been given the right to cross examine said Parole and Probation Officer and present any additional facts he desired, and the said report of said Parole and Probation Officer being filed as a part of the record in this case, the Court doth fix and ascertain the punishment of the said James C. Hammer to be imprisonment in the public jail and penitentiary house of this Commonwealth for the term of thirty (30) years. Thereupon, the accused, by counsel, moved the Court to set aside its judgment herein as being contrary to the law and the evidence, which said motion the Court doth overrule and to which action of the Court in overruling said motion, the said James C. Hammer, by counsel, excepted. Thereupon, it being demanded of the prisoner if any thing he had or knew to say why this Court should not now proceed to pronounce judgment against him, according to law, and nothing further being offered or alleged in delay thereof, it is considered by the Court that the said James C. Hammer be imprisoned in the public jail and penitentiary

house of this Commonwealth for the term of thirty (30) years, the term of his imprisonment therein by the Court herein fixed and ascertained, there to be kept imprisoned and treated in the manner directed by law for the term aforesaid, or until he be otherwise discharged by due course of law, and that the Commonwealth recover against the said James C. Hammer the costs of this prosecution. And it is ordered that a credit of two hundred fifteen (215) days be allowed the said James C. Hammer for the time actually spent in confinement awaiting trial on this indictment. Thereupon, the said James C. Hammer is remanded to jail. And the record made by the Court Reporter herein of the said proceedings is filed with the papers in the case.

Entered Dec. 14, 1964.

* * * * *

page 17 }

* * * * *

Filed Feb. 12, 1965.

F. B. BARHAM, Clerk.

NOTICE OF APPEAL AND ASSIGNMENT OF ERROR.

To F. Baxter Barham, Clerk, Corporation Court of the City of Newport News, Virginia:

Notice is hereby given that the defendant, James C. Hammer, appeals in the above styled case and will apply for a writ of error.

ASSIGNMENTS OF ERROR.

The following are assignments of error:

1. That the conviction of the defendant was contrary to due process of law guaranteed to him under Article 1, Sections 8 and 10 of the Constitution of Virginia, and the 4th, 5th, 6th and 14th Amendments to the Constitution of the United States in the following regards:

a. In that the Court failed to dismiss the subject indictment when the defendant had been taken into custody and held in confinement without any arrest warrant or other valid pro-

cess contrary to statute, and without being advised until after the subject indictment as to the nature and circumstances surrounding the charges for which he was being held, and when the defendant was denied the right or opportunity to engage counsel at a crucial stage of his confinement and the investigation of charges against him.

b. In that the Court erred in admitting into evidence an incriminating statement signed by the defendant, which was extracted from him as a result of threats, promises, duress ad coercion, denial of the right and opportunity to retain counsel, the wrongful and illegal nature of the page 18 } defendant's being taken into and held in custody without a valid warrant for his arrest or reasonable notice of the charge or charges against him induced by the results of illegal searches and seizures.

2. That the Court erred in excluding the following evidence offered on behalf of the defendant for purposes of showing the incriminating statement of the defendant was inadmissible.

a. Exclusion of testimony of Police Lieutenant Mapes regarding his participation in alleged illegal searches and seizures, which defendant contends were a procuring cause of his making incriminating statements.

b. Exclusion of evidence as to investigative procedures, including continued interrogation and the execution of additional incriminating statements subsequent to defendant's signing such a statement as to this matter, and further, the Court's ruling that any evidence respecting these matters subsequent to the time of the statement in question were immaterial and were not to be considered on the question of admissibility of the said incriminating statement in this case.

c. Exclusion of testimony of the defendant's father that he was advised by the Chief of Police that charges could or might be brought for possession of stolen goods unless the defendant co-operated with the police, said testimony having been offered as tending to establish that the defendant's incriminating statement was induced by threats of officials of the Police Department.

d. Exclusion of testimony of the defendant that Police Lieutenant F. L. Martin advised that it would be unnecessary to employ an attorney for the defendant.

e. Exclusion of evidence as to the defendant's schedule or routine during the day he was taken into custody as being

immaterial to the question of the admissibility of his incriminating statement.

f. Exclusion of the defendant's testimony concerning the manner and circumstances of the investigation and interrogation to which he was subjected after he was taken into custody.

page 19 } 3. That the Court erred in denying the defendant the right to cross examine the complainant's mother as to any statement by the complainant that she could not identify her alleged assailant.

4. That the Court erred in over-ruling the motion of the defendant made at the conclusion of the Commonwealth's case to dismiss the indictment on the grounds the evidence was insufficient as a matter of law, and also that the Court erred in denying the same motion made at the conclusion of the defendant's case.

5. That the Court erred in denying defendant's motion to set aside the verdict and to dismiss the indictment against the defendant on the grounds the verdict was contrary to the law and the evidence, or in the alternative to the defendant a new trial.

JONES, BLECHMAN, WOLTZ & KELLY
By HARRY J. KOSTEL
HERBERT H. BATEMAN

* * * * *

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* * * * *

NOTICE OF TENDERING OF TRANSCRIPT TO JUDGE.

To Marvin M. Murchison, Commonwealth's Attorney for the City of Newport News, Virginia:

You are hereby notified that on the 12th day of February, 1965, at 9:30 a.m. o'clock a.m., in the Corporation Court of the City of Newport News, Virginia, the undersigned will tender to the Honorable Douglas M. Smith, Judge of the said Court, the original transcript of the evidence, reduced to writing, in the above styled cause, and respectfully ask the Honor-

able Judge of said Court to certify the same as a true copy of the evidence in the above styled proceeding.

JONES, BLECHMAN, WOLTZ & KELLY
By HARRY J. KOSTEL
HERBERT H. BATEMAN
Counsel for the Defendant.

Filed Feb. 12, 1965.

F. B. BARHAM, Clerk.

* * * * *

SUSAN GODWIN,
called as a witness by the Commonwealth, being duly sworn, testified as follows:

DIRECT EXAMINATION.

* * * * *

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* * * * *

By Mr. Murchison:
Q. Susan Godwin?
A. Yes.
Q. For the Clerk, Stenographer, will you spell your last name, Susan?
A. G O D W I N.
Q. How old are you, Susan?
A. 17.
Q. Directing your attention to—let me ask you this. When was your birthday?
A. October 25.
Q. Of—what year? 64?
A. Yes.
Q. That's a little redundant. What—how old were you then, April of '64?
A. 16.
Q. 16?
A. Yes. All right. Where do you live, Susan?

Susan Godwin.

A. 86 Main Street.

Q. I'm not hearing you too good.

page 9 } A. 86 Main Street.

Q. 86 Main Street?

A. Yes.

Q. Where is that?

A. In Hilton.

Q. Is that in the City of Newport News, Virginia?

A. Yes.

Q. All right, who do you live there with, Susan?

A. My mother and brother and sister.

Q. And do you go to school?

A. Yes.

Q. Where do you go, Susan?

A. Warwick High.

Q. Warwick High School?

A. Yes.

Q. What grade are you in?

A. I'm a senior.

Q. You're a senior?

A. Yes.

Q. I don't mean to be repeating it after you but I'm not getting all of it. If you gentlemen can't hear, let me know. Susan, were you living in the City of Newport News on or about April the 16th, 1964?

A. Yes.

page 10 } Q. Living at your home?

A. Yes.

Court: Susan, let me tell you now, you're going to have to answer. You can't shake your head. Everybody has got to hear an oral answer from you.

A. All right.

By Mr. Murchison:

Q. All right, Susan, what did you do, if anything, in the evening of April the 16th of 1964?

A. I was baby sitting for the Spiers.

Q. For the Spiers?

A. Yes.

Q. Do you know their first name?

A. No, I don't.

Q. Do you know where he works, anything about him?

A. I think he has his own business.

Susan Godwin.

Q. His own business?
A. Yes.
Q. Whereabouts do the Spiers live, Susan?
A. On Ferguson Avenue.
Q. Do you know the number?
A. 210.
Q. 210 Ferguson Avenue?
page 11 } A. Yes sir.
Q. Is that in the Hilton Village area also?
A. Yes, sir.
Q. In Newport News, Virginia?
A. Yes, sir.
Q. You—where were you baby sitting, at their home or your home or somewhere else?
A. At their home.
Q. At 210 Ferguson Avenue in the City of Newport News, Virginia?
A. Yes sir, yes sir.
Q. And what—what child or children were you baby sitting with? What were their ages?
A. I think the little girl is about 18 months and the little boy was about four.
Q. Four years or months?
A. Four years.
Q. Four years?
A. Yes.
Q. What time, if you recall, Susan, did you go to the Spiers' home to start your baby sitting?
A. I think it was about 7:00 o'clock.
Q. In the evening?
A. Yes, sir.
Q. Did anyone else go with you to be a com-
page 12 } panion or—or was anyone else there with you?
A. No sir, no sir.
Q. Were the Spiers home when you arrived there?
A. No. I think—Mrs. Spiers' sister had the children and she was going to bring them to the house.
Q. Did she bring them to you at 210 Ferguson Avenue?
A. Yes, sir.
Q. About what time?
A. Between seven and a quarter after seven.
Q. I see. And you had already gotten there waiting for them?
A. Yes, sir.

Susan Godwin.

Q. Did anyone—I want to clear this. Did anyone stay with you or come there to be with you, to be your companion or friend for the night?

A. No, sir.

Q. While you baby sat?

A. No, sir.

Q. None of your friends or anyone like that?

A. No sir, no sir.

Q. How far is Ferguson Avenue at 210 from your home, how many *block* would you say, if any?

A. About three and a half.

page 13 } Q. Three and a half blocks?

A. Yes.

Q. Had you baby sitted—baby sit—

Mr. Kostel: Sat.

By Mr. Murchison:

Q. You don't object to my English. Had you baby sat before for Mr. and Mrs. Spiers?

A. Yes, sir.

Q. On numerous occasions or just several?

A. Just several.

Q. Were there any specific orders given that night to you or just the normal baby sitting routine?

A. Just the normal.

Q. Had you put the babies to bed or were they still up for the evening when they were brought back by his sister?

A. They were still up. I was supposed to put them to bed in a little while.

Q. Where would they be? Where were they in the early part of the evening there, after seven?

A. They were downstairs watching TV with me for a while.

Q. And did you—did you put them to bed?

A. Yes, sir.

Q. And what time did you put them to bed?

page 14 } A. I think the little boy was about—went about nine o'clock and the little girl went between eight and eighty thirty.

Q. All right. Now after you put the children to bed, Susan, did anything happen to you there at the house that night?

A. Yes, sir.

Q. Will you tell the Court in your own words and I will ask you to speak into the microphone so everyone can hear

Susan Godwin.

you and these gentlemen here, what happened to you? Tell us the sequence of events that happened?

A. Well, I was in the living room and I was—lying down watching TV and it was about time for the people I was baby sitting for to get home.

Q. I'm sorry. Would you tilt it to your mouth. Mr. Kosten isn't going to bother you. Tilt it to your mouth a little closer up. You were lying down?

A. On the sofa watching TV.

Q. Get it up close to your mouth (indicating microphone).

A. And—

Q. Isn't that better? Go ahead.

A. And the door was—the door clicked like it was going to open and I thought it was the Spiers.

Q. What door?

page 15 } A. The front door.

