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Clerk, Supreme Court of Appeals
Richmond, Va.

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Record No. 6157

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. 6157

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 22nd day of December, 1965, in a prosecution by the Commonwealth against the said petitioner for a felony (Indictment No. 2); 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. H. Martin, Lt. Schanz 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 on the 26th day of April, 1964, in the said City, did Unlawfully and feloniously rape one Susan Godwin W/F age 16 at 98 Post Street, Newport News, Virginia, 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 13th 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.

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

PRE HEARING WAIVED.

Filed 6/2/64.

F. B. BARHAM, Clerk.

(on back)

GRAND JURY

Juvenile and Domestic Relations Court, City of Newport News,

v.

James C. Hammer, 10371 Warwick Boulevard accused.

Charged with Rape.

Executed this 13 day of May, 1964, at 3:20 o'clock a. m., by arresting James C. Hammer at Hopkins St. & War. Blvd. 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. H. Martin, Lt. Schanz, Lt. Hiser, Lt. Austin, Sgt. Calhoun, Sgt. Calhoun, Policeman.

ACCUSED IN JAIL.

Deft. Exh. #1 10-15-64.

D. M. L.,

* * * * *

page 2 } Virginia:

In the Juvenile and Domestic Relations 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: Rape, do hereby waive preliminary hearing on this 22nd day of May, 1964.

JAMES C. HAMMER.

Filed 6/2/64.

F. B. BARHAM, Clerk.

* * * * *

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* * * * *

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, unlawfully and 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 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)

Indictment for Rape, A FELONY.

A true bill.

....., Foreman.

Filed 8 day of June, 1964.

December 22, 1964.. Deft. Hamer in Jail.. Represented by Atty's H. Kostel & H. Bateman, heretofore appointed pd...
Morris Schneider, Court Reporter Sworn...
Upon arraignment Deft. enters plea of Not Guilty, waives trial by Jury on advise of Atty's, Comwlth. Atty. & Court agree on waiver...
Motion of Deft. by Counsel for Court to Disqualify himself from trying the Deft. on this charge on grounds that the Court has heard some of the evidence in earlier trials of the Deft., and some evidence was actually presented in reference to this charge, and the Court has made certain remarks about the case, therefore should disqualify himself... Overuled... Exception...
Motion of Deft. by Counsel to Dismiss this charge on grounds that no warrant of any kind was ever served on the Deft., he was therefore unaware of the nature of the charges against him and could not properly prepare an adequate defense... Overuled... Exception...
The Comwlth. Evidence was then heard...
Deft's. evidence heard...
Motion of Deft. by Counsel to Dismiss this charge on grounds that the Commonwealth has failed to prove a case against the Deft... Overuled... Exception...
Deft. Found Guilty... Sentenced to Forty (40) years confinement in the State Penitentiary, with Thirty (30) years to run concurrent with other sentence heretofore imposed...
Deft. remanded...

* * * * *

page 14 } Virginia:

In the Corporation Court for the City of Newport News, the 22nd day of December, 1964.

* * * * *

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 evidence and 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. Whereupon, the defendant, by counsel, moved the Court to disqualify himself for the trial of this case upon the grounds that the Court has heard some of the evidence to be presented in this case in earlier trials of the defendant and that some of the evidence in this case was actually presented in an earlier trial and the Court has made certain remarks about this case, which said motion the Court doth overrule and to which action of the Court in overruling said motion, the defendant, by counsel, excepted. Thereupon, the defendant, by counsel, moved the Court to dismiss this charge upon the grounds that no warrant of any kind was ever served on the defendant and that, therefore, the defendant was unaware of the nature of the charges against him and, consequently, could not properly prepare an adequate defense, 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 fully heard, the defendant, by counsel, moved the Court to dismiss the charge against him herein upon the ground that the Commonwealth has failed to prove a case against him, which said motion the Court doth overrule and to which action of the Court in overruling said motion, the defendant, by counsel, ex-
page 15 } cepted. And the arguments of counsel being fully heard the Court doth find the said James C. Hammer guilty of raping Susan T. Godwin, as charged in said indictment and doth fix and ascertain his punishment to be imprisonment in the public jail and penitentiary house of this Commonwealth for the term of forty (40) years. 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 being offered or alleged in delay thereof, and it appearing that the said James C. Hammer has been previously sentenced to imprisonment in the public jail and penitentiary house of this Commonwealth for the term of thirty (30) years on Indictment No. 4, it is now considered by the Court that the said James C. Hammer, after the termination of his previous term of sentence on Indictment No. 4, be imprisoned in the public jail and penitentiary house of this Commonwealth for the term of forty (40) 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 no credit be allowed the said James C. Hammer for any time spent by him in jail awaiting trial on this indictment, such credit having been allowed him on Indictment No. 4. And it is further ordered that thirty (30) years of the forty (40) year sentence this day imposed upon the said James C. Hammer shall run concurrently with the sentence imposed upon him on Indictment No. 4. 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.

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Filed Feb. 19, 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 Court erred in overruling the defendant's motion that the Court disqualify itself from consideration of this case on the ground that a statement made by the Court at the trial of the defendant on a separate charge indicated that the Court had formed an opinion in this case which was prejudicial and contrary to the best interest of the defendant.

2. 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 process 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 state of his confinement and the investigation of charges against him.

page 18 } 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 and coercion, denial of the right and opportunity to retain counsel, the wrongful and illegal nature of the 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 and induced by the results of illegal searches and seizures.

3. 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.

page 19 } 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.

4. That the Court erred in overruling the motion of the defendant to dismiss the indictment charging the defendant with rape on the grounds that the evidence was insufficient as a matter of law.

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 19th day of February, 1965, at 9:30 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 Honorable 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 HENRY J. KOSTEL
HERBERT H. BATEMAN
Counsel for the Defendant.

Filed Feb. 19, 1965.

F. B. BARHAM, Clerk.

* * * * *

page 3 } Court: All right sir, now I understand you have a motion.

Mr. Kostel: Yes sir. If your Honor please, on behalf of the Defendant, we respectfully move your Honor to disqualify himself from consideration of the case of the *Commonwealth* vs *Hammer* in the Susan Godwin incident of April 26, 1964.

Court: Yes, April 26, according to Doctor Wash's testimony.

Mr. Murchison: That's the correct date, Mr. Kostel.

Mr. Kostel: I want to get the number of the docket. Indictment number—indictments numbered one and two, on the grounds, your Honor, that during argument by counsel for the Defendant when counsel for the Defendant pointed out to the Court the Defendant had returned to the Susan—to the residence where Susan T. Godwin was baby sitting on the 16th day of April, 1964 the Court then interrupted counsel and said yes, he went—he went back a third time or words to that effect. It is the feeling of counsel for the defense that that the statement made by the Court was highly page 4 } prejudicial to the rights of the Defendant in that it indicates that the Court has formed a judgment on a case which is yet to be tried before his Honor.

Court: And what are you asking?

Mr. Kostel: And I think—I think I moved that the Court disqualify itself.

Court: No sir, I don't think you did.

Mr. Kostel: I thought I did.

Dr. Thomas Wash.

Court: Did he?

Mr. Kostel: I think so.

