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SUPREME COURT OF VIRGINIA
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RICHMOND, VIRGINIA

IN THE

Supreme Court of Virginia

AT RICHMOND

Record No. 750183

DAVID JOE BRYANT

v.

COMMONWEALTH OF VIRGINIA

APPENDIX

For Appellant: Henry A. Whitehurst
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Attorneys at Law
P. O. Box 179
Christiansburg, Virginia 24073

For Appellee: Stuart Bateman
Assistant Attorney General

APPENDIX

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VIRGINIA:

In the Circuit Court of the County of Montgomery

OCTOBER 1, 1974
Date

The Grand Jury charges that:

On or about May 19, **, 19** 74 **, in the County of Montgomery**

DAVID JOE BRYANT did rape Nancy Anderson Tennant, age twenty-one (21) years,

Va. Code § 18.1-44

A TRUE BILL

C. F. Blessett
Foreman

WITNESSES:

D. L. Stewart
Nancy Anderson Tennant

BY THE COURT:

All right gentlemen, the jury is ready.

OPENING STATEMENT BY MR. GRAYBEAL:

OPENING STATEMENT BY MR. GILLIS:

BY THE COURT:

Call the first witness.

NANCY GAIL TENNANT, a witness being duly and properly sworn, testified as follows:

DIRECT EXAMINATION BY MR. GRAYBEAL:

Q: What is your name please?

A: Nancy Gail Tennant.

Q: Nancy Gail Tennant. Is that Miss or Mrs.?

A: Mrs.

Q: Mrs. How old are you Mrs. Tennant?

A: Twenty-one.

Q: Twenty-one. Where do you live?

A: In Roanoke.

Q: You were married in May of this year?

A: March.

Q: March. In May of this year, were you in Montgomery County?

A: Yes sir.

Q: Were you here in the daytime or nighttime?

A: At night.

Q: At night?

A· Yes sir.

Q: On that day did you know David Joe Bryant?

A: No.

Q: No? Did you know this gentlemen seated in the middle there at the table? (Indicating Mr. Bryant)

A: I never seen him before.

Q: You never seen him before?

A: No, not till that night.

Q: Not till that night. What time of night did you see him?

A: (Unintelligible response)

Q: Look right to the Judge please.

A: (Unintelligible response)

Q: One more time please?

A: At 2:00 in the morning.

Q: 2:00 in the morning? Where did you see him?

A: At the Christiansburg Grill.

Q: Christiansburg Grill. How long had you been there when you saw him?

A: (Shaking head)

Q: You don't know. Was anyone with him at the time?

A: Jerry.

Q: Jerry? Look right to the Judge please and speak just a loudly as you can. Jerry. And how long had you been in Christiansburg?

A: I don't know.

Q: You don't know?

A: About an hour.

Q: Pardon?

A: About an hour.

Q: About an hour. All right. And what were you trying to do at the time you saw Mr. Bryant?

A: I was trying to go home.

Q: To Roanoke?

A: Yes.

Q: And what conversation did you have with him?

A: With who?

Q: Did you talk with Mr. Bryant?

A: No, I talked to Jerry.

Q: You talked to Jerry. Jerry Carden?

A: (Shaking head yes)

Q: All right. What did you talk about with Mr. Carden?

A: I asked him if he'd take me home.

Q: Asked him if he would take you home.

A: Yes. He said I'll take you home if you give me some.

Q: I'll take you home if you'll give me some?

A: (Shaking head yes)

Q: What did you say to that?

A: If you won't take me I'll try to find another way home.

(Cross Examination of Nancy Tennant by Mr. Whitehurst)

Q: What did you and your husband do on Saturday afternoon prior to the time you came to Christiansburg?

A: We were just talking about what we were going to do that night.

Q: I'm sorry, I didn't understand.

A: We were talking about what we were going to do.

Q: What time did you come to Christiansburg, Nancy?

A: About 10:30 or 11:00.

Q: I'm sorry?

A: About 10:30 or 11:00.

Q: I'm sorry?

A: 11:00 o'clock.

Q: About ...

A: Eleven.

Q: About 11:00 o'clock? All right. With whom did you come to Christiansburg?

A: Sir?

Q: Who did you come to Christiansburg with?

A: Jim, and I forgot the other one's name.

Q: What were the names?

A: Jim.

Q: You say you knew him?

A: Yes, I knew him until that night and - -

Q: Were they classmates of your's?

A: I seen one of them before, but that's been a long time ago.

(Cross Examination of Nancy Tennant by Mr. Whitehurst)

Q: But you said one of them was a friend of your's, didn't you?

A: He was - my girlfriend was going with him.

Q: What time do you think you got in Christiansburg, Nancy?

A: About eleven.

Q: About when?