Q. Was the front door shut?

A. It was.

Q. Who had closed it?

A. I had.

Q. Was it locked?

A. No.

Q. What type of door is that, screen door, wooden door or what?

A. There's a screen door and a wooden door.

Q. Were both doors shut or open?

A. Both of them were shut.

Q. Both were shut?

A. Yes.

Q. And you had shut them?

A. Yes, sir.

Q. And what then happened about the door?

A. It clicked like it was opening and I thought it was the Spiers getting home and I turned around and there was—this man standing there.

Q. Were any lights on in the house?

A. Yes, sir.

Q. Could you see this man?

A. Yes, sir.

Q. How far away were you from him?

page 16 } A. About from here to you.

Q. About from me to you?

A. Yes.

Susan Godwin.

Mr. Murchison: Would you want to estimate that, Mr. Kostel?
Mr. Kostel: Ten to twelve feet, I'd say.
Mr. Murchison: Agreeable with me.

By Mr. Murchison:
Q. All right, you were still on the sofa?
A. Yes, sir.
Q. And what—how—did you know this man?
A. No.
Q. How was the man dressed?
A. He had on a dark blue hooded sweat shirt and a handkerchief across his face and—and tennis shoes and dark pants.
Q. You mean the hood was on his head?
A. Yes.
Q. And—this handkerchief was across his face?
A. Yes.
Q. When he came in?
A. Yes, sir.
Q. And that's how you saw the first time?
A. Yes, sir.
Q. Did he have anything in his hands?
page 17 } A. He had a gun in his hand.
Q. He had a gun in his hand?
A. Yes.
Q. Could you see that?
A. Yes, sir.
Q. What did it look like? What type did it look like or do you know?
A. Like a regular gun.
Q. Like a regular gun?
A. Yes.
Q. Was it in his hand you say?
A. Yes, sir.
Q. What happened from that moment on then, Susan?
A. Well—
Q. Did he say anything to you at that moment?
A. He—he told me just to do what he told me to do and I wouldn't get hurt.
Q. Told you to do what he told you to do and you wouldn't get hurt?

Susan Godwin.

A. Or something like that. I don't know if that's his exact words.

Q. Where were you then?

A. I was sitting on the sofa.

Q. Where was he then?

page 18 } A. He was standing near the door in front of the door.

Q. In front of what door now?

A. The front door by the piano.

Q. What happened after he said that to you?

A. Well, he told me to come over to where he was and we went—

Q. Where was the gun then?

A. In his hand.

Q. Why did you go over to him?

A. Because I was afraid.

Q. Why were you afraid, Susan?

A. Because he had a gun.

Q. All right, so you went over to him and then what happened?

A. We went through the living room and through the dining and—through the kitchen to this little like laundry room.

Q. In the Spiers' home?

A. Yes.

Q. Is that laundry room connected with the main part of the house that's—

A. It's connected to the kitchen.

Q. Connected to the kitchen?

A. Yes.

page 19 } Q. Why were you going back there? What made you go back that way?

A. Because he said to.

Q. He said to?

A. Yes.

Q. Was the gun there all the time?

A. Yes, sir.

Q. What did he say he was going to do as you were going back there?

A. Nothing.

Q. Were you in front of him as you were going back?

A. Yes, I guess so.

Q. All right. What happened when you got back to the utility room, wash room, whatever you call it?

Susan Godwin.

A. Well, he told me to take off my slacks and pants and he told me to lie down on the floor and then he—

Q. Go ahead.

A. He got on top of me.

Q. He did what?

A. He got down on top of me.

Q. Was his clothes all intact?

A. No, he had his zipper down.

Q. When did he do that?

A. When he told me to take off my slacks and
page 20 } pants.

Q. Did you see him take his zipper down?

A. No.

Q. Was it down when you got down on the floor then? Was it open?

A. Yes, sir.

Q. Was or was not anything exposed to you?

A. Well, I wasn't looking.

Q. You were not. Why did you get on the floor then?

A. Because he told me to.

Q. Why did you do that?

A. I was afraid of him.

Q. You were afraid of him. All right and I believe you said that he did what then after you—were your clothes off when you laid down?

A. Yes, sir.

Q. And what happened then?

A. Well, he—he got down on top of me and put his penis in my vagina.

Q. He put his penis in your vagina?

A. Yes.

Q. Did he or did he not penetrate your body?

A. Well, I don't know. I don't know how much he did.

Q. Did you—you felt this, is that right?

page 21 } A. Yes sir.

Q. And he was on top of you?

A. Yes, sir.

Q. Did he or did he not say anything to you while he was on top of you?

A. He asked me if I had ever done it before and I told him no and he said I was lying.

Q. He said I was lying?

A. Yes.

Q. Were you hurt?

Susan Godwin.

A. By what he said?
Q. No, by what he was doing.
A. It just a little bit.
Q. It hurt a little bit. What happened after that? How long did he stay there on top of you or do you know?
A. Not very long.
Q. What happened?
A. There was a—it sounded like the front door was opening and I said it was probably the people coming home so he jumped up real quick and—and he—he went out the back door, and I locked it and I—I put my clothes on and went to the living room but the Spiers weren't there so—I didn't know how to lock the door and I didn't want to
page 22 } open the door because the screen door was unlocked and he might be there. I didn't know so then—then somebody knocked at the door but I was afraid to open it so I was standing in front of it and it was him and he pushed the door open.
Q. It was him again?
A. Yes.
Q. And he pushed the door open again?
A. Yes.
Q. What happened then?
A. He said he forgot something so he went back through the—the dining room and kitchen into that room and he got his gun and he asked me why wasn't the door locked and I told him I didn't know to lock it so he locked it and he left.
Q. Did he do anything to you on that second time coming in except to get the gun that was out in the room?
A. No.
Q. Well, immediately after that what did you do then?
A. Well, I was—I thought the people would be there soon so I just waited for a while and then—they weren't there by eleven and I was scared and I called my mother and asked her to come down and she came down and she called my father at work and he came and we stayed there until the Spiers came home and then we left and my mother
page 23 } called the police and one of the detectives came to the house and I went to the hospital.
Q. You went to the hospital?
A. Yes.
Q. Why did you go to the hospital, do you know?
A. To have an examination.
Q. Susan, did you scream out at any of this time while he

was going back to the utility room with you or while he was on top of you?

A. No.

Q. Why?

A. I was scared.

Q. You were scared. Did you see the gun there after he had gone out the back door after this noise had been heard and you got yourself dressed, had you seen it?

A. No, I didn't know he left it.

Q. Had you ever seen that man before that night, to your knowledge?

A. No, sir.

Q. Did you see him later at any time, the person?

A. Yes.

Q. Where would that be?

A. At my grandmother's house.

Q. And where is that?

page 24 } A. 98 Post Street.

Q. Now, at this moment, this was the other charge, Mr. Kostel, you were asking about not to be tried at this time. Now after that time at your grandmother's house—

A. Yes.

Q. Did you ever see that man again?

A. Yes, one afternoon my mother and I had gone around to my grandmother's and we were coming back to my house and I—I saw that man and so my mother followed him and she—he cut through some lady's back yard and—the lady let Mom use the phone. She called to the detectives.

Q. And that was in an afternoon?

A. Yes, sir.

Q. How was that man dressed then?

A. Well, he had on the same dark sweat shirt and tennis shoes and—and trousers.

Q. Did he have on anything in front of his face then that afternoon?

A. No, he was just walking along.

Q. But you recognized him then?

A. Yes.

Q. Did you see him again later from that afternoon?

A. That—that night he was caught. That was the night he was caught and—and I came down here and

page 25 } he was in the lineup.

Q. Down here, you mean down the Police Station?

Susan Godwin.

A. Yes.

Q. Did you see him here at the Police Station later that day and night then?

A. Yes, sir.

Q. Was that person that you saw here at the Police Station the same person that you have testified to that did this act to you at 210 Ferguson Avenue, Newport News, Virginia?

A. Yes, sir.

Q. The same man?

A. Yes, sir.

Q. Any question in your mind about it, Susan?

A. No, sir.

Q. Is that man in the Courtroom today?

A. Yes, sir.

Q. Where is he, Susan?

A. Right there.

Q. Where do you mean, "right there"? This machine doesn't know what you are talking to.

A. This man over there with the dark shirt on and the dark suit.

Q. Is it to the right or left of you?

A. To the right.

page 26 } Q. To the right?

A. Yes.

Mr. Murchison: May the record show he's identified—

Court: Let the record show she's pointed to the Defendant.

Q. This is the man you had seen the times you have testified to?

A. Yes, sir.

Q. Did you invite him to come to visit you at 210 Ferguson Avenue?

A. No, sir.

Q. Had you ever been in this man's—the Defendant's company before that night?

A. No, sir.

Q. To your knowledge?

A. No, sir.

Q. Did you give him—strike that. What did he say to you, Susan, when you were back in the utility room? What—what did the Defendant say?

A. He just said what I told you about had I ever done that before.

Susan Godwin.

Q. Well, go back to where you were—did he at that time tell you to disrobe there in the utility room or wash
page 27 } room?
A. He told me that before.
Q. Did he or did he not direct you to get on the floor?
A. Yes, he did.
Q. And then what did he say, if anything, then?
A. That was when he said hadn't I ever done this before.
Q. I see. And this this act was—
A. Happened.
Q. Was happening then. Were any of his clothes off of him other than his unzipped pants?
A. No, sir.
Q. Do you know where the gun was at the time he was on top of you?
A. I guess it was in his hand.
Q. Do you know?
A. No.
Q. If you do or if you don't.
A. No.
Q. Was the gun in his hand when he was standing there as you were disrobing and getting on the floor?
A. Yes.
Q. Then he had to come back and get the gun later on as you said?
page 28 } A. Yes.
Q. How long was that time between the time that he ran out the back door and you had gotten your clothes on and gone to the front, how long a time elapsed?
A. About five minutes.
Q. I see. Did you recognize the person that was there at the front door on the second time around when you saw this form standing out there?
A. Yes, sir.
Q. Did you open the door or did he open the door?
A. He opened it.
Q. He opened it again and you say you couldn't lock it. It had a funny or something?
A. I didn't know how to lock it.
Q. Did you or did you not lock the utility room door, the one he had gone out of the back?
A. That was locked, yes.
Q. Did you lock it?
A. Yes sir.

Susan Godwin.

Q. After he had left?
A. Yes sir.
Q. So you locked that one but you couldn't lock the front one?
A. Yes sir.
page 29 } Q. Had you tried to lock the front one before he came in then the first time?
A. No, I thought it was locked.
Q. You thought it was locked?
A. Yes.
Q. But you couldn't lock it after you had gotten back out of this utility room and gone back?
A. No, I didn't know how it worked.
Q. I see. What time do you estimate that he first came in there?
A. It was between 9:30 and ten.
Q. Between 9:30 and ten and then the act occurred and he came back and then you—
A. Yes.
Q. Called your mother later on?
A. Yes sir.
Q. Did you call the police yourself at the house?
A. No, sir.
Q. Why?
A. Well, since he came back again I thought he might still be out there and I was afraid if he saw me—he might come back in.
Q. I see. Why didn't you call your mother then until later?
A. Because I thought he might see her.
page 30 } Q. Might see her?
A. Yes, he might harm her.
Q. Why were you afraid he might see her?
A. I didn't want anything to happen to her. I thought the Spiers would be there soon.