Court: All right sir, well, the Court has not formed an opinion. I don't even know what the two indictments are that you are talking about. Of course I know that he's charged with rape of Susan Godwin on April the 26th, '64 since we have taken a doctor's testimony in that matter. I think there was—certainly brought from Susan Godwin and I think from Mrs. Godwin about the second time. The Court has formed no opinion. My mind is completely open page 5 } as to whether he—did any such act on April 26, 1964. I feel I can hear the evidence without any qualms whatsoever that I had prejudged the case. I am not disqualifying myself.

Mr. Kostel: Note our exception.

Court: Note your exception.

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Mr. Kostel: If your Honor please, we make the motion to dismiss both indictments on the grounds that the arrest warrants on which the indictments were returned by the Grand Jury were not served on the defendant.

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

Mr. Kostel: Note our exception.

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DR. THOMAS WASH,

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

DIRECT EXAMINATION.

By Mr. Murchison:

Q. All right, sir. Now, will you state your name please, sir?

Dr. Thomas Wash.

A. Thomas Wash.
Q. Mr. Wash, what is your occupation?
A. I'm a physician.
Q. Doctor Wash, how long have you practiced?

Mr. Kostel: Let's stipulate the same questions would go in here, your Honor.
page 12 } Mr. Murchison: This is just another record.
Mr. Kostel: In the record of the other case.
Court: Might as well go into it. You want to stipulate, however, that he's qualified?
Mr. Kostel: Sure.
Court: As a gynecologist.

By Mr. Murchison:
Q. All right, sir. Were you practicing your profession in the City of Newport News in the year of 1964?
A. Yes, sir.
Q. Specifically, were you practicing on or about April 26, 1964?
A. Yes, sir.
Q. Do you know one, Susan Godwin?
A. Yes, sir.
Q. Was she or is she a patient of your's?
A. She's not a patient of mine.
Q. Had you seen her prior to the date of April 26, 1964?
A. Yes, sir.
Q. And—that was in regard to testimony you have given in a previous trial?

page 13 } Mr. Murchison: Can I do it like this so we won't have to go back in—
Court: Yes, it's pertinent that he did see her on another day.

By Mr. Murchison:
Q. You did see her where and when as you testified previously?
A. On April the—17, 1964.
Q. And your examination at that time was for what? This is on April 17. What did you examine her for, if anything?
A. I examined her at Riverside Hospital, emergency room. I was asked to see her as she allegedly was raped. I was asked to see her for a—a pelvic examination.

Dr. Thomas Wash.

Q. From your examination of April 17, did you find any physical damage to her pelvic area or her vagina area?

A. No, sir.

Q. All right, did you then examine her on—on or about April the 26th, 1964?

A. Yes, sir.

Q. What type of examination did you do this time to Susan Godwin?

A. I did a—a general physical examination and then a pelvic examination.

page 14 } Q. And do you recall when you made that examination, Doctor, or do you have any—

A. This was—I do not know the exact time. It was on April the 26th in the evening.

Q. All right. What, if anything did you find in your examination on April the 26th, 1964?

A. Well, there was no evidence of injury to her body in general. More specifically, specifically to the genital or pelvic area, she had—there was a small tear or laceration of the hymen or the opening of the vagina.

Q. Now, is that hymen in the body of a woman or is it on the outside of the body?

A. Well, it is right at the opening to the vagina.

Q. Well, is it—can you be a little more specific, Doctor? Is it like skin on my hand here or is it inside any part of you?

A. Well, it's—I don't know exactly how—how to answer that.

Q. Let me ask you this. From the laceration of the hymen, from a medical standpoint, what does that indicate to you?

A. That there had been some trauma to the genital area.

Q. And trauma meaning what?

page 15 } A. Injury.

Q. Could you tell by what or could you ever—can you tell by what or is that just your medical—

A. No sir.

Q. Was that tear there at your examination of April the 17th, '64?

A. No sir.

Q. Was that tear medically in your medical opinion a fresh tear?

A. Yes, sir.

Dr. Thomas Wash.

Q. When that tear is made, is it—is it—does the body repair that tear or is it then permanent?

A. It heals without any treatment but there is—there is evidence—there is evidence there that a tear is present.

Q. That's after the healing and all?

A. Yes.

Q. Now how as Susan—this time on April 26, how was her physical condition and emotional and so forth and so on, from your standpoint?

A. She was somewhat upset but she was able to answer questions and—appeared reasonably calm for—what had supposedly transpired.

Q. Any evidence of sperm?

A. There was no evidence of sperm in the vagina.

Q. Was there any evidence of sperm anywhere
page 16 } on the body?

A. There was no evidence of any, anywhere.

Q. Were there any other injuries to her body, to your knowledge?

A. No sir.

Q. Other than the laceration in the hyem area?

A. No sir.

Q. Could you tell from a mecial—from your medical experience whether penetration had been made or not?

Mr. Kostel: Objection, if your Honor please. That—that question assumes that he testified that there was penetration. All he testified to was that there was a laceration in the vagina. He didn't testify that it came by penetration. He said it came from trauma.

Court: He's asking him now whether or not there was any penetration and whether he can tell with medical certainty. Go ahead, sir.

Mr. Bateman: Exception.

A. Could you re-state that?

By Mr. Murchison:

Q. Can you tell from your medical experience and as a medical expert whether or not penetration had
page 17 } been at the area of the hymen?

A. I cannot tell for certain but the findings were consistent with penetration.

Dr. Thomas Wash.

Mr. Murchison: I see. In fact, you actually never know. Strike that. All right. Witness with you.

CROSS EXAMINATION.

By Mr. Kostel:

Q. The findings were consistent with trauma of any other kind other than penetration, weren't they, Doctor?

A. That's possible.

Q. Penetration is not the only thing that will—is not the only type of trauma that will lacerate a hymen, is it?

A. That's right.

Q. There are many other type of trauma that will lacerate a hymen, aren't there?

A. Yes, sir.

Q. Is there any medical way in which you could determine if a male penis had penetrated into a female vagina or had come near to a female vagina if there was no ejaculation?

A. No sir.

page 18 } Q. There would have to be ajaculation for you to have definite evidence of sexual intercourse?

A. For me to say whether?

Q. For you to determine that sexual intercourse had taken place?

A. Probably so.

Q. There would have to be sperm from an ejaculation?

A. Yes.

Q. Was there any blood in the vagina?

A. No sir.

Q. Does that mean that the laceration was so minor that it didn't produce any blood?

A. It was not bleeding at the time.

Q. Do you construe that to be a minor laceration?

A. Yes, sir.

Q. Was anybody else present in the hospital when you examine Susan Godwin, with her at the time you examined her on either occasion?

A. The nurse in the emergency room.

Q. Were her parents at the hospital with her?

A. Yes, sir.

Q. They were not in the examining room?

A. No sir.

page 19 } Mr. Kostel: Thank you, Doctor.
Court: Doctor, where is the hymen?

A. The hymen is right at the opening of the vagina.

Court: Inside the vagina?

A. It's not inside the vagina. It's—it's just right at the opening. Just like—the door there, the opening to the—to the Courtroom but it's not actually in the Courtroom.

Court: Now the vagina is the—what you consider the actual opening in the inside, is that correct?