A: About eleven.

Q: About 11:00 o'clock?

A: Yes.

Q: Well whose idea was it for you to go in the truck stop?

A: They wanted a cup of coffee.

Q: Did you get them a cup of coffee?

A: Yes, and I lacked a penny of having enough.

Q: You lacked what?

A: A penny.

Q: Well did you get them the coffee?

A: When I got out there they was gone.

Q: How many people did you talk to at the truck stop, Nancy?

A: Huh?

Q: How many people did you talk to at the truck stop?

A: I didn't talk to nobody except to say "Hi" to one of them.

Q: You didn't talk to anybody at all at the truck stop?

A: That's all I did.

Q: Did you see any of your friends at the truck stop?

A: Yeah.

Q: What was his name?

A: Gary.

Q: Gary. So he was at the truck stop?

A: Yes.

Q: Why didn't you ask Gary to take you home?

A: Because he was in there with his girlfriend.

Q: But you say you had a friend at the truck stop?

A: Gary was there.

Q: And you knew this person named Gary pretty well?

A: I think about two or three months.

Q: How many other people did you talk to at the truck stop?

A: I didn't.

Q: Did you talk to Sammy Epperly?

A: Yes, after I got the coffee they were gone.

Q: What did you promise Sammy?

A: I asked him if he could take me home.

Q: What else did you promise?

A: Nothing.

Q: Did you and Sammy get in the shadows and hug and kiss each other?

A: I can't remember that.

Q: You can't remember. Is it possible that you and Sammy got between the two buildings and were hugging and kissing each other?

BY MR. GRAYBEAL:

Your Honor, I object to that question.

BY THE COURT:

Sustain the objection.

BY MR. WHITEHURST: (Continuation of Cross-Examination of Nancy Tennant

Q: Did you go between the two buildings?

A: I can't remember.

Q: You can't remember.

A: It was dark and I was upset, I wanted to go home.

Q: You say it was dark between the two buildings?

A: I said I was upset and I just wanted to go home and I asked Sammy to take me home.

Q: What else did you and Sammy do?

A: We were just talking.

Q: You did talk to Sammy then?

A: Yes.

Q: Between the two buildings?

A: No.

Q: Out front of the truck stop?

A: Yes.

Q: Was he hugging?

A: (Shaking head no)

Q: Was he kissing?

A: (Shaking head no)

Q: Were you hugging him?

A: (Shaking head no)

Q: Did you go across the street with Sammy?

A: He told me if I wanted a ride home to go across the road with him.

Q: Did you promise to have sex with him if he would take you home?

A: No.

Q: Did you?

A: No.

Q: Did you promise Larry Smith anything?

A: (Shaking head no)

Q: Did you go across the street with Larry Smith and Sammy Epperly?

A: I was about five feet behind ...

Q: Only about five feet ...

A: Behind them - -

Q: Did you cross Roanoke road? Did you cross the road in front of the truck stop?

A: Yeah.

Q: You say you walked about five feet behind them?

A: (Shaking head yes)

Q: You were following them?

A: They were walking ...

Q: But you were following then?

A: Yes ...

Q: You were following Sammy and Larry Smith?

A: Yes, they were parked around the back of the lot down the road.

BY THE COURT:

Well, I'll overrule the objection cause it will show the Court the whole conduct of the young lady involved.

BY MR. WHITEHURST: (Continuation of Cross-Examination of Nancy Tennant)

Q: Who did you have sexual relations with first, Nancy?

A: Sammy.

Q: With Sammy? And what did Sammy do?

A: Huh?

Q: What did Sammy do after you had sexual intercouse with him?

A: Then Larry got in the back.

Q: I'm sorry?

A: After Sammy did, Larry got in the back.

Q: Larry got in the back?

A: And Sammy got in the front seat.

Q: Well what did Larry do when he got in?

A: We had intercourse.

Q: Had intercourse with him?

A: (Shaking head yes)

Q: Did you take off your clothes for him?

A: (Shaking head no)

Q: Did you have your clothes off when he got in?

A: I was putting them back on.

Q: Then you took them off again for Larry Smith?

A: He did. I was putting them back on and he took them back down.

Q: After Larry and you finished having sexual intercourse, what did you do next?

A: Sammy did it again.

Q: Sammy did it again?

A: (Shaking head yes)

Q: All right, did you have your clothes off when Sammy got back in?

A: No, I was putting them back on.

Q: You were putting them back on again?

A: Yes. I got them up to here (knees) and Sammy pulled them back off.

Q: And after Sammy got in the second time, what happened?

A: Then David said they wanted to go and get a pack of cigarettes.

Q: I'm sorry Nancy, I couldn't understand you.

A: They wanted a pack of cigarettes.