Mr. Murchison: All right, witness with you.
Court: All right sir, you may cross examine.

CROSS EXAMINATION.

By Mr. Kostel:
Q. You go to school, Susan?
A. Yes sir.
Q. Where do you attend school?

Susan Godwin.

A. Warwick High.
Q. What grade are you in?
A. I'm a senior.
Q. You were a junior at the time of this occurrence?
A. Yes sir.
Q. Did you begin at Warwick High School in September of 1963?
page 31 } A. Yes sir.
Q. You are no longer in Warwick High School, are you?
A. I am.
Q. You still a student at Warwick High School?
A. Yes sir.
Q. Now Susan, are you positive about the time that this man entered the house where you were baby sitting?
A. It was between nine thirty and ten.
Q. Do you think that you ever made a statement to Officer Tench of the Newport News Police Department that it was about eight o'clock?
A. No, sir.
Q. You are positive you didn't make such a report to Lieutenant C. L. Tench?
A. Not this time. It might have been the second time.
Q. Mam?
A. Not the first time. It might have been the second time.
Q. I don't follow you.

Court: Not the first time. It might have been the second time.

By Mr. Kostel:
Q. Now Susan, I plan to offer some evidence
page 32 } which is going to contradict the time which you say this happened. Do you desire to change that time?
A. No.
Q. Now what time did you telephone your mother?
A. About eleven.
Q. That would have been about how long after the suspect or the person who was in the house with you had left?
A. About an hour and fifteen minutes.
Q. Hour and fifteen minutes?
A. Yes.
Q. No reason why you couldn't telephone the police from the Spiers' house, was it?

Susan Godwin.

A. I wanted to tell my mother first.

Q. No reason why you couldn't call your mother and have her telephone the police was it, Susan?

A. I don't know.

Q. What?

A. I don't know.

Q. You don't know of any reason why you couldn't have done that, do you?

A. I don't know.

Q. As you were being led back to the living into the dining room into the kitchen and the laundry room, did you ever ask this man what he wanted?

page 33 } A. No.

Q. You never questioned him?

A. No.

Q. And as soon as he told you to take your clothes off, you took your slacks and pants off, is that right?

A. I did.

Q. You didn't take any of your upper garments off?

A. No, I didn't.

Q. I didn't hear you.

A. I didn't.

Q. Were you standing up when you took your slacks and pants off?

A. No, sir.

Q. And then he told you to lie down?

A. Yes sir.

Q. And again he didn't have to ask you but one time?

A. No.

Q. What?

A. No.

Q. Did you ask him at that point what he planned to do?

A. Well, I had an idea.

page 34 } Q. What?

A. By that time I had an idea.

Q. Did you in any way try to resist him after he got on top of you?

A. No, I was afraid. He had a gun.

Q. What?

A. No, I was afraid because he had a gun.

Q. I thought you said in response to Mr. Murchison's question you didn't know where he had the gun when he was on top of you?

A. When he was getting down is what I thought you were talking about.

Susan Godwin.

Q. Beg your pardon?
A. I thought you were talking about when he was getting down.
Q. He was getting down on top you, with a gun in his hand?
A. Yes.
Q. Did you remain in the living room when he returned to get his gun?
A. Yes sir.
Q. You did?
A. Yes sir.
Q. And how did he depart on that occasion?
A. Through the front door.
page 35 } Q. He came back out through the front door?
A. Yes.
Q. Locked the door for you?
A. Yes sir.
Q. Why did he do that, if you know?
A. I don't know.
Q. What type of lock is on that door?
A. I think it's a latch.
Q. A latch?
A. You push a button that's on the side of the door.
Q. Can you close the door behind you and lock it without a key when you're going out?
A. Yes sir.
Q. And that's what he did, after he slammed the door, it remained locked on the second occasion, is that right?
A. No, he pushed the button that's on the side of the door. You open the door and there's two little—buttons like things. You push it in and it locks it.
Q. Does a metal thing slip out of the lock and go into the door frame to lock the door when you push that button? Is it that type of lock?
A. No, sir.
Q. What kind is it?
A. I don't know how to explain it to you.
page 36 } Q. Had you been shown by the Spiers how that lock worked?
A. No, sir.
Q. How many times had you baby sat for them?
A. Three altogether.
Q. This made the third time?
A. Yes sir.
Q. They never bothered to show you how to lock the door?

Susan Godwin.

A. They always locked it when they went out. It was already locked.

Q. Why wasn't it locked on this occasion, if you know?

A. They weren't there. They had to leave it open for me to get in.

Q. I beg your pardon?

A. They weren't there when I arrived and they had left the door open so I could get in.

Q. Who was the last person to go out of that door before this occurrence happened?

A. I think it was the lady's sister who had the children.

Q. Is she an adult?

A. Yes sir.

Q. How old a lady is she?

page 37 } A. I don't know.

Q. Did she inquire about the lock on the door?

A. No, sir.

Q. She knew you were there alone with two young children, didn't she?

A. Yes sir.

Q. Where were the Spiers going, if you know?

A. I think they were going to a dinner.

Q. A dinner?

A. I don't remember.

Q. Do you know what time they left the house?

A. They weren't there when I got there.

Q. Did they leave an address where they could be reached in the case of an emergency?

A. I think it was at the Chamberlin. I don't know. They didn't leave—

Q. Did they tell you that or you just assumed that?

A. She called me and told me.

Q. She called you?

A. Yes.

Q. About what time?

A. Oh, I mean this was before that night. When she called and asked me to see if I could stay.

Q. They were going to the Chamberlin?

page 38 } A. I think that's where it was.

Q. And you knew how to call the Chamberlin Hotel, didn't you?

A. No.

Q. You didn't?

A. No.

Q. You didn't have benefit of a telephone directory?

Susan Godwin.

A. There was one there.
Q. You know how to use a telephone directory, don't you?
A. Of course.
Q. Did Mr. and Mrs. Spiers tell you how long they would be out that evening?
A. They said they would in by nine thirty.
Q. By nine thirty. Did they tell you why they were late in arriving when they did arrive?
A. If they did, I don't remember.
Q. Did you learn how to lock the door after this man came back and locked it in your presence?
A. I guess so.
Q. And hadn't the Spiers locked it before in your presence when they left?
A. No, the latch was already on—on—

page 39 } Q. You don't know whether there was any penetration or not?
A. No, I don't.

Q. Did you try to assist this man in any way after he got on top of you?
A. No.
Q. Did you try to resist him in any way after he got on top of you?
A. No.
Q. Did you try crossing your legs?
A. No.
Q. Did you have your legs spread?
A. Well, when he got down he told me.
Q. Beg your pardon?
A. When he got down, he told me what to do.
Q. He did?
A. Yes.
Q. How far is it from 210 Ferguson Avenue to 98 Post Street?
A. About four and a half blocks.
Q. Four and a half blocks?
A. Yes.
Q. Did you tell him your grandmother lived at 98 Post Street?
A. No.

page 40 } Q. Do you know of any reason why he would know you were at 98 Post Street on several weeks later, several days later?
A. No.

Susan Godwin.

Q. Ferguson Avenue runs in a north-south direction, doesn't it?
A. Yes sir.
Q. And 210 is located on which side, east or west side?
A. I don't know which side it's on.
Q. Is it on the side toward the river or the side toward the City Hall?
A. Toward the City Hall.
Q. Mam?
A. Toward City Hall.
Q. That would be the east side I think we can agree on and where is it situated with regard to the block that it's in? Is it in the middle of the block or on the corner or where?
A. It's in the middle.
Q. In the middle?
A. Yes.
Q. Is it a single unit dwelling?
A. Yes sir.
Q. House on each side of it?
A. Yes sir.
page 41 } Q. Do you know who lives on either side of 210 Ferguson Avenue?
A. No, sir.
Q. Those houses are real close together, aren't they, Susan?
A. They have a driveway in between them.
Q. They have a common driveway, don't they?
A. Sir?
Q. Do they have a common driveway? Do the driveways serve both houses, the same driveway?
A. Not on the single house they don't.
Q. Not on the single houses. How far would it be from the utility room of 210 Ferguson Avenue to the kitchen—of 212 Ferguson Avenue?
A. I don't know.
Q. It wouldn't be very far, would it?
A. I don't know.
Q. Now you say you saw this man who was in your—in 210 Ferguson Avenue walking—along the street of Hilton Village on the day he was arrested?
A. Would you repeat that?
Q. I understood you to say that you saw the man who was in 210 Ferguson Avenue walking along the streets of Hilton Village on the day previous to the night he was arrested?

Susan Godwin.

A. Yes sir.

page 42 } Q. And that was—the man who was in 210 Ferguson Avenue?

A. Yes sir.

Q. That's the same man who is sitting here?

A. Yes sir.

Q. Where did you see him, Susan?

A. You mean the day? The afternoon—

Q. The exact location.

A. He was in front of the telephone company walking down in front toward the river.

Q. In front of what?

A. The telephone company.

Q. That would be on the north side of Main Street, wouldn't it?

A. Yes sir.

Q. And he was walking which way?

A. Towards the river.

Q. Toward the railroad?

A. The river.

Q. The river and which way was the car in which you were riding with your mother proceeding?

A. We weren't riding. We were walking.

Q. Oh, I see. Which way were you all walking?

A. We were crossing the street and I happened

page 43 } to see him.

Q. Crossing what street?

A. Main Street.

Q. Crossing Main Street?

A. Yes.

Q. And were you crossing over from the bank of Warwick side to the telephone company side?

A. Just the opposite.

Mr. Kostel: Just the opposite. I think we can agree they were crossing Main from north to south and the man she identifies as the Defendant was walking west on Main. Is that all right, Mr. Murchison?

Mr. Murchison: Yes sir.

By Mr. Kostel:

Q. And at what point on Main Street were you crossing from north to south?

A. On the corner of Piez and Main.

Susan Godwin.

Q. On the corner Piez and Main?
A. Yes; yes sir.
Q. So that the Defendant as you were crossing or—just prior to crossing was to your left, is that right?
A. Yes sir.

page 44 } Q. Now starting at the intersection of Main Street and Warwick Boulevard and going toward the river, name the streets that intersect Main Street?
A. Piez, Hurley, Palen, Ferguson and then River Road.
Q. How far is the corner of Piez and Main Street from where you first saw the Defendant in front of the telephone company building?

Mr. Murchison: How far is the corner from Piez and Warwick Boulevard?
Mr. Kostel: How far is the corner of Piez and Main Street from where she saw the Defendant, first saw the Defendant?
Mr. Murchison: It would be the same place. It's there all the time. Two streets are there forever. I think your question will confuse her.
Court: I understand the question but maybe she doesn't.

By Mr. Kostel:
Q. How far is it from the corner of Piez Avenue and Main Street from where you first saw this man walking west on Main Street?
A. I don't know.
Q. Where is the telephone building in that block?

page 45 } A. It's right in the middle. It's a short block.
Q. Right in the middle?
A. Yes.
Q. And you told your mother that was the man who was in 210 Ferguson Avenue?
A. Yes sir.
Q. When you first saw him?
A. Yes sir.
Q. Had you crossed the street at that point or were you beginning to cross?
A. I turned and I saw him and we were crossing the street and I told my mother.
Q. When you were crossing?
A. As we were crossing, I told her.
Q. What were your exact words, if you recall?

Susan Godwin.