A. That's right.

Court: And the hymen is right at this opening?

A. Right at the opening.

Court: And there was a tear there?

A. Yes, sir.

Court: And this of course indicated to you a trauma of some sort?

A. Yes, sir.

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

DIRECT EXAMINATION.

By Mr. Murchison:
page 21 } Q. Will you state your name, please.
A. Susan Godwin.

Susan Godwin.

Q. How old are you, Susan?
A. 17.
Q. When were you 17?
A. October 25.
Q. Susan, where do you live?
A. 86 Main Street.

Mr. Murchison: Can you gentlemen hear her?
Mr. Bateman: Yes.

By Mr. Murchison:
Q. Who did you live with, Susan?
A. My mother and two sisters and my brother.
Q. Susan, now you will have to put that mike up a little closer and see if it helps you so we can hear a little better. Susan, where were you living on or about April the 26th, 1964?
A. 86 Main Street.
Q. Is that in Hilton, Virginia?
A. Yes, sir.
Q. Hilton Village, Newport News, Virginia.
A. Yes, sir.
Q. Where does your grandmother live?
A. 98 Post Street.
page 22 } Q. Where?
A. 98 Post Street.
Q. That's just next door?
A. No, it's a block over.
Q. A block over. Is it 96 Post Street, did I understand?
A. 98.
Q. 98. Is that also in the City of Newport News?
A. Yes, yes sir.
Q. Was your grandmother home on April the 26th, in the evening?
A. Yes, sir.
Q. Did you see her?
A. Yes, sir.
Q. What was her condition?
A. She had just had a slight stroke and she was in bed.
Q. She was in bed?
A. Yes.
Q. Where was the bedroom?
A. Well, she has an apartment on the third floor of the house.

Susan Godwin.

Q. And who has the other apartments on the first and second floor, do you know?

page 23 } A. That's just—a house and the Jones live there.

Mr. Kostel: I didn't hear that.

Mr. Murchison: The house that the Jones live in. Is that what you said?

A. Yes.

By Mr. Murchison:

Q. Did you have an occasion to visit your grandmother on the evening of April the 26th or afternoon?

A. Yes, sir.

Q. While you were visiting your grandmother—about what time did you go over, do you remember?

A. A little after seven.

Q. A little after seven?

A. Yes.

Q. Is that in the evening?

A. Yes, sir.

Q. Did anything unusual occur to you while you were there at your grandmother's home?

A. Yes, sir.

Q. Will you tell us in your own words what happened, Susan?

A. Yes, sir.

Q. All right, tell us in your own words what happened to you that night, if anything?

page 24 } A. I was upstairs with my grandmother and the doorbell rang and I went downstairs and I opened the door and nobody was there and I shut it and I turned around and there was this man with a blue hooded sweat shirt on and a handkerchief across his face and a pair of trousers and tennis shoes and he had a knife in his hand.

Q. Where was he?

A. He was—by the closet. It's under the stair case.

Q. You had gone down to answer the bell on the door you say?

A. Yes, sir.

Q. Was anyone there at the door?

A. No sir.

Q. Was the door shut?

A. Yes, sir.

Susan Godwin.

Q. And when you—did you shut the door after you saw there was no one there on the outside?
A. Yes, sir.
Q. What did you do then?
A. I turned around to go back upstairs.
Q. And where are the stairs in relationship to the front door? What distance would you have them there, would you tell us? Could you point out something to us in the Courtroom about the distance from the stairs to the
page 25 } front door?
A. I guess it's from about the beginning of this rail to where he's sitting (indicating).
Q. He, you mean the Court Reporter?
A. Yes.

Mr. Murchison: Can defense counsel agree?
Mr. Kostel: Five feet.
Mr. Murchison: Agreeable.
Court: All right, sir.

By Mr. Murchison:
Q. And you turned around and then what did you see, if anything, when you turned around?
A. I saw the man with the blue hooded sweat shirt on.
Q. Where was he then?
A. He was standing by the closet door.
Q. Well now, where would the closet door be in relationship to the stairs and the front door? You said the stairs were about five feet from the front door. Where would this closet be?
A. It's right on the other side of the steps.
Q. A little further back from the front door or closer to the front door?
A. A little further back.
page 26 } Q. Could you right next to the stairs, in other words, the closet, the stairs and then this distance of five feet, is that correct?
A. Yes, sir.
Q. Was he in the closet or out of the closet? Where was he standing?
A. He was out of the closet.
Q. Would he be in the hallway there?
A. Yes.
Q. Or foyer, whatever you call it?
A. Yes, sir.

Susan Godwin.

Q. Were lights on or not?
A. I think there was a small light on in the living room.
Q. Could you see this person?
A. Yes, sir.
Q. Had you seen that person before?
A. Yes, sir.
Q. Where had you seen that person before?
A. On Ferguson Avenue.
Q. When?
A. About a week before this second time.
Q. This was the same person you saw?
A. Yes.

page 27 } Q. What happened from that moment on, Susan, when you turned around and saw this man dressed as you say, with a knife. Where was the knife, incidentally?

A. It was in his hand.
Q. What kind of a knife was it?
A. I don't know. Just a knife.
Q. Well, was the knife open or closed or what?
A. It was open.
Q. Was it a short or long knife or could you tell the Court what it looked like?
A. It wasn't very—it was—I guess the blade was about like that (indicating).
Q. Will you hold your hand up so defense counsel can see.

(The witness complied by indicating).

Court: From the tip of your thumb to the tip of your finger?

A. Yes, sir.

Mr. Murchison: Four inches. You agree on a four inch blade?
Mr. Bateman: Yes.

By Mr. Murchison:
Q. What happened then, Susan, after you saw him in this manner?
A. Well, he asked me if I remembered him.

Susan Godwin.

page 28 } Mr. Kostel: He asked you?

A. He asked me if I remembered him.

By Mr. Murchison:
Q. What did you say?
A. Oh, I did. I told him I remember him.
Q. What happened after that?
A. Well, he asked me who was there with me and I—I told him my mother and father and he—said, "don't lie to me" and I was afraid so I said, "well—they're not" and—
Q. He told you not to lie to him?
A. Yes.
Q. You were afraid. Why were you afraid?
A. Because he had the knife.
Q. All right. Then you told what?
A. He just had the knife and he took me through the living room into the dining room into this den like.
Q. In where?
A. In a den like.
Q. A den like?
A. A den like. I guess it's a den.
Q. Was anyone down stairs in the first floor, to your knowledge?
A. No.
Q. And he took you back to what you call the
page 29 } den like?
A. It's kind of a den like, I guess.
Q. How did he take you?
A. By the shoulder kind of.
Q. By the shoulder?
A. Yes.
Q. You mean he touched you?
A. Yes, sir.
Q. With what?
A. He had his hand on my shoulder.
Q. Were you in front of him or in back of him?
A. In front of him.
Q. All right. What happened when you—what happened back there? What was said to you there and what happened?
A. Well, he told me to take off my slacks and pants and to get down on the floor and—
Q. Tell us what was said and done back there, Susan?

Susan Godwin.

A. So he—got down on top of me.
Q. How was he dressed at that time?
A. Well, he just—oh, he had his pants on.
Q. What happened when he got down on top of you? How was he dressed then?
A. Well, he just had his zipper unzipped I
page 30 } think.
Q. What did you see, if anything?
A. His penis.
Q. Where was that?
A. What do you mean?
Q. Was it in his clothes or out of the clothes or where?
A. Out.
Q. All right. Why did you take off your clothes and get down on the floor?
A. Because he had the knife.
Q. You say he then got on top of you?
A. Yes.
Q. What did he do, Susan?
A. Well, he told me to kind of act right or something so he could—do whatever he was going to do right and—
Q. Do whatever he going to do right?
A. Yes, he told me, you know—do right so that he would be able to—
Q. Well, what did he do 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.
page 31 } Q. Did you feel his penis in your vagina?
A. Yes sir.
Q. What did he do then?
A. Well, my sister had come down stairs and he heard her—
Q. What did he do while he was on top of you with his penis in your vagina? Did you feel it in your body?
A. Yes, sir.
Q. Did it hurt or not?
A. For a while.
Q. Why didn't you—did you make any outcry?
A. What do you mean?
Q. Did you cry out or anything like that?
A. No.
Q. Why?

Susan Godwin.

A. Well, my sister was there and—I didn't want anything to happen to her.

Q. You didn't what?

A. Didn't want anything to happen to her.

Q. What do you mean you didn't want anything to happen to her?

A. I was afraid of him.

Q. You were afraid of him. Was anyone else there other than your sister and your grandmother who was in bed upstairs?

page 32 } A. My little sister.

Q. How old was she?

A. Nine.

Q. And where was she?

A. She was upstairs with my grandmother.

Q. All right. What happened after that occurrence while he was on you?

A. My sister called me and I went to the door and he was on the other side of the door with the knife.

Q. Had he gotten off of you or how did you get up to go to the door?

A. Yes, he got up. He said to see who it was and I went and—I just told her to go back upstairs and I was being excused and I would be up in a minute.

Q. Why didn't you tell her what had happened to you then?

A. Because he was standing there with a knife right on the other side of me.

Q. Was the door wide open or how?

A. No, it was just cracked.

Q. Where was the knife at that time when you were talking to your sister?

A. I was standing this way and he was here on the side with the knife pointing at me.

Q. How close was he to you?

page 33 } A. About from there to where I am (indicating).

Q. About from where now?

A. From here (indicating).

Mr. Murchison: The witness to the edge of the side.

Mr. Kostel: Edge of the Bench.

Mr. Murchison: Sir? May we agree on that distance? A foot?

Susan Godwin.

Court: Two feet.
Mr. Murchison: Two feet.

By Mr. Murchison:
Q. What happened after that? Did your sister go back upstairs or what did she do, do you know?
A. I guess she did.
Q. She didn't come back in the room?
A. No.
Q. Why didn't you want her to come into the room?
A. I—I didn't know what he would do.
Q. All right. What happened after that then, Susan?
A. Well, we went into the bathroom and he asked me how old my sister was.
Q. What?
A. And he asked me how old my sister was and
page 34 } —and then he told me to get down on the floor.
Q. Again?
A. Yes.
Q. What happened then?
A. Well—
Q. Where is the bathroom in relation to this den you're talking about?
A. It's in the den.
Q. It's in the den. How did you get in the bathroom? How did you go in there?
A. I don't know. I don't remember.
Q. All right, what happened there in the bathroom?
A. Well—
Q. If anything?
A. He got down on top me and put his penis in my vagina.
Q. Again?
A. Yes.
Q. Did you feel his organ in your body again?
A. Yes.
Q. Why did you go in the bathroom with him the second time then?
A. I can't remember.
Q. Did he have the knife?
page 35 } A. Oh, yes.
Q. What happened there in the bathroom after he was on top of you?
A. He got up. I—there was—my sister had stayed down stairs and she went and shut the side door and he heard it and

he thought it was somebody coming in so he was going out the back door. He went out the back door.

Q. Did you hear any noise of the door being shut?

A. I heard it.

Q. What did he say, if anything then?

A. He told me to meet him out in the back yard in five minutes.

Q. What did you say?

A. I—I just said—I just told—I just went on and I said yes, and he went on and I went and called my mother.

Q. You called your mother immediately?

A. Yes.

Q. What did you tell her?

A. Well, she—she should have been on her way around and—and we locked the doors.

Q. Who locked the door?

A. The door bell rang and somebody—wanted me to see something about the phone but—

page 36 } Q. What—did your mother get around there immediately?

A. In a few minutes.

Q. Did you get her on the telephone when you called or was she on her way?

A. She was on her way.

Q. To your knowledge, had your mother planned to come on around with your grandmother that evening?

A. Yes, sir.

Q. You told your mother what happened when she came in?

A. Yes, sir.

Q. You all reported this then to the police?

A. Yes, sir.

Q. That night?

A. Yes, sir.

Q. Were you examined by a doctor?

A. Yes, sir.

Q. That evening?

A. Yes, sir.

Q. Do you know his name?

A. Doctor Wash.

Q. I believe you had previously been examined by him, hadn't you?

A. Yes sir.

page 37 } Q. Did you see this person any more after that time?

Susan Godwin.

A. Yes, sir.
Q. Where did you see the person again?
A. One afternoon I was with my mother. He was walking along.
Q. Whereabouts?
A. On Main Street.
Q. Did you recognize him then?
A. Yes, sir.
Q. What happened then?
A. Well, my mother followed him and she—
Q. What did you do?
A. I went home.
Q. And your mother followed him so far as you know?
A. Yes, down to Palen Avenue.
Q. Susan, the person that did this to you as you testified there on Post Street in your grandmother's home, is that person in the Courtroom today?
A. Yes, sir.
Q. Where is that person?
A. Over there, the third one (indicating) from the left.

Court: All right, she pointed to the Defend-
page 38 } ant, James Hammer.

By Mr. Murchison:
Q. Susan, did you submit these times in the house with your grandmother?
A. No.
Q. Did you agree to do these acts with him?
A. No.
Q. Did you want to do them?
A. No.
Q. Why did you?
A. It might be hard for you to understand but I was afraid of him and I never expected to see him again. I was really scared when I saw him again that second time.
Q. You were really scared?
A. Yes.
Q. Did you see him any more that night in question at your grandmother's after he went out the back door?
A. No sir.

Mr. Murchison: All right.

Susan Godwin.

CROSS EXAMINATION.

By Mr. Kostel:

Q. Susan, describe the lay-out at this house at 98 Post Street, the downstairs, the first floor area?

page 39 } A. You—you go in the front door and there's an entrance hall and then there's a door that leads into the kitchen from the entrance hall and that has a side door and then you can—then on the right-hand side of the kitchen there's a—an entrance into the dining room and then from the dining room you go back to the den and then—when you first go in the front door to your right is the living room.

Q. What backs up to the living room? What does the living room back up to?

A. The dining room.

Q. The dining room. Can you go from this entrance hall into the living room?

A. Yes, sir.

Q. You can all the way back to the kitchen, entrance hall takes you all the way back to the kitchen, say?

A. Yes, sir.

Q. And the den is off of the kitchen?

A. No.

Q. Where is the den?

A. Off the dining room.

Q. Off of the dining room. Where is the den in relation to the kitchen?

A. I don't know what you mean.

Court: Tell us what rooms you go to from the den to the kitchen?

page 40 } A. You can go through part of the dining room.