A. I don't remember the exact words.
Q. Did you look at this man?
A. Yes sir.
Q. Did he look at you?
A. I don't think so.
Q. Was there any reason why he couldn't see you?
A. No.
Q. Almost right in front of you, wasn't he?
page 46 } A. No, he was—in front of the telephone building and I was coming across the street.
Q. He was—he was looking in your direction. He would not have to turn his head to see you, would he?
A. No, sir.
Q. But you would have to turn your head somewhat to the left to see him, isn't that right?
A. Yes.
Q. So what did you and your mother do after you informed her that was the man who was in 210 Ferguson Avenue?
A. She sent me home to get my father and she followed him.
Q. And how far—were you living at 86 Main Street at the time?
A. Yes, sir.
Q. And how far is 86 Main Street from—from where you all were crossing?
A. It's just across across the street in the second house. It's not far.
Q. Just across the street?
A. Yes, it's the second house on the corner.
Q. Second house on the corner from the corner?
A. Yes, sir.
Q. Of Warwick Boulevard and Main Street and
page 47 } Piez Avenue?
A. Yes sir.
Q. On the—
A. On the side the bank is on.
Q. On the south side. So you went in and got your father?
A. Yes.
Q. And she followed the man, is that right?
A. Yes, sir.
Q. And how long after that did you and your father come out of your house?
A. I didn't go out the house.
Q. You didn't come of the house?
A. No, sir.

Susan Godwin.

Q. Your father come out of the house?
A. Well, my mother had gone down and my mother told my father.
Q. Don't tell us what your mother told. Just tell us—did your father come out of the house?
A. No sir, not then.
Q. Why didn't he?
A. Because he was supposed to stay there with us.
Q. He was supposed to what?
A. She wanted him to stay there with us.
page 48 } Q. Oh, I thought your mother instructed you to go get your father.
A. Just to go tell him that I had seen him.
Q. Oh, to go tell you while she followed him, is that right?
A. Well, I didn't know she was going to follow him but she did.
Q. I thought you just testified that she was going to follow him.
A. Well, she did.
Q. What did your father do when you told him?
A. I can't remember whether—I think he called the detective.
Q. You're not sure?
A. Well, one of them did. I don't know.
Q. What?
A. One of the two of them did. I don't remember.
Q. When did your mother return to the house?
A. Not too long after she left.
Q. How long ten or five or ten minutes?
A. I don't remember.
Q. Now Susan, have you done a lot of baby sitting? Not just for the Spiers but for in general?
A. No sir.
page 49 } Q. You haven't done a lot?
A. No sir.
Q. How much would you say you have done in the last two years?
A. Not more than eight times.
Q. Well, you realize that it's a very responsible job to be—to have children in your custody, don't you?
A. Yes, sir.
Q. And don't you know what the proper steps are to be taken in an emergency?
A. Yes, sir.

Susan Godwin.

Mr. Murchison: I object to that. That hasn't go anything to do with baby sitting. What kind of an emergency.

Mr. Kostel: I think—

Mr. Murchison: There has been no groundwork laid here that any emergency work occurred in baby sitting.

Mr. Kostel: If this wasn't an emergency—

Mr. Murchison: On her but—

Court: I think that's a matter of argument, Mr. Kostel. We know what she did.

By Mr. Kostel:

Q. What time did you see this man walking west
page 50 } on Main Street?

A. It was in the afternoon.

Q. About what time?

A. I don't know.

Q. Was your father generally home in the afternoon?

A. No, sir.

Q. What was he doing home that afternoon?

A. Well, I—I used to get scared at nights and he was working on a later shift. He worked a different shift. They changed shifts.

Q. Where does he work?

A. N.A.S.A.

Q. N.A.S.A.?

A. Yes.

Q. They don't work nights, do they?

A. Yes sir, they do.

Q. Could you tell me if it was in the early afternoon or late afternoon?

A. I—I think it was about 5:00 o'clock.

Q. 5:00 o'clock. Is this a two story house or one story house?

Mr. Murchison: Which?

By Mr. Kostel:

Q. 210 Ferguson Avenue.
page 51 } A. It's a two story house.

Q. And the children were upstairs?

A. Yes, sir.

Q. Did you make a statement to the detective at Police Headquarters that the man that came into 210 Ferguson Avenue on April 16, 1964 was wearing a button type golf hat?

Susan Godwin.

Mr. Murchison: I think, if I may, if your Honor please that he should lay the groundwork as to when the statement was made.

Mr. Kostel: 18th of April, 1964 at 4:30 p.m.

By Mr. Kostel:

Q. Did you on April 18, 1964 at approximately 4:30 in the afternoon make a statement to a detective that the man who came into 210 Ferguson Avenue was wearing a button type golf hat?

A. Yes, sir.

Q. Was he wearing a button type golf hat?

A. No, sir.

Q. Why did you make that statement?

A. Because he had something on his head and I—I wasn't really thinking about what it was.

Q. Did you also on that occasion make the statement that you could not identify the person who was in the house on that occasion?

page 52 } A. I didn't know who he was.

Q. That's not what I asked. Did you make a statement on that same occasion that you could not identify the person you saw?

A. If I saw him—

Court: Before she answers that, did she use the word, "identify" in the statement?

Mr. Kostel: No, she didn't use it.

Court: All right, let's repeat what she said. If you are going to contradict her, let's *us* her language If it's not her language and that of the Police Officer, then—let's use the language that's there or read it to her anyway.

By Mr. Kostel:

Q. Well, do you deny that you told the Police Officer—that you told the detective on April 18, 1964, 4:30 p.m., that you could not identify the person who came into 210 Ferguson Avenue on April 16, 1964?

A. I told him that I didn't know who he was but if I saw him again I probably would.

* * * * *

page 56 }

* * * * *

Susan Godwin.

Mr. Murchison: These are something you all have made up. I haven't made them. You may have got them but you put them together.

Court: All right, sir. Go ahead. She has testified if she told him that, if she saw him, she's testified if she saw him again she probably could tell him and you asked what probably meant. She said she could tell him if she saw him, identify him.

By Mr. Kostel:

Q. All right. Now you testified that you didn't see the man's penis because you weren't looking, is that right?

A. Yes.

Q. So you wouldn't know whether he was wearing a contraceptive or not, is that a fair statement?

A. Yes, except he told me was going to use something.

Q. He told you that?

A. Yes.

Q. But you don't know of your own knowledge?

A. No.

page 57 } Q. What time did you arrive at Police Headquarters on the morning of May 13, 1964?

A. I don't know.

Q. But it was after—it was after midnight of the 12th, wasn't it?

A. Yes, sir.

Court: Did you say, "yes sir"?

A. Yes, sir.

By Mr. Kostel:

Q. You saw this man in Police Headquarters that night?

A. Yes, sir.

Q. When did you first see him and under what circumstances?

A. I went upstairs to—I don't know what room it was, where all these detectives who had been working on it were and—and they just told me that they had somebody down there.

Q. They told you what?

A. They had—

Q. Use your mike, Susan, if you will.

A. This?

Susan Godwin.

Q. Use your mike. Hold it up to your mouth. You got to hold it about an inch away and talk into it.

A. They said they had some men down there
page 58 } and they thought they might have, you know, the right man and they asked me if there was anything I wanted him to say that might help me recognize this voice and I went into the room and he was in there and—and another man.

Q. How was he dressed?

A. You mean—

Q. Meaning the Defendant.

A. He had on his outfit, the blue hooded sweatshirt and something across his face and dark trousers and tennis shoes.

Q. How was the other man dressed?

A. He had on a sweatshirt and—and trousers.

Court: You're dropping your voice, Susan.

A. He had on a sweatshirt and he had on—

By Mr. Kostel:

Q. Maybe we'll save you some trouble.

A. O. K.

Q. Is this the other man that you saw with the Defendant (indicating a photograph)?

A. I don't remember what he looked like.

Q. You don't remember what he looked like. Was he dressed in this manner?

A. Yes, sir.

Q. Was he about that size?
page 59 } A. I can't be sure.

Mr. Kostel: Let the record show that the witness has testified that the—that the man on the left of the photograph as you look at it in Defendant's Exhibit Number One in the case of Commonwealth vs.

Court: Phillips.

Mr. Kostel: In the case of—*Commonwealth* vs *Hammer* in the Phillips' case.

Court: I'm sorry.

Mr. Kostel: Was pointed to by the Defendant—by the witness.

Court: By the witness.

Susan Godwin.

By Mr. Kostel:

Q. That made it a whole lot easier for you to identify this man, didn't it?

A. Well, you couldn't forget him.

Q. You couldn't forget him?

A. No.

Q. Suppose he hadn't been dressed in—in the manner in which he was dressed when you saw him at Police Headquarters, would you—would it have been as easy to identify?

A. He was dressed like he usually—

page 60 } Q. Suppose he hadn't been dressed in that manner, would it have been as easy for you to identify him?

A. Yes, sir.

Q. It would have?

A. Yes.

Q. And what portion of his body could you see?

A. His eyes, eyebrows.

Q. His eyes?

A. Yes.

Q. And what else?

A. That was all.

Q. Just his eyes?

A. Yes.

Q. And from where, from where—

A. About from here up (indicating).

Q. To how high?

A. To his forehead.

Q. How high on his forehead?

A. I guess to as high as it went.

Q. As high as it went?

A. Yes.

Q. Do you know that or are you guessing?

A. That's how much I saw, I'm sure.

Q. Was the man in 210 Ferguson Avenue wearing gloves on the evening of April 16, 1964?

page 61 } A. Yes sir.

Q. He was?

A. Yes, sir.

Q. Did he ever take those gloves off?

A. I think he did.

Q. Do you know whether he did or not?

A. I'm not positive.

Q. Would it be possible to engage in an act as you said he engaged in with the contraceptive with the gloves on?

Susan Godwin.

Mr. Murchison: I object to that. It calls for an opinion of someone who has never done anything like that before. She's not the one that's doing it. He's doing it. It's an opinion.

Mr. Kostel: She may be able to answer it.

Court: I'll let her answer it if she can.

A. I don't know.

By Mr. Kostel:

Q. I don't know whether I asked you this but if I did, I've forgotten what your answer was. Why did you tell somebody at Police Headquarters on April 18, 1964 that he had on a golf hat, button type golf hat?

page 62 } A. Well, you asked me but—he had something on his head and I wasn't sure what it was. I couldn't remember.

Q. What do you mean by a golf cap?

A. A golf cap. I don't know just a golf cap.

Q. As I understand, a golf cap—

Mr. Murchison: I object to that. It's not what you know. You're not—

Mr. Kostel: Mr. Murchison, I certainly don't think you're being very polite interrupting my question before I finish.

Mr. Murchison: I think the law school tell me I can interrupt you. If I object to it. It's your opinion. She says she doesn't know.

Mr. Kostel: I appreciate the courtesy of letting me finish my question.

Mr. Murchison: Take the witness stand and I'll examine you then. You're not going to testify from the floor certainly.

Court: You can ask your question.

Mr. Kostel: Read it back to me, Mr. Reporter.

Court: I don't think you got very far.

page 63 } (The last question was read).

By Mr. Kostel:

Q. As I understand what a golf hat is, it has a bill on it and it snaps to the top. The bill snaps to the top and has a little button in the center. Do you have the same understanding of a golf cap?

Susan Godwin.

Mr. Murchison: I object to that. That's not what the golf caps are. There are all kinds.

Court: She ought to know what she thinks is a golf cap.

A. That's what I think is one.

By Mr. Kostel:

Q. That's not remotely similar to a hood on a sweat shirt, is it?

A. Except for the little bill part.

Q. Except for the little bill part. Where is the bill on the hood, Susan, sweat shirt hood?

A. There isn't one on it. Not on a sweat shirt.

Q. Where is the little button in the center of the top of the sweat shirt hood?

A. There isn't one.

* * * * *

page 64 } Mr. Kostel: Except for the button on the top.

By Mr. Kostel:

Q. They aren't very similar, are they?

A. In a way they are.

Q. Do you know Officer Calhoun of the Newport News Police Department?

A. Yes, sir.

Q. Did you talk with him on this night, didn't you?

A. Yes, sir.

Q. Was it before you went to the hospital or after?

A. After.

Q. Now what time did you go to the hospital, Susan?

A. It was about 12:00 o'clock.

Q. 12:00 o'clock?

A. Yes, sir.

Q. And about how long were you there?

A. About an hour, hour and a half.

Q. So you—talked to—Sergeant Calhoun about one or one thirty?

A. I think so.

page 65 } Q. Do you remember how old you told Sergeant Calhoun that the man was who was in 210 Ferguson Avenue?

Susan Godwin.

A. Yes, sir.
Q. How old did you tell him?
A. I told him I thought he was about 18 or 19.
Q. About five feet seven inches?
A. About.
Q. Weight, you told him he weighed about 160 pounds?
A. I told him he was kind of medium.
Q. Mam?
A. I told him he was medium build.
Q. He was medium build?
A. Yes.
Q. You wouldn't describe him as a powerful and strong man, would you?
A. I don't know.
Q. Would you say this man sitting here who you have identified as the man who was in 210 Ferguson Avenue on April 16, 1964 is 18 years old?
A. Would I say he is?
Q. Yes mam.
A. Well, that's how old he looked to me then.
Q. Would you say looking at him now that he's that age?
A. I can't say now because I know how old he
page 66 } is. I—
Q. Do you know how old he is?
A. Yes, sir.
Q. Would you estimate that to be about right now as you look at him?
A. I guess he could be that old.
Q. Susan, doesn't he in fact appear much older than 18 year old? Take a look at him.
A. It's just a matter of opinion.
Q. I didn't hear you.
A. It's just a matter of opinion I guess.

Mr. Kostel: Well, I want your's.
Mr. Murchison: She's given it to you.

A. Well, he looks his age.

* * * * *

page 67 }

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DOCTOR THOMAS WASH,
called as a witness by the Commonwealth, being duly sworn, testified as follows:

DIRECT EXAMINATION.

By Mr. Murchison:
Q. State your name, please.
A. Thomas Wash.
Q. What is your profession, Mr. Wash?
A. Physician.
Q. Doctor Wash, are you a practicing physician in the City of Newport News, Virginia?
page 68 } A. Yes sir.
Q. Were you so practicing in the City of Newport News, Virginia, on or about April the 16th and the 26th of 1964?
A. Yes, sir.
Q. And how long have you practiced? Will you—

Mr. Bateman: We'll stipulate the Doctor is medically qualified.
Court: He's qualified not only as a practitioner now but he is a—gynecologist, isn't that correct?

A. Gynecologist, excuse me.

Mr. Bateman: The stipulation went to his area of specialty which is gynecology.

By Mr. Murchison:
Q. Do you know one, Susan Godwin?
A. Yes, sir.
Q. Have you had an occasion to examine her?
A. Yes, sir.
Q. Do you recall when you—is she a patient of your's?
A. No, sir.
Q. Did you have an occasion to examine her on or about the 16th or 17th of this year?
page 69 } A. Yes sir.
Q. Would you tell the Court where you examined her and what type of examination you made and what your findings were, if any?
A. I was asked to examine her at the emergency room at Riverside Hospital and my examination at that time—
Q. Now, is this—do you remember the date? Was it the 16th or 17th?

Doctor Thomas Wash.

A. This was on April 17, during the night. I believe the exact time I do not recall as I don't have the hospital record.
Q. It would be after midnight of April 16, but on the early morning hours of April 17?
A. That's right.

Mr. Murchison: I know I'm leading.
Mr. Kostel: Go right ahead. I'm not going to interrupt you.

By Mr. Murchison:
Q. Did you make this examination?
A. Yes, sir.
Q. What type was it?
A. This was a general physical examination and more specifically, a pelvic examination.
Q. What, if anything, were your findings in the pelvic?
page 70 } A. I found no evidence of injury to Miss Godwin and I found no sperm present in the vagina.
Q. All right sir, was that approximately all you did at this examination time?
A. Yes, sir.
Q. You gave her no treatment or anything of that nature?
A. No, sir.
Q. Now, did you have any occasion to examine her again?

Court: Wait a minute. Let's—stick strictly to this case first.
Mr. Murchison: I'm sorry. I was trying to get on—I beg your pardon. All right.
Court: All right, you may cross examine.

CROSS EXAMINATION.

By Mr. Bateman:
Q. Doctor Wash, you say there was no evidence of any injury in the area of the pelvis of this young lady?
A. Yes, sir.
Q. And no sperm in the vagina?
A. Yes, sir.
Q. Were there any findings consistent with there having been recent sexual relations?
page 71 } A. No sir.
Q. Were there any findings of any force having been used or exerted in her vagina or pelvic area?

Mrs. James H. Godwin.

A. No, sir.
Q. None whatever?
A. No, sir.
Q. On the occasion of your examination, of April 17, what was the emotional state of the patient?
A. Well, I did not talk to her at any great length. Mainly I examined her. She seemed somewhat upset but—she was not—actually crying or—she was—fairly calm but—
Q. Was she sufficiently composed that she could respond to your questions readily?
A. Yes, sir.
Q. And in no way hysterical or—or distraught?
A. No, sir.

* * * * *

MRS. JAMES H. GODWIN,
called as a witness by the Commonwealth, being duly sworn, testified as follows:

DIRECT EXAMINATION.

page 72 } By Mr. Murchison:
Q. Will you state your name, please?
A. Mrs. James H. Godwin.
Q. Where do you live, Mrs. Godwin?
A. 86 Main Street.
Q. Is that in the City of Newport News, Virginia?
A. Yes, it is.
Q. Known in the area of Hilton Village?
A. Yes, it is.
Q. Who do you live with?
A. Well, my children and myself reside at 86 Main Street.
Q. And where does your husband work?
A. N. A. S. A., Langley Field.
Q. Will you tell us your children's names?
A. You want all four of them?
Q. Whoever your children are.
A. Susan Tilford Godwin, Ruth West Godwin, Sarah Frances Godwin and James H. Godwin, Jr.
Q. Mrs. Godwin, how old is Susan Godwin?
A. 17.
Q. When was she 17?
A. She was 17 October the 25th.

Mrs. James H. Godwin.

Q. Now directing your attention to April the 16th or 17th of 1964, was Susan living with you at home?

page 73 } A. Yes, she was.

Q. Were you home during that day?

A. Yes, I was at home.

Q. Did or did not Susan baby sit on the evenings, so far as you know?

A. She did.

Q. Do you know where she was supposed to be baby sitting on April 16th?

A. At Mrs. Spiers on Ferguson Avenue.

Q. Do you know the number?

A. No, I do not.

Q. Had Susan, to your knowledge, baby sat for Mrs. Spiers prior to April the 16th?

A. Yes, she had.

Q. On that date, did you have an occasion to see Susan at the Spiers' home?

A. Yes, I was called there by Susan.

Q. And what time do you recall that you went to the home? Where were you when you were called?

A. I was at my home on Main Street.

Q. And who called you?

A. Susan called me from the Spiers' house.

Q. At about how far away is that from your home?

A. About two and half blocks.

page 74 } Q. And do you recall the time in which you received a call or what time you got there?

A. I think it was somewhere in between nine thirty and ten o'clock.

Q. That you got the call or you went there?

A. Well, honestly, Mr. Murchison, I know it was between nine and ten. I can't put the exact hour but I know I went because she called me and told me she needed me immediately.

Q. Did you go immediately?

A. Yes, I did. I was very upset.

Q. Did you—by what she had told you?

A. The only thing she told me, she said—

Q. You can't tell what she said. You did leave immediately?

A. Yes sir, I did.

Q. And when you went around to the Spiers' home, who did you find there?

A. I found just Susan there and of course the Spiers' children upstairs.

Mrs. James H. Godwin.

Q. And Susan talked to you?
A. Yes, she did.
Q. Related certain things to you?
A. Yes, she did.
Q. And after those related things to you, what then did you do?
page 75 } A. I called my husband at N. A. S. A.
Q. Was he working at night?
A. Yes, he works on the night shift.
Q. And what after that did you do?
A. Well, I waited for him to come and I waited for the Spiers to return. I didn't want to leave the children there by themselves.
Q. After that did your husband come?
A. Yes, he did.
Q. Do you recall any of the timing in there when you called him or when he came?
A. No, I know just as soon as Susan had talked to me, I called him immediately and I asked him to come to the Spiers.
Q. Did he do that?
A. Yes, he did.
Q. And after he came to the Spiers, what did you and your husband and Susan do then at the Spiers?
A. I just told him what had happened and we tried to contact the Spiers. There wasn't any—any telephone number left there to—to reach them and we had to wait. Mr. Spiers came in first and then later Mrs. Spiers.
Q. Did you all leave? What did you all do after the Spiers came in?
A. We left immediately and went home and my
page 76 } husband called the police.
Q. After the police were called, what then did you do?
A. I carried my daughter to the Riverside Hospital to have her examined.
Q. By who, do you know?
A. Doctor Wash.
Q. Now Mrs. Godwin, could you—can you tell us—did you call the police from the Spiers' home?
A. No, I did not.
Q. Can you tell us why?
A. I guess because I was so upset by what had happened and I was sort of upset because I didn't know how to get in touch with the Spiers and I didn't want to leave their chil-

Mrs. James H. Godwin.

dren alone and I was worried about my other children at home by themselves.

Q. How soon after you got home did you see your husband call the police?

A. Yes, I did.

Q. How soon after you got in the house did you call them?

A. Immediately.

Q. Did they come up?

A. Yes, they did.

Q. You know nothing of your own knowledge
page 77 } what happened there at the house that night?

A. No, I do not.

Q. At the Spiers' home?

A. No, I do not.

Q. How did Susan look to you when you went into the Spiers' home?

A. She was very upset.

Q. In what manner?

A. Well, she was frightened for one thing and she was scared.

Q. Had you seen her like that before?

A. Frightened and scared like that, no.

Q. Did you at a later date—strike that. All right, did you examine Susan yourself?

A. No, I did not.

Mr. Murchison: All right, witness with you.

Court: All right, sir.

CROSS EXAMINATION.

By Mr. Bateman:

Q. Mrs. Godwin, are you confident of the time your daughter first called you?

A. I feel quite sure. I know Perry Mason show
page 78 } was on at that time. I can check and—verify that.

Q. Well, as I understood it, the call was between nine thirty and ten?

A. I assume—I think I'm giving you the correct time but as I said, I was very upset when I arrived there and found out what had happened to my daughter.

Q. Yes mam, I understand that. I certainly don't want to seem to be picking or anything. I wanted to verify what your best recollection of the time of the call was and do I under-

stand correctly that she called between nine thirty and ten?