By Mr. Kostel:

Q. Part of the dining room?

A. If you go through the kitchen to go to the dining room to go to the den.

Q. The door, the only other door other then the front door is in the kitchen?

A. No.

Q. What other door leads outside and where is it?

A. It's in the den, the back room.

Susan Godwin.

Q. And the bathroom part of the den or just in the den?
A. In the den.
Q: In the den?
A. Yes.
Q. Where does that door lead to, the rear yard?
A. Yes.
Q. Or the side yard?
A. The rear yard.
Q. And when you—closed this door as your sister was outside, you tried to keep the door closed and tried to keep her from coming into the den, didn't you?
A. Would you repeat that?
Q. Your sister was outside of the den when she
page 41 } came down, was she not?
A. Yes sir.
Q. And did you not try to keep the door leading into the den closed so she would not come in?
A. It was just cracked. It was—
Q. Just cracked?
A. Yes.
Q. Did she try to open that door?
A. No, I don't think she did.
Q. You don't think she did. You just told—what did you tell her, do you remember your exact words?
A. I just told her I was being excused and I'd be up in a minute.
Q. You were being excused?
A. Yes.
Q. Is that the only bathroom on the first floor?
A. Yes, sir.
Q. The one that's in the den?
A. Yes.
Q. Now you testified there was a small light on in the living room?
A. Yes.
Q. Any other lights on downstairs?
A. There might have been one on in the entrance.
Q. In the entrance hall?
page 42 } A. Yes.
Q. But any lights on to the rear of the house?
A. Well, he turned the light on in the bathroom.
Q. He turned the light on in the bathroom but the den was dark?
A. Well—the house is by an alley and there's this light in the alley and it shines through.

Susan Godwin.

Q. There was no light on in the den, was it?
A. No light from the house.
Q. You're saying the light from the bathroom and the light that shines in from the alley was sufficient for you to see his exposed private parts?
A. Yes.
Q. Who lives in the house other than the third floor apartment which your grandmother had?
A. The Jones.
Q. Are they a married couple?
A. Yes, sir.
Q. Do they have any children?
A. Yes, sir.
Q. And where were they on the night in question?
A. I don't know.
Q. You don't know?
A. I think they were at church.
page 43 } Q. Did you see them any more than night? Did you see them that night?
A. I'm trying to remember.
Q. Beg your pardon?
A. I'm trying to remember. I don't think I did.
Q. You don't think you did. You walked from the den out to this man who was in your house that night, after he left, you walked into the—walked from the den to the phone, is that right?
A. I went to the phone.
Q. Beg your pardon?
A. I went to the phone.
Q. Where is the phone located?
A. In the entrance hall.
Q. In the entrance hall?
A. Yes.
Q. And you immediately dialed your mother, is that right?
A. Yes, sir.
Q. And where was your sister at that time?
A. She was downstairs.
Q. She was downstairs?
A. Yes.
Q. Where was she when you first came out again
page 44 } A. Going up the steps.
Q. She was going up the—the steps?
A. Yes.
Q. What made her come back down if she did come back down?

Susan Godwin.

Mr. Murchison: I object to that unless—
Mr. Kostel: I thought she said she came downstairs.
Mr. Murchison: What made her—
Court. I'll let her answer it.

By Mr. Kostel:
Q. Did she come back while coming down the steps or while she was going up the steps?
A. I called her down.
Q. You called her down?
A. Yes.
Q. Told her what had happened?
A. Yes.
Q. And then you began to dial your mother, is that right?
A. Yes, sir.
Q. Then a man came over from next door, didn't he?
A. I don't know where he came from.
Q. Well, did a man come making inquiry about
page 45 } the phone?
A. Yes sir.
Q. Was this before or after you called your mother?
A. I'm not sure.
Q. Who let him in?
A. Who let who?
Q. The man that came in to make inquiry about the telephone.
A. I didn't let him in.
Q. How did he get in, if you know?
A. He didn't get in.
Q. He didn't get in?
A. No.
Q. How did you know he came over there?
A. Because—I had the chain on the door and I opened it and he was there and he said something about the phone but I told him I was sorry, I couldn't help him.
Q. You couldn't help him. Did you tell him what had happened?
A. No.
Q. Did you know at the time the name of this man?
A. No sir.
Q. Had you ever seen him before?
page 46 } A. No sir.
Q. Aproximately how long did the accused remain on top of you in the den on the first instance?
A. About a minute or two.

Susan Godwin.

Q. A minute or two. And how about in the bathroom on the second instant?

A. About the same time.

Q. Did you try to push him away from you on either occasion?

A. No.

Q. Who called the police, Susan?

A. My brother.

Q. Your brother?

A. Yes.

Q. Did he come over with your mother?

A. Yes, sir.

Q. How old is he?

A. 21.

Q. How far is it from 98 Post Street to 318 Ferguson Avenue?

A. I don't know.

Q. Were you at 318 Ferguson Avenue on April 17?

A. No.

Q. What was that address?

page 47 } A. 210.

Q. 210?

A. Yes.

Q. How far is it from 210 Ferguson Avenue to 98 Post Street?

A. About four blocks.

Q. Four blocks?

A. Yes.

Q. Can you offer any explanation to the Court how the man that came into the house that night knew you were there?

A. What night?

Q. Can you offer any explanation to the Court as to how or why the man who came into your house that night at 98 Post Street or your grandmother's house knew you were there?

A. No.

Q. Do you know how he got in?

A. Through a door but I don't know which one.

Q. Through a door but you don't know which one? Was the entrance door locked?

A. No.

Q. Any reason why it was not locked, to your knowledge?

A. People never lock their doors.

page 48 } Q. People never lock their doors. Now this closet is further away from the door, the front door than the steps going upstairs?

Susan Godwin.

A. Yes, sir.
Q. Is it on the *lading* of the steps or off of the landing of the steps, the closet?
A. I don't understand.

Court: Under the steps. Isn't that what you said?

A. It's under the steps.

By Mr. Kostel:
Q. Under the steps?
A. Under the steps.
Q. In the living room then?
A. No, in the hall.
Q. In the hall. Did you see anybody leaving after you got downstairs to answer the door bell?
A. No sir.
Q. How long was it between the time you first heard the ring and the time you got downstairs?
A. Not long at all.
Q. You could have hear the front door open, had it been opened, couldn't you?
A. Not if I was upstairs.
Q. Well, I mean while you were coming down.
page 49 } A. I guess I could have.
Q. You started down immediately, didn't you?
A. When I heard the door bell I started down.
Q. Susan, why did you call your mother immediately on this night and you waited some time before you called your mother on the previous occurrence?
A. I was expecting the people to come home any—real soon because it was about the time I was to expect them.
Q. I know but—is there any reason why you called for your mother immediately. Why can you feel the need to call for her immediately on this night and you didn't feel that need to call for her on the night of April 17 and 16?
A. Well, I wanted to call the other night but my brother was with her now and I knew he was coming too.
Q. Did anybody answer the phone at your mother's house?
A. No sir.
Q. Tell us the number of minutes that it took your mother to get there or seconds?

Court: What do you mean?
Mr. Kostel: From the time she called.

Susan Godwin.

Court: She never got her.
Mr. Murchison: She never got her.
Court: You mean from the time she attempted
page 50 } to call her?
Mr. Kostel: Yes, sir.

A. I guess it was about seven or eight minutes.

By Mr. Kostel:
Q. Seven or eight minutes?
A. Yes.
Q. How long does the walk—does it take from 86 Main Street to 98 Post Street, how long does it take you to walk there?
A. I guess about five minutes.

Mr. Kostel: Five minutes.
Court: Were they walking? I don't know whether they were walking.
Mr. Kostel: I don't know.
Court: You just want to know?
Mr. Kostel: I just want to know, yes sir. I may be able to tie it up when Mrs. Godwin testifies.

By Mr. Kostel:
Q. Would you say that the man that knocked on the door and whom you would not admit came over there within five minutes from the time the accused left?
A. Yes, sir.
Q. You say it was within five minutes?
A. Yes.
page 51 } Q. So that—he got there before your mother did, isn't that right?
A. Yes, sir.
Q. Were you at home when this Defendant was brought by your home later on, the night of May 13?
A. He wasn't brought by my home.
Q. 1964. He was not?
A. No sir.
Q. Someone else's house?
A. I didn't know he was brought by anybody's house.
Q. When was the first time you saw him after the—the afternoon, you said you saw him in Hilton. When is the next time you saw after that?
A. It was early in the morning.

Susan Godwin.

Q. Where did you see him, Susan?
A. Down here at the Police Station.
Q. Down at Police Headquarters. And was he put in the lineup for you to identify on that night?
A. Yes, sir.
Q. And was he dressed in the blue hooded sweat shirt?
A. Yes, sir.
Q. With a handkerchief over his face?
A. Yes sir.
page 52 } Q. Did you see the Defendant at Police Headquarters in a lineup (indicating photograph), consisting of the Defendant and another man?
A. Yes.
Q. And did you identify the Defendant based on that lineup?
A. Yes, sir.
Q. Could you have identified him if there had been somebody in the lineup who—was the same height and same coloring?
A. Yes, sir.
Q. This—the fact that this other man in the lineup is in a light sweatshirt and is somewhat taller than the Defendant didn't assist you in identifying him?
A. No.
Q. Your answer is no?
A. Yes.

Mr. Kostel: That's Exhibit One, if your Honor please.
Court: You want to introduce it?
Mr. Kostel: Yes sir.
Court: All right, Defendant's Exhibit One.

(The photograph was received and marked Defendant's Exhibit One).

page 53 } By Mr. Kostel:
Q. Did you arrive at 98 Post Street around 7:00 p.m.?

Court: That's what she said.

By Mr. Kostel:
Q. What time did the door bell ring when you came downstairs, if you know?

Mrs. James H. Godwin.

A. It was—either a little before seven thirty or a little after.
Q. A little before seven thirty or a little afterwards?
A. Yes.
Q. Was it before a quarter to eight?
A. I think it was.
Q. It wasn't completely dark then was it, out side?
A. It was dark outside.
Q. It was dark. Completely dark?
A. Yes.
Q. Did the man come back in five minutes in the back yard?
A. I don't know. I never went out.
Q. You didn't go back out to see, did you?
A. No.

* * * * *

page 54 }

* * * * *

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

DIRECT EXAMINATION.

By Mr. Murchison:
Q. Tell us your name please, mam.
A. Mrs. James H. Godwin.
Q. Where do you live, Mrs. Godwin?
A. 86 Main Street, Newport News, Virginia.
Q. Are you the mother of Susan Godwin?
A. Yes, I am.
Q. Where were you living on April 26, 1964?
A. 86 Main Street, Newport News, Virginia.
Q. Is your mother living, Mrs. Godwin?
A. Yes, she is.
Q. Where does she live?
A. 98 Post Street, Newport News, Virginia.
Q. How far away is that from your home?
page 55 } A. About two blocks.
Q. Anything wrong with your mother on or about April 26, of '64?

Mrs. James H. Godwin.

A. She had suffered a mild stroke.
Q. Where does she live—whereabouts in this community?
A. 98 Post Street.
Q. Whereabouts? Is it a house or apartment building?
A. It's a home but she had an apartment on the third floor there.
Q. Did you have an occasion to visit with your mother on the evening of April 26?
A. Yes, I did.
Q. Who did you find at your mother's home when you arrived?
A. My two daughters.
Q. Was your mother there?
A. My mother was upstairs in bed, yes.
Q. And who went with you to the house?
A. My son.
Q. Your son?
A. Yes.
Q. Did you know of your own knowledge that—you said two daughters. What were their names?
page 56 } A. Ruth West Godwin and Susan Godwin.
Q. Susan?
A. Yes.
Q. Was she there when you arrived?
A. Yes, she was.
Q. Did you know of your own knowledge that your two daughters, Susan and Ruth were going to their grandmother's house that evening?
A. Yes, I did.
Q. Had you made arrangements to go down there yourself?
A. Yes, I was to go later on.
Q. And for what purpose were you going then?
A. So that they could go to their Aunt's and I was going to be with my mother.
Q. I see.
A. Because she was in bed.
Q. All right. Was Susan there and Ruth, when you arrived?
A. Yes, they were.
Q. Did Susan tell you that anything had happened there?
A. Yes, she did.
Q. And on what she told you, what did you do?

Mrs. James H. Godwin.

A. My son called the police.

page 57 } Q. Immediately?

A. I think so, Mr. Murchison.

Q. Do you recall, Mrs. Godwin, approximately what time you arrived there?

A. I think it was around 8:00 o'clock or around that time.

Q. Around that time?

A. Yes.

Q. And how long after you had been in the home was it before Susan told you whatever she had to tell you?

A. Well, she told me immediately.

Q. Immediately?

A. She wouldn't come down to the door. She called to me from the third floor when we rang the bell.

Q. Who came down then?

A. She did. After she found out it was my son and myself.

Q. How did she find that out?

A. She called out of the third floor window.

Q. And you replied?

A. Yes, I did.

Q. Then she came down and when did she tell you whatever this is, this is hearsay.

A. Just as soon as I entered the house.

Q. As soon as you entered?

page 58 } A. Yes.

Q. And your son then called the police department?

A. Yes, he did.

Q. Did you have your daughter examined by a doctor that evening?

A. Yes, I did.

Q. What doctor?

A. Doctor Wash, at Riverside Hospital.

Q. At Riverside Hospital?

A. Yes.

Q. Now of course you know nothing of any of the things that occurred there in the house of your grandmother's other than what was told to you by Susan, is that right?

A. No, I do not.

Q. How was Susan when she talked to you? What was her condition?

A. She was sort of hysterical.

Q. How old is Susan, Mrs. Godwin?

Lieutenant Frank L. Martin.

A. Susan is now 17.
Q. When was she born?
A. October 25, 1949.
Q. She was 16 then in April 26, of '64?
A. That is correct.

* * * * *

page 64 } LIEUTENANT FRANK L. MARTIN,
called as a witness by the Commonwealth, being duly sworn, testified as follows:

DIRECT EXAMINATION.