A. It was somewhere in that time, yes.

Q. It wouldn't have been earlier than 9:30 nor later than ten?

A. It wouldn't have been any later than ten, that I am sure of.

Q. Yes mam and you say you went to the Spier home immediately?

A. Yes, I did.

Q. And you say that you did not know where to get in touch with the Spiers?

A. They did not leave a telephone number. My husband and I both looked.

Q. Did not Susan have information as to where they were going?

page 79 } A. No, they just told her that they would be home between 9:30 and ten and not any later than ten.

Q. Do you know what the Spiers told them—told your daughter of your own knowledge?

A. Well, I'm going by what my daughter had told me when she said she was going to baby sit.

Q. Then you have no knowledge of your own as to what she was told?

A. No.

Q. Do you know when she was engaged for this baby sitting job?

A. Yes, she told me that she had called her and asked her. She had baby sit for them once before.

Q. This was some days prior to the 16th, the date of this occurrance, was it not?

A. That she baby sit before?

Q. Well, she was engaged to baby sit before?

A. Not to my knowledge, no.

Q. You didn't know until sometime on the 16th that she was going to the Spiers to baby sit?

A. No, I did not.

Q. Did you know whether or not the Spiers were expecting to be home when your daughter arrived there at the Spiers' home for her baby sitting assignment?

A. Would you repeat that again?

page 80 } Q. Did you know whether or not Mr. and Mrs. —Mr. or Mrs. Spiers were expected to be at home

when your daughter arrived to begin baby sitting for them?
A. Yes, I assumed they would be.

Court: Do you know of your own knowledge?

A. No, I do not know of my own knowledge.

By Mr. Bateman:
Q. Your daughter, Susan, is a senior at Warwick High School?
A. Yes, she is.
Q. Did she begin this school term there in September?
A. No, she did not.
Q. Where was she going to school?
A. At Oak Hill Academy.
Q. Where is that?
A. That's at Mouth of Wilson, Virginia, not very far from Pulaski.
Q. Now when your daughter called you, you went immediately to the Spiers' residence I believe we established?
A. Yes, I did.
Q. And you got there and you had called your husband after you got to the Spiers' residence?
A. Yes, I did.
page 81 } Q. And waited for him to come there?
A. Yes, I did.
Q. Took no action or made no report until he arrived?
A. No, I did not.
Q. And what length of time was it before he arrived?
A. Well, I imagine he left as long as it would take to get from Langley Field up to—to Palen Avenue.
Q. He was at Langley Field and had to leave his office and drive from Langley Field to the home?
A. Yes.
Q. Do you know anything about approximately the distance from Langley Field to the Spiers' home in Hilton Village?
A. No, I do not.
Q. Have you ever driven that distance?
A. Yes, I have but—I don't know the exact distance.
Q. Well, is this a distance that you can cover in five minutes?
A. No.
Q. It would take—

Mrs. James H. Godwin.

A. It would take about 15 or 20 minutes I would imagine, to get there.

page 82 } Q. And who called—did anyone call the police?

A. My husband did.

Q. He called them after he got home?

A. Yes.

Q. Did you advise him over the phone when you called him as to—what had transpired or the reason you wanted him to come?

A. Yes, I did.

Q. The call to the police was not made until he arrived?

A. That's true.

Q. And you made no call to the police?

A. No, I did not.

Q. Why was that, Mrs. Spiers?

A. Because I was very upset.

Q. Mrs. Godwin.

A. I just couldn't imagine anything like that happening to my daughter.

Q. Well, then, did you have some doubt that it had happened?

A. No, I did not. It was just the shock of finding out something like that when I arrived there.

Q. Well, it having happened and it having been so shocking, wouldn't the first thing that would come to

page 83 } your mind be to call the police?

A. No, I—I really don't know. As I said, I think I was completely shocked by the whole thing.

Q. Did your daughter advise you as to when this incident had occurred or the time?

Mr. Murchison: I object to that.

Court: I'll let her answer that.

A. When she called me at home she told me that something had happened, to please come immediately.

By Mr. Bateman:

Q. Well, did she tell you then?

A. No, she wouldn't tell me what had happened over the telephone. She just told me she needed me.

Q. My question rather, Mrs. Godwin, was not what she told you as to what had happened or whether she told you

what had happened on the phone but when you arrived there, did she tell you the hour or the time it had happened?

A. Well, it had happened just a little bit before I arrived.

Q. Is that what she told you?

A. Yes.

Q. That it had just happened, just before she called you?

A. It happened right before she called me, yes.

page 84 } Q. Without any appreciable length of time between the time it happened and the time—

A. As far as I know.

Q. Well—

Court: That's what he's asking you, Mrs. Godwin. Did she tell you or are you assuming that it had just happened? Did she tell you it just happened?

A. She told me it had happened, just happened.

By Mr. Bateman:

Q. That it had just happened immediately prior to her call to you?

A. Yes.

Q. And asking you to please to come, that she needed you?

A. Yes.

Q. Did you find the front door of the Spiers' residence locked or in an unlocked condition when you arrived?

A. I can't—I really don't know. I know she answered the door to me.

Q. Were you able—did you go right in or did you knock or have to wait for someone to open the door?

A. I'm sorry, I really don't remember.

Q. Yes mam. Did you make any particular note of the nature of the lock or whether there was a lock on

page 85 } the door?

A. No, I did not.

Q. Were you present when your daughter was interviewed or gave a statement or information to the Police Department or representatives of the Police Department on April the 18th, 1963 at approximately 4:30 in the afternoon?

Mr. Kostel: '64.

Lt. Frank L. Martin.

By Mr. Bateman:

Q. '64. I beg your pardon. The time was around 4:30 on April the 18th, 1964.

A. I honestly couldn't tell you now. I really—I think I was with her most of the time except the one time she went around there for fingerprint at the Spiers.

Q. This was at the Spiers' residence?

A. Yes.

Q. When you were not present. Isn't it true that—in your presence your daughter mentioned to the detective that she was—would be unable to identify or could not identify the man who had come into the home on April 16th?

Mr. Murchison: I object.

Court: Sustained.

Mr. Bateman: Exception.

By Mr. Bateman:

Q. Has your daughter ever stated in your presence to anyone whether she could or could not identify
page 86 } the man who came into the home on April the 16th?

Mr. Murchison: I object.

Court: Sustained.

Mr. Bateman: Exception. No further questions.

* * * * *

LT. FRANK L. MARTIN,

called as a witness by the Commonwealth, being duly sworn, testified as follows:

DIRECT EXAMINATION.

By Mr. Murchison:

Q. Will you state your name please, sir?

A. Lieutenant Frank L. Martin.

Q. Where are you employed, Lieutenant?

A. In the Detective Bureau, Police Department, Newport News.

Q. How long have you been so employed?

A. Almost 18 years.

page 87 } Q. Lieutenant Martin, in the matter of J. C. Hammer, have you had occasion to investigate various matters involving him?

Lt. Frank L. Martin.

A. Yes, sir.
Q. Particularly directing your attention to one, Susan Godwin of the complaint occurring on or about April the 16th of 1964, did you have an occasion to investigate this matter involving Mr. Hammer and Susan Godwin?
A. Yes, sir.

Mr. Kostel: We object to the admission of the confession for the reason heretofore assigned.
Mr. Murchison: All right. Let me get my question in.

By Mr. Murchison:
Q. Did you talk to him about this matter?
A. Yes, sir.
Q. Did he give you a statement concerning same?
A. Yes, sir.
Q. Was this statement voluntarily?
A. Yes, sir.
Q. Did he sign the statement?
A. Yes, sir.
Q. In your presence?
page 88 } A. Yes sir.
Q. Did he read the statement before signing same?
A. Yes, sir.

Mr. Murchison: Now is that objection they want in there?
Mr. Kostel: Yes sir.
Court: Let the record show they object.
Mr. Bateman: And also your Honor, the stipulation as in the previous case.
Court: And the testimony—
Mr. Murchison: Yes, I understand.

By Mr. Murchison:
Q. Lieutenant, do you have the statement?
A. Yes, sir.
Q. Will you read it to us, sir.
A. Yes sir. "After being advised of any statement that he made could be used as evidence either for or against him, Jams C. Hammer, white male, 25, made the following statement to Lieutenant F. L. Martin in the Detectve Bureau on May 14, 1964 at 10:10 a.m.
"Q. This is on May 14, 1964 at 10:10 a.m."

Lt. Frank L. Martin.

By Mr. Murchison:

Q. This is on May 14, 1964 at 10:10 a.m., is that page 89 } correct?

A. Yes sir.

Q. All right, sir.

A. "On April 17, 1964 about 8:00 p.m. I was walking in the 200 Block of Ferguson Avenue. It was drizzling a little bit. I was wearing a blue Navy sweat shirt with a hood pulled up over my head. I was carrying a hunting knife in my right hip pocket and a 38 caliber revolver in my left hip pocket. As I walked past 210 Ferguson Avenue, I saw a young girl close the blinds in the house. She saw me. I stopped and looked at the house. In a second or two this same girl opened the blinds again. Then she looked out the window and smiled again. I said to myself, 'what the Hell is going on.' I put my handkerchief over my face. I walked up to the front door. I tried the knob of the door. It opened and I walked inside and closed the door behind me. This girl was laying on the couch on her stomach watching TV. She must not have heard me. I looked at her for about 30 seconds. When she did see me, she sat up on the couch. I said, 'are you by yourself?' She said, 'yes'. That she was baby sitting. I said, 'let's go into the other room.' She got up and walked into the kitchen. I told her to take her clothes off and lay down on the floor. She took off her slacks and laid down on the utility room floor.

While she was laying on the floor, she started to page 90 } take off her panties. My intentions were to have sexual relations with this young girl. While she was pulling off her panties, we heard a noise. She said that the people that she was baby sitting for must be coming home. She pulled her panties on and put her slacks back on. She told me to go out the back door so that no one would see me. I went out the back door and stood in the yard. I felt my left hip pocket and my gun was gone. I went back around to the front of the house. I did not see any car. I went to the front door and opened it again and walked inside. She was standing in the front room. She asked me if I was going to hurt her again and I said, 'no.' That I had come back to get something that I had left in the utility room. I walked through the utility room where I found my gun laying on the floor. I picked up the gun and went back through the house to the front door. The young lady asked me if I knew how to lock the door and I said I would see. I worked on the lock for about five minutes until I got it locked. I then left the house and

went on home. I arrived home about 9:00 p.m. Signed James Clifford Hammer."

Q. Lieutenant Martin, did Mr. Hammer ever point out any gun that he had that he—while in your presence that he had the night of this—

A. Yes.

Q. Mr. Kostel: If your Honor please, let ask page 91 } this question. Lieutenant Martin has testified that the Defendant gave me him a statement admitting certain things had occurred on April 17, 1964. I don't think that statement is admissible on an indictment which charges him—which charges him with the crime which occurred on April 16, 1964.

Mr. Murchison: Let me finish with this witness and then you can make your motions or your objections.

Mr. Kostel: I think it might be appropriate at this time.

Court: Overrule it.

Mr. Kostel: Note my exception.

By Mr. Murchison:

Q. Mr. Martin, I hand you a weapon, an article and will you tell me what it is? Can you tell me what it is?

A. It's a 38 caliber revolver, nickle plated.

Q. Did Mr. Hammer have any discussion with you about that gun in relation to the charges in which you're testifying in now?