By Mr. Murchison:
Q. Tell us your name please, sir.
A. Lieutenant Frank L. Martin.
Q. Lieutenant Martin, where are you employed?
A. Police Department, City of Newport News.
Q. You are in the capacity of Detective Lieutenant?
A. Yes, sir.
Q. How long have you been so employed?
A. Almost 18 years.
Q. Lieutenant, directing your attention to the matter of Susan Godwin and James Hammer, did you have an occasion to investigate any matter that occurred on or about April the 26th of '64?
A. Yes, sir.
Q. Will you tell us what your investigation disclosed please, Lieutenant?
A. Yes. You want me to read it?
Q. Tell us what you learned. sir, yes sir.
page 65 } A. I—I interviewed James Hammer in reference to this charge. He gave me a signed statement.
Q. Did he give it to you voluntarily?
A. Yes, sir.

* * * * *

page 69 }

* * * * *

JAMES C. HAMMER,
called as a witness in his own behalf, being duly sworn, testified as follows:

DIRECT EXAMINATION.

page 70 } By Mr. Bateman:
Q. Your name is James C. Hammer?
A. Yes, sir.
Q. You are the Defendant in this proceeding?
A. Yes, sir.
Q. Will you tell the Court where you were and what you did on the evening of April the 26th, 1964?
A. I was home all evening.
Q. Did you leave your home at all?
A. Well, sometime after 8:00 o'clock, maybe it might have been 8:30 I went outside for a few minutes.
Q. Did you see anyone when you left?
A. I met a man and woman on the corner.
Q. Did you have anyone or anything with you?
A. I had my dog.
Q. Your dog?
A. My dog.
Q. All right. Was the dog with you when you saw the man and woman?
A. Yes sir. That's the reason I went out.
Q. Where were this man and woman that you saw?
A. Standing right on the corner of Post Street and Warwick Boulevard.
Q. Did you know the man and the woman that you saw on this occasion at that time?
page 71 } A. No sir.
Q. Did you subsequently come to know who they were?
A. Yes, sir.
Q. And who were they?
A. Sergeant Talbert was one of them and the other lady I believe to be Mrs. Godwin.
Q. Did you have any conversation or anything to do with them?
A. Yes, sir.
Q. Did anyone ask you any questions?
A. The lady asked me some questions. The man just stood there.
Q. How were you attired or dressed, if you remember?

James C. Hammer.

A. I had on dark pants, loafers, blue sweater, Mohair sweater and a Madras sport shirt.

Q. Did you at that time know or had you ever seen the Complainant in this proceeding, Susan Godwin?

A. No sir.

Q. When was the first time that you saw her?

A. On May the 12th or either the early morning of May the 13th.

Q. Where did you see her?

A. At Police Headquarters.

page 72 } Q. And where were you—what happened or what were the circumstances that brought this about?

A. She was brought in to identify me.

Q. Who were you with when she was brought in?

A. I don't recall who was in the office at that time.

Q. Hammer, I show you a photograph that's Defendant's Exhibit Number One in this proceeding and ask you if this photograph accurately depicts what Susan Godwin would have seen when she came to Police Headquarters on the evening of May 12 or the early morning of May 13?

A. Yes sir, that picture was taken just before she came in.

Q. And does accurately reflect what she saw and the circumstances under which she made her identification?

A. Yes, sir.

Q. When did you next see her?

A. Well, I'm not sure I saw her—

Q. Have you seen her since other than in Court?

A. I think I saw her at 98 Post Street the following day but I couldn't say for sure. I just got a glimpse of the girl.

Q. The following day. What do you mean by the following day?

page 73 } A. I was carried to the house where the crime was supposed to have been committed by Lieutenant Shanz and Sergeant Jeffers the following day.

Q. This would have been what, the following day, the 13th?

A. I saw her mother but I'm not sure it was her.

Q. By her, you mean Susan Godwin?

A. Susan. It was one of the two sisters.

* * * * *

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

DIRECT EXAMINATION.

page 74 } By Mr. Bateman:

Q. State your full name, please.

A. Alton Bryant Talbert.

Q. And by whom are you employed?

A. With the City of Newport News, Police Department.

Q. And were you so employed on April the 26th of this year?

A. Yes, sir.

Q. And did you on that day or on the evening of that day become cognizant of a complaint involving a—an alleged rape on one, Susan Godwin?

A. Yes sir, I did.

Q. Were you involved in the investigation and taking of this complaint?

A. Yes, sir.

Q. And what time did you receive the complaint?

A. It was sometime around eight o'colck. I'm not sure of the time exactly but I'm almost sure it was around eight.

Q. And where were you when you received the complaint?

A. We were in the police car.

Q. And approximately how long after the receipt of the complaint was it before you arrived at the scene?

page 75 } A. I wouldn't say that it would have been over five minutes.

Q. And who did you see when you—and where was the alleged scene?

A. At 98 Post Street.

Q. And who did you find when you arrived there?

A. Well, there was Susan Godwin, her sister, I don't recall her name and Officers from the Youth Bureau, including Officer Rice.

Q. Were they already there?

A. Yes sir, the Youth Bureau Officers were there.

Q. Was any description furnished you of the alleged assailant?

A. Yes, sir.

Q. What was that description?

A. Well, the description was that he was a white male,

Alton Bryant Talbert.

around five-seven, wearing dark blue sweat shirt with a hood on it and dark pants and tennis shoes. That's the best of my recollection, the description we received.

Q. And what did you do after you got to the premises at 98 Post Street and were furnished this description?

A. Well, after we got the description I got out and walked around to see if I could anything around the—the area.

Q. Did you see anyone when you walked around page 76 } the area?

A. Yes sir.

Q. Who was with you when you walked around the area?

A. I was alone.

Q. You were alone?

A. Yes, sir.

Q. There was no lady who accompanied you?

A. A lady came up—I walked up to the corner of Warwick Boulevard and the lady came up and whether she was right behind me I don't know but she was there at the corner too.

Q. There was a lady with you at or near Warwick Boulevard?

A. Yes, sir.

Q. At or near its intersection with Post Street?

A. Yes, sir.

Q. And did you see some third person?

A. Yes, sir.

Q. Would you describe that third person that you saw?

A. Well, I don't know how to describe a person I saw. It was a white man with a dog. The clothing that he page 77 } was wearing no way fitted the description of the one we had just received from the complaint and this person was walking a dog.

Q. Did you or the lady who accompanied you or who was with you at this point ask this third person any questions?

Mr. Murchison: I haven't heard there was a lady with him.

Mr. Bateman: He said—

Mr. Murchison: He said a lady came up.

Court: I'll let him answer it.

A. The lady was on the corner with me and if any questions were asked, I don't know. The person that I talked to did

Alton Bryant Talbert.

ask me what was going on and I said we just having a little trouble and I'm just looking around.

Q. The person that you talked to?

A. Yes.

Q. And by this you are referring to the person who was walking the dog?

A. Yes, sir.

Q. And this was—at or near the intersection of Warwick Boulevard and Post Street?

A. Yes, sir.

Mr. Bateman: No further questions.

Mr. Murchison: No questions.

page 78 } Court: All right, you may step down.