A. Yes sir, we went across the street to the vault where this gun was—in the custody of Lieutenant J. C. Butler. I got this gun and showed it to him and he said page 92 } that this was the gun that he carried the night that he went to 210 Ferguson Avenue.

Q. Did you also show him or did he have any explanation to make to you about a knife that has been heretofore introduced (indicating)?

A. He said this is the knife that he carried.

Q. All right, sir. Now Lieutenant Martin, in your investigation of this matter when did you find the complaint had originated?

A. The complaints originated on April 16.

Q. And did you discuss with him his statement of April the 17th that you have just read?

A. Yes, sir.

Lt. Frank L. Martin.

Mr. Kostel: The statement is not dated April 17.

Mr. Murchison: A statement that he said on April the 17th.

By Mr. Murchison:

Q. Did you discuss with him that date in his statement he gave you?

A. Yes, sir.

Q. What—what did he tell you about that?

A. He—he seemed to think it was on a Friday night instead of a Thursday night which would have made it the night of the 17th. Our records show that it occurred on the

page 93 } 16th.

Q. Then why—why was April the 17th in the statement then?

A. That's the date that he said it was. That's what I put down.

Q. And—April the 16th occurrence had occurred at the same place as his statement is reading on April 17?

A. That's correct.

Q. You put April the 17th down at his insistence?

A. Yes, sir.

Q. Now, were there any complaints, official complaints of the Susan Godwin girl occurring on—at 210 Ferguson Avenue on the 17th, any official complaints?

A. Yes sir, it was just after midnight the offense was taken on the 17th.

Q. Well—

A. The offense occurred between nine thirty and ten o'clock. The Officers didn't make the report until shortly after 12:00 o'clock.

Q. Nine thirty and ten o'clock what day?

A. On the 16th of April.

Q. Were there any complaints made by Susan Godwin or her family of an offense at 210 Ferguson Avenue between nine and ten o'clock on April the 17th?

page 94 } A. Not on the 17th.

Q. On the 16th though?

A. On the 16th, yes sir.

Q. But the Defendant insisted that it was the 17th this occurred?

A. That's correct.

Q. And that's the reason it was in his statement?

A. That's correct.

Lt. Frank L. Martin.

Mr. Bateman: Are you through testifying?

Mr. Kostel: Swear the Commonwealth in, if your Honor please.

Mr. Murchison: I haven't done too badly now.

Court: All right, you may cross examine.

CROSS EXAMINATION.

By Mr. Kostel:

Q. You filed a special report after you were assigned to investigate this case, Lieutenant Martin?

A. I believe that this was another one of the cases where there was maybe four of us involved. I'm not posi-
page 95 } tive.

Q. You filed a special report in this case I believe?

A. No, I didn't.

Q. You didn't?

A. I wasn't working at the time.

Q. Didn't you on May 23, 1964 file a special report in connection with the Susan T. Godwin occurrence on April 16, 1964?

A. On the 23rd?

Q. Of May, 1964.

A. You said report. You mixed me up.

Court: For the grand jury I imagine.

A. You talking about the grand jury?

Court: It's called a special report.

A. Oh, I see. I wrote the grand jury report.

By Mr. Kostel:

Q. Where did you obtain your information that Susan T. Godwin reported to the Police Department on April 16, 1964 about eight p.m., that this happened about eight p.m.? Where did you obtain that information?

A. I get a copy of the offense sheet. That's the original which goes into the jacket and then there's a yellow sheet and then a green sheet. The green copy stays in the jacket. The yellow sheet comes to the investigating Officer. The
page 96 } first paragraph that you see on the special report is what is on the offense sheet.

Lt. Frank L. Martin.

Q. The offense sheet is written up from the time the complaint is made?
A. At the crime scene.
Q. Do you know who received the complaint at Police Headquarters, made the notation that it happened at eight o'clock?
A. It would be hearsay.
Q. Not if you know.
A. I don't know of my own knowledge. It would be hearsay.

Court: You can waive it if you want to waive it.
Mr. Kostel: That's right, I haven't heard any objection.
Court: Go ahead. You can answer it.

A. The offense sheet showed that Sergeant J. C. Calhoun made it.

By Mr. Kostel:
Q. Thank you. When were you first assigned to this case?
A. It would have been the 17th of April.
Q. Of April?
A. Yes sir. Those—they are typed up the fol-
page 97 } lowing morning.
Q. Did you interview Susan Godwin on the 18th of April at 4:30 p.m.?
A. On the 18th of April? No sir, I didn't take a statement from Susan Godwin.
Q. I hand you a copy of what purports to be some investigation notes and ask you if you can identify the handwriting in this margin here (indicating), 4-18-64.
A. That's not my writing.
Q. You can't identify it?
A. No, sir.

Court: Is that all, sir?
Mr. Kostel: That's all.
Court: All right, go back if you will in the statement where he walked in the door and the girl was lying down. I believe up to that time he stated he had put a handkerchief over his face, is that right?

A. It says, "I walked past 210 Ferguson Avenue. I saw a young girl close the blinds in the house. She saw me. I stopped and looked at the house. In a second or two, this same girl opened the blinds again and then she looked out the win-

Lt. Frank L. Martin.

dow and smiled. I said to myself, 'what the Hell is going on.'

page 98 } I put my handkerchief over my face. I walked up to the front door. I tried the knob of the door. It opened and I walked inside and closed the door behind me."

Court: All right, go on from there.

A. "This girl was laying on the couch on her stomach watching TV. She must not have heard me. I looked at her for about 30 seconds. When she did see me, she sat up on the couch. I said, 'are you by yourself' and she said, 'yes.' That she was baby sitting."

Court: Now did you ascertain from him whether he had his gun out or not at that time?

A. No, he never had his gun out.

Court: Yet he admits he had to go back in and get the gun?

A. He had it—

Court: Beg your pardon?

A. It's not in this statement. It was in his pocket.

Court: Doesn't further on in his statement he said he had to go back in the house?

A. Yes.

Court: Read that part about where they heard the noise and she put her pants back on.

page 99 } A. "She took off her slacks and laid down on the utility room floor. While she was laying on the floor, she started to take off her panties. My intentions were to have sexual relations with this young girl. While she was pulling off her panties, we heard a noise and she said that the people that she was baby sitting for must be coming home and she pulled her panties up and put her slacks back on. She told me to go out the back door so no one would see me.

Lt. Frank L. Martin.

I went out the back door and stood in the yard. I felt my left hip pocket and my gun was gone."

Court: He didn't say he took it out but it was gone?

A. It was gone.

Court: And he went back in to get it?

A. "I went around to the front door of the house. I did not see a car. I went to the front door and opened it again. I walked—and walked inside. She was standing in the front room. She asked me if I was going to hurt her again and I said no, that I had come back to get something that I had left in the utility room. I walked"—

Court: Now just a minute. There he said he left something in the utility room, is that right? This is his language as I understand it?

A. This is his language.

page 100 } Court: And he said he left the gun in the utility room.

Mr. Murchison: May I suggest that he finish that sentence, sir.

Court: All right.

Mr. Murchison: Where you said—

A. "I left the gun in the utility room. I walked through the house to the utility room where I found my gun laying on the floor. I picked up the gun and went back through the house to the living room to the front door."

Court: Didn't he say "left"? When she asked him whether he was going to hurt her again, what did he say?

A. He said, "no, that I had come back to get something that I had left in the utility room."

Court: Left, L-E-F-T, left.

A. Left.

Lt. Frank L. Martin.

Court: I thought I heard right.

Mr. Bateman: Did I understand the Court make some reference to him having said in the statement, "I hurt her again" or she making a statement about hurting her again?

Court: That's what the statement says.

Mr. Kostel: She made the statement.

Court: "Are you going to hurt me again."

page 101 } Mr. Kostel: That's right.

Mr. Bateman: Nothing in his statement quoting her.

Court: Yes it is, read it.

Mr. Murchison: This is his statement. That's the crux of this case.

Court: That's the two things I picked up, that he left the gun and she said, "are you going to hurt me again." All right sir, that's all, Lieutenant.

* * * * *

Mr. Murchison: The Commonwealth rests.

Mr. Bateman: Your Honor, the defense moves that this charge or these two charges be dismiss on the grounds that as a matter of law there's at least a reasonable doubt as to the guilt of the Defendant.

Court: All right sir. the Court overrules your motion.

Mr. Bateman: And further moves that—let's see. Further moves that the charge of attempted rape be dismissed. There's no evidence of any force here or—that was applied to this girl or—

page 102 } Court: What's a gun?

Mr. Bateman: Your Honor, the evidence is not this gun was used in any threatening manner on her or this was a—the causative factor in anything that transpired.

Court: No causing factor when she's testified all the way through it to Mr. Murchison, I thought he was going to wear it out, "why did you do it." "I was scared because of the gun." That's the biggest cause I can see.

Mr. Bateman: I take it the Judge is overruling my motion?

Court: Yes sir, I overrule your motion.

Mr. Bateman: And we note exceptions to both rulings sir.

Lt. Charles Tench.

* * * * *

LIEUTENANT CHARLES TENCH,

called as a witness by the Defendant, being duly
page 103 } sworn, testified as follows:

DIRECT EXAMINATION.

By Mr. Bateman:

Q. State your full name, please, sir.

A. Lieutenant Charles Tench.

Q. And you're in the employ of the Newport News Police Department?

A. That is correct, sir.

Q. And specifically are assigned to the Detective Bureau, am I correct?

A. I am in the Detective Bureau but I'm in charge of the fingerprinting and photographing center.

Q. Were you employed by the Police Department in April of 1964?

A. Yes, sir.

Q. Of this year?

A. Yes, I was.

Q. Did you at any time have any part to play in the investigation or receipt of complaints involving an alleged rape or attempted rape on the person of Susan Godwin on April the 16th, 1964?

A. Yes, sir.

Q. How did this matter first come to your at-
page 104 } tention?

A. Well, I was requested to go to an address in Hilton to process the home for fingerprints.

Q. All right. Now did you interview the complainant at Police Headquarters at any point, Lieutenant Tench?

A. No, sir.

Q. You never had any dealings with her personally other than perhaps having seen her at the home when you went there for other purposes?

A. That's right, sir.

Q. I'd like to show you this—this document and ask you if you can identify it.

Mr. Murchison: May I see what it is?

Mr. Bateman: Yes, I thought you had seen it.

Sergeant J. C. Calhoun.

Mr. Murchison: No. This is the composition I was arguing about a minute ago. I don't know what it is.

By Mr. Bateman:

Q. I'd like to show you this, Lieutenant Tench, and ask you if you can identify this handwriting (indicating) or if you have seen the original of which this a copy?

A. No sir, I've never seen this.

Q. You have never seen this. And are not
page 105 * familiar with any of the handwriting here as being that of any of your colleagues?

A. No, sir, I don't—I can't determine it right now. It isn't familiar to me.

Q. I take it that you are the fingerprint expert and not the handwriting expert?

A. That's correct, sir.

Mr. Bateman: I have no further questions.

Court: All right, may we excuse the Lieutenant?

Mr. Murchison: Yes sir.

Court: You may leave. Thank you.

A. Thank you, sir.

Court: Next witness.

Mr. Bateman: Sergeant Calhoun.