Mr. Bateman: That's the Defendant's case, your Honor.

Court: All right, the Defendant rests.

Mr. Murchison: No rebuttal.

Court: All right, no rebuttal. The Court is ready to hear argument. I don't need any from the Commonwealth.

Mr. Bateman: Your Honor, we would like to move for the record first of all, that the indictment as to rape be dismissed on the basis there is insufficient—evidence as a matter of law to convict him and to renew of course all the exceptions as to the admissibility of the confession into evidence and would further move the Court that the charge of burglary with intent to rape be merged into the indictment for rape. It's all one and the same occurrence and one event and one transaction.

Court: All right, at this point I overrule all your motions.

Mr. Bateman: Your Honor, there's nothing that I feel that the defense can say or add to what your

page 79 } Honor has heard. It's our position the Defendant has testified very straightforwardly he had never even seen this young lady until he was confronted by her in this so-called lineup. He states he encountered someone that he later he came to know as a Sergeant on the Police Force at approximatly 8:00 p.m. on the evening in question, April the 26th and that—the Police Officer obviously did not take him into custody or have any suspicion of him. It certainly is corroborated by Sergeant Talbert that he did see the Defendant under the circumstances to which the Defendant testified and—we simply feel there is no evidence beyond a rea-

sonable doubt that this Defendant was the man who came into this—grandmother's home and who perpetrated the act which he has described.

Court: Nothing but his statement.

Mr. Bateman: And on the question of whether or not there can be an actual rape here, I would like to—to call the Court's attention to the testimony of Doctor Wash which I think on this subject is the most reliable evidence in the record. It's scientific and it's objective and he in-
page 80 } dicates that the only damage that he found upon examination of this girl's pelvic and genital area was a slight laceration of the hymen. He does not indicate any penetration or that there had been any rupture of the hymen and he went on to describe the anatomical location of the hymen as being at the entrance of the vagina and so if there has been no penetration or puncture or rupture of the hymen, it would appear quite apparent that there had been no penetration and so at most we would be dealing with an attempted rape and not a rape.

Court: What was that again?

Mr. Bateman: Inasmuch as the hymen is located at the entrance of the vagina and the doctor testified only there was a slight laceration of the hymen and no puncture or penetration or rupture of the hymen, this would negate any actual penetration and therefore we would be dealing with an attempt rather than a consummated rape.

page 81 } Court: Did you miss the language that he said, that it would be what he found was consistent with penetration.

Mr. Bateman: Well, your Honor, I do have—

Court: Plus the fact that Hammer himself says he penetrated and plus the fact that Susan Godwin says he penetrated.

Mr. Bateman: If the Doctor's testimony is accurate as to having only been the laceration of the hymen, I think this is more telling and probative evidence on the question of penetration than what the parties even themselves have indicated.

Court: Didn't he say it was consistent?

Mr. Bateman: I have a notation that—from his—investigation he could not tell for certain that the findings were consistent with penetration.

Court: That he could not tell?

Mr. Bateman: I have the notation—

Court: You haven't got it—

Mr. Bateman: The findings were consistent with pene-

tration but he could not tell for certain. The des-
page 82 } cription of what he found, it was a laceration—

Court: He said he couldn't testify for anybody that there was penetration.

Mr. Bateman: Well, your Honor, I don't—know what he can in other cases or in all cases in general.

Court: He testified to that.

Mr. Bateman: But he did testify as to a laceration, only a slight laceration but as to no puncture or break of the hymen and if the hymen be the entrance of the vagina, I don't see—

Court: I didn't hear him say there wasn't any puncture. He said what he found was consistent with penetration which I have here with a star by it.

Mr. Bateman: Your Honor, further so far as the—the statement of the Defendant that has been admitted over objection, there is certainly nothing in the statement which is incriminating so far as a forceable act of intercourse or perpetrated one. It was a completely voluntary act according to the statement. Nor or are the—nor is the real
page 83 } testimony of this Defendant—of the Complainant under all the circumstances consistent with a forceable, violent rape. It's consistent with—a degree certainly of voluntariness and co-operation so we submit that the evidence is not sufficient to establish a rape and if there is an offense established, it would be attempted rape.

Court: Well, I understand the position that the defense is in. It's right hard to blow hot and cold at the same time. Number one, you say I'm not there but number two, if I was there, it wasn't rape. Everything that is in his statement is consistent with what this little girl has testified to on the stand. The defense made a great to-do about the opening of the door and the ringing of the door bell. Hammer says so, rang the bell and, "I went around the side and came in the door." You made a great to-do about the fact and the Court was getting the impression this was a pre-arranged meeting. Hammer doesn't say that. Didn't even know it was the same girl until he got inside but the thing that topped it all off was what the little girl said, "you may not un-
page 84 } derstand but I was scared to death when I saw him the second time." That's the key right there. You know, we read and hear and talk about rape and hollering and screaming to high heaven but you've got to remember we're dealing with a 16 year old girl with a man dressed with a hood across his—over his head and a mask on his face and in this instance a knife and you want to make to-do about

the fact that she didn't scream. I guess with her grandmother upstairs and her sister upstairs, the fact she didn't tell a stranger when he came to the door and opened the door, I might say that is incredible in some cases but I don't find it incredible in this case. True, she didn't fight and scream. She said she didn't. She said she went along with everything he said, he did, but each step of the way he had the knife and Doctor Wash was, I'm sure as fair as any doctor in this type of thing can be and I admit that his testimony to me was a little different than I would have imagined but he testified that he can't say in any case whether there's pene-
page 85 } tration or not but Susan says so. He says so and they find the tear.

True, it's a small laceration and true it was, as he put it, right at the opening but you can't tell me that he wasn't there one minute and the next minute say if he was, believe the fact that—that he didn't put it in. If I believe he was there, then I take the rest of his statement. He says he put it in her and I believe he was there and I believe he put it in her and I believe it was rape and that's been the testimony. This business of up on the corner, after eight o'clock, no reason in the world why he couldn't have gone home and changed clothes and got his dog and came out on the corner to see what was happening. That's not unusual either. All right, as I have done in the rest of these cases, I don't believe in placing the whole bunch of charged against an individual if there's one main charge that revolves around the whole thing and I will find him not guilty of the burglary with the intent of rape and I'm going to find him guilty of the rape and I'm ready to pass sentence on him now. Stand up,
page 86 } Hammer. This Court finds you guilty of rape. Do you know of any reason why I should not sentence you at this time?

Mr. James C. Hammer: Only I didn't do it.

Court: Anything else?

Mr. James C. Hammer: That's all.

Court: All right sir, the Court has found you guilty and I'm sentencing you to 40 years in the State Penitentary. I'm going to let 30 years of it run concurrent with the sentence I've already given. You'll be taken from here to the jail and then from there to the State Penitentiary to serve the sentence until you're otherwise released according to law.

Mr. Kostel: Note my exception to all our motions which were overruled, and to the Court's overruling of a new trial.

* * * * *

page 87 } 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* v. *James C. Hammer,* tried in said Court in Newpotrrt News, Virginia, on December 22, 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 19th day of February, 1965, within sixty days after the entry of final judgment in the said cause.

Given under my hand this 26th 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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