Court: Sergeant Calhoun out there?

SERGEANT J. C. CALHOUN,

called as a witness by the Defendant, being duly sworn, testified as follows:

DIRECT EXAMINATION.

By Mr. Kostel:

page 106 } Q. State your name and occupation.

A. Sergeant J. C. Calhoun, Detective, Newport News Police Department.

Q. Did you receive a complaint on April 16, 1964 in a matter involving one, Susan Godwin?

A. I did, sir.

Q. What time did you receive the complaint, sir?

A. The exact time of the complaint I don't recall exactly what time it was. I think it was somewhere close to 11:00

Sergeant J. C. Calhoun.

o'clock. I'm not sure of the exact time. I had just come on—into the station, come on duty at that time.

Q. And who did you receive the complaint from?

A. It was called around from the radio room as well as I recall.

Q. Did you receive information in the course of your investigation as to what time the alleged crime occurred?

A. Yes sir, I did.

Q. What time was that?

A. The alleged time was between 9:30 and ten o'clock p.m., on the 16th.

Q. Nine thirty and ten o'clock p.m. on the 16th?

page 107 } A. Yes sir.

Q. When did you first talk with the victim?

A. Well, I went to—I was en route to—Godwin address and my unit ran out of gas and I had to get out of the car and—and hitchhike a ride with another unit and I got to the house I would say it was after eleven o'clock and I talked with Mrs. Godwin. Miss Godwin and her parents at that time.

Q. What time did you see—what time did you receive a report to go to that address?

A. Well, it was after 11:00 o'clock. I—like I say, I don't know the exact time because I was milling around the station waiting to go on jury duty.

Q. What time did you testify you arrived at that address?

A. I said it was after eleven.

Q. Could it have been 12:20 a.m. on the 17th?

A. No sir, that was the time I made out the report.

Q. Well, I hand you a report purporting to be a report from you to Captain Weaver and I ask you if you could refresh your memory from that report (indicating)?

A. As far as these times are concerned, I would have to agree with you that this is the time, yes sir.

Q. What do they say, Sergeant Calhoun?

page 108 } A. The approximate time that I arrived at the address was 12:20 a.m. on the 17th.

Q. What time did you receive the alert?

A. Aproximately twelve midnight.

Q. What—emotional state was Susan Godwin in when you arrived?

A. When I arrived at the house, the young lady was in another room and—I talked to her parents briefly and she came into the room. She appeared to be quite nervous at the time

Sergeant J. C. Calhoun.

and I had difficulty getting her to correspond with me as far as any conversation.

Q. Didn't you make an observation in your report that she appeared to be unusually calm?

A. Not to my knowledge, no sir. I could have.

Q. Check that report.

A. It says here, the first part, yes sir, that I talked with her and she seemed unusually calm but as I progressed further—

Q. Read it all.

A. As I progressed further into the subject she became very upset and began to cry.

* * * * *

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* * * * *

Court: May I ask the materiality of this time element here at around eleven and twelve o'clock?

Mr. Kostel: Well, Mrs. Godwin testified that she got over there between nine thirty and ten.

Court: Yes, sir.

Mr. Kostel: And Susan testified that she didn't call her mother until eleven.

Court: Yes sir.

Mr. Kostel: And we want to know exactly what time Mrs. Godwin got there. I want to find out who is in error.

Court: All right.

Mr. Kostel: Or who is telling the truth.

By Mr. Kostel:

Q. Where were you at the time you received the alert?

A. I was at Headquarters in the Detective Bureau.

Q. How long did it take you arrive at 210 Ferguson Avenue from the time you left Headquarters? You arrived at 12:20 a.m., I believe is your testimony on April 17, 1964. How long did it take you to get there, counting the time that you had to hitch a ride?

page 110 }

A. In minutes, I don't know. I went directly out of the Bureau en route and when I got to James River Bridge intersection, I ran out of gas and I immediately called another unit and he responded and carried me on to the scene and let me out. I was there a matter of 20, 30 minutes.

Sergeant J. C. Calhoun.

Q. So would it be a fair statement to say you left the Bureau about 11:45 p.m. on April 16, 1964?
A. Well, I don't know the exact time. It was in that—time period.
Q. Did you talk—to the victim?

Court: Didn't you just—all right. All I know is you just showed him a thing that said he didn't get the complaint until twelve midnight. How could he leave 11:45?

Mr. Kostel: Said 30, 35 minutes.
Court: If you don't get the complaint until midnight, how are you going to leave at 11:45 to go up there, Sergeant?
A. I don't know how, sir.

Court: Let's listen to the question. That's just impossible.
Mr. Kostel: That was an oversight on my part.
page 111 } Court: Well, I don't blame you as much as I blame the Sergeant. He ought to listen to what you asked him.

By Mr. Kostel:
Q. Did you talk to the victim on April 18, 1964 at 4:30 p.m.? That would have been two days after it happened.
A. Not to my knowledge, I don't think so.
Q. Can you identify this handwriting on the margin (indicating)?
A. No sir, I can't.
Q. That's not your handwriting, 4-18-64, 4:40 p.m.?
A. No.
Q. You are positive?
A. I feel right sure it isn't.

Court: Is that all, sir?
Mr. Kostel: I think that's all.
Court: All right. Anything further from you, sir?
Mr. Murchison: Just one question, if I may.

CROSS EXAMINATION.

By Mr. Murchison:
page 112 } Q. Sergeant Calhoun, this piece of paper they have shown to you is a summary of your activities on certain cases when you work in the evenings and

Sergeant J. C. Calhoun.

report to Captain Weaver in the morning so they have a little bit of information that you have done cases or any other Officers?

A. You mean the first paper he showed me or the second?

Mr. Murchison: Yes.

Mr. Bateman: Your Honor, I suggest that's a little bit leading.

Court: He's your witness. He can lead. He's on cross examination. I agree it's leading.

By Mr. Murchison:

Q. All right, let me show you—I've got my copy. I show you this piece—

Court: Here it is. Use the same one he used.

By Mr. Murchison:

Q. The same one with more underlinings which weren't there. What is that?

A. This is just a standard letter that we write to the Captain after we investigate a complaint.

Q. In other words, it's a cover letter that goes with your complaints and your statement and investigation page 113 } and whatever you all have done on your cases in the evenings before you leave your shift in the morning?

A. Yes, sir.

Q. And you got approximate times in here, haven't you?

A. Yes.

Q. And your time you come on duty at that time?

A. Twelve midnight would be the time I came on duty.

Q. That's your official work day, twelve o'clock?

A. Yes, sir.

Q. You come in a little bit earlier and get ready to go?

A. Yes, sir.

Q. If a call came in, you could take a little bit earlier on emergency instead of a night man having to stay over one, two, three o'clock?

A. Yes, sir.

Q. This is just a letter to Captain Weaver, and your basic investigation is in a captain folder that goes with it?

A. That's correct, sir.

Sergeant J. C. Calhoun.

Mr. Murchison: I don't have anything else.

RE-DIRECT EXAMINATION.

page 114 } By Mr. Kostel:

Q. You wouldn't send Captain Weaver a report that was inaccurate whether it was a cover letter or whether it was the body of your report?

A. I hope I wouldn't.

* * * * *

page 117 } Court: All right, sir, you want to argue these?

Mr. Kostel: If your Honor please, all the facts and circumstances in this case are completely inconsistent with—rape or attempted rape. There has been a lot of evidence produced by the Commonwealth Attorney and a lot of conflicting evidence and we say to your Honor that the Commonwealth is bound not only by the evidence which is harmful to the Defendant but also that evidence which is helpful to him and which tend to disprove a charge of attempted rape and I say to your Honor that this girl, regardless of how scared she is, is going to march herself through the living room, dining room, kitchen into the utility room without asking this man one question about what was on his mind. He tells her one time to take off her slacks and pants and lie down on the floor and she doesn't ask him at all what he's going to do. She said she thought she knew what he was going to do. He gets on top of her. She doesn't resist. She doesn't cross her legs. She doesn't put up one iota of
page 118 } resistance. That's her testimony.

Now, she further testified that the Defendant was out of there on the second occasion by at least 10:45. The Commonwealth is bound by that testimony. She further testified that she did not call her mother until 11:00 o'clock, an hour and fifteen minutes later. Now your Honor, that's very, very strong circumstantial evidence that the offense with which this Defendant is charged did not take place.

Court: How are you going to get around his statement?

Mr. Kostel: His statement—

Court: His statement is that he was there, wasn't it?

Mr. Kostel: We're not disputing he was there.

Court: And she took her pants off and he got ready to get

on top of her. By his own statement he's there. You're saying no offense took place at all.

Mr. Kostel: That's right.

Court: All right.

page 119 } Mr. Kostel: We're not disputing that he was there. We offered no evidence to rebut the fact that he was there.

Court: You admit he was in the home?

Mr. Kostel: No sir, I'm saying we offered no evidence to rebut that he was in there.

Court: His statement admits he was in the home.

Mr. Kostel: Precisely but his statement doesn't say he raped her.

Court: Granted.

Mr. Kostel: The Commonwealth introduced his statement.

Court: You talking about all of these times, your argument indicated that this thing never happened. I'm saying his own statement showed he was in the house.

Mr. Kostel: I don't think I made myself clear to your Honor. My arguing of the times is that a girl who is half scared out of her wits by an assailant toting a gun is not going to wait an hour and fifteen minutes to call her parents or to call the law, to call the people who employed page 120 } her. That's my point. This is a—a fairly intelligent girl. She made a nice appearance from the witness stand. She is 17 years old. She's a senior in high school. Now we're not dealing—

Court: Mr. Kostel, some of them don't ever tell on a rape charge. It's not—

Mr. Kostel: I don't think the burden is on the defense.

Court: No sir.

Mr. Kostel: To show she's the type of girl who is not inclined to tell.

Court: No sir.

Mr. Kostel: There's been no evidence to produce—

Court: You made the comment that it's incredible that a scared girl is going to run and tell the police. Some of them are never going to tell.

Mr. Kostel: If he came back the second time but what's to prevent him from coming back the third time.

Court: He did. It's not in evidence but he page 121 } did.

Mr. Kostel: Not at that address.

Court: That's true.

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Court: All right, sir. I find him guilty of both charges.
Mr. Kostel: Note our exception.
Court: Yes sir.

* * * * *

page 127 } JUDGE'S CERTIFICATE.

I, Douglas M. Smith, Judge of the Corporation Court for the City of Newport News, Virginia, who presided over the foregoing trial in the case of *Commonwealth* vs *James C. Hammer,* tried in said Court in Newport News, Virginia, on December 2, 1964 do certify that the foregoing is a true and correct report of the evidence, together with the motions, objections and exceptions on the part of the respective parties, the action of the Court in respect thereto, and all other incidents during the trial of said case as herein set forth.

I do further certify that the attorney for the Commonwealth had reasonable notice, in writing, given by counsel for the Defendant of the time and place when the foregoing report of the testimony, objections, exceptions and other incidents of the trial would be tendered and presented to the undersigned for signature and authentication, and that the said report was presented to me on the 12 day of February 1965, within sixty days after the entry of final judgment in said cause.

Given under my hand this 19 day of February, 1965.

DOUGLAS M. SMITH
Judge of the Corporation Court
for the City of Newport News,
Virginia.

A Copy—Teste:

H. G. TURNER, Clerk.

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