Q: A pack of cigarettes. And where did they go?

A: Up the road ...

Q: And left you in the car?

A: I got out and walked back across the road.

Q: And walked back across the road?

A: Yes.

Q: Who did you talk with when you went back across the road?

A: (Unintelligible response)

Q: Did you put your clothes back on after you and Sammy finished?

A: As soon as they left and got out - - I put my clothes back on.

Q: And then where did you go?

A: Across the road.

Q: To the truck stop?

A: Across the road at that building they brought me.

Q: Did you have some money with you?

A: Not too much.

Q: You did have some money with you? Did you see that pay telephone in front of the truck stop?

A: I was upset.

Q: Huh?

A: I was upset.

Q: You weren't upset?

A: I was.

Q: Nancy, why didn't you call your husband?

A: I was upset and afraid he would leave me.

Q: Why didn't you call your husband?

A: I was afraid that he might leave me.

Q: You were afraid that your husband might leave you?

A: Yes.

Q: Why were you afraid of that, Nancy?

A: I don't know. I just got that feeling.

Q: Did you know that you'd done something wrong?

A: No.

Q: Well why were you afraid he would leave you, Nancy?

A: I don't know.

Q: You don't know why you were afraid that he would leave you? Why didn't you call your mother?

A: Because I couldn't remember my number.

Q: You what, Nancy?

A: I couldn't remember what the area code was.

Q: I couldn't hear what you're saying.

A: The area code, I couldn't remember.

Q: Why didn't you ask somebody at the truck stop to help you?

A: I don't know - -

Q: Weren't there people inside the truck stop?

A: Well I was out in front down toward the building.

Q: Did you go inside the truck stop?

A: Huh?

Q: Did you go inside the truck stop?

A: (Unintelligible response)

Q: Why?

A: (Unintelligible response)

Q: Whey didn't you call your father, Nancy?

A: Huh?

Q: Why didn't you call your father?

A: I thought he was out of twon.

Q: Why didn't you call the police?

A: I wasn't thinking.

Q: Why didn't you?

A: I wasn't thinking at the time.

Q: You were ashamed?

A: I wasn't thinking at the time.

BY MR. GRAYBEAL:

I'm sorry, what was the answer?

BY MR. WHITEHURST:

I couldn't hear.

BY MR. GRAYBEAL:

What was your answer?

A: I wasn't thinking at the time.

BY MR. GILLIS:

She wasn't thinking at the time.

BY MR. GRAYBEAL:

You weren't thinking at the time?

A: (Shaking head yes)

BY MR. WHITEHURST: (Continuation of Cross-Examination of Nancy Tennant

Q: How many boys did you talk to, Nancy, after you came back across the street?

A: Two.

Q: How many, Nancy?

A: Two.

Q: Two? Did you talk to a big, heavy-set, fat boy named David Denton?

A: I can't remember.

Q: Did you ask David Denton to take you home?

A: He said he wouldn't take me home.

Q: Did you tell him if he'd take you home you'd give him some? Is that what you said to David Denton?

A: (Shaking head no)

Q: You did not say that?

A: (Shaking head no)

Q: How many other boys did you promise to have sexual intercourse with if they'd take you home?

A: None.

Q: You didn't talk to a boy named Joseph Bonds?

A: (Shaking head no)

Q: Nancy, you understand what swearing to tell the truth is?

A: (Shaking head yes)

Q: Do you understand that it's wrong to tell something that's not true?

A: (Shaking head yes)

Q: Do you understand, Nancy?

A: (Shaking head yes)

Q: How many boys did you promise to have sexual intercourse with if they'd take you home?

A: None (Shaking head)

Q: You didn't promise anybody?

A: (Shaking head no)

Q: Did you ask Jerry Carden to take you home?

A: I asked him to take me home.

Q: Did you promise to have sexual intercourse with him if he took you home?

A: (Shaking head no) I just asked him to take me home so I could speak to Charlie.

Q: Get who?

A: So I could talk to Charlie.

Q: Who's Charlie?

A: My husband.

Q: Why didn't you call your husband, Nancy?

A: I couldn't remember my phone number - -

Q: What did you tell Jerry you'd give him if he would take you home?

A: I didn't tell him I'd give him anything - -

Q: How did you get him to take you home?

A: (Unintelligible response)

Q: All right Nancy. Now when you talked to Jerry Carden, where was Jerry's car parked?

A: Down at the end of the Grill.

Q: Down where?

A: At the Christiansburg Grill down at the end there.

Q: Was it parked near Joseph Bond's car?

A: - - - no.

Q: Were there other cars parked around?

A: No.

Q: And you walked into Jerry and asked him to give you a ride home?

A: Sammy did. - - -

BY MR. WHITEHURST: (Continuation of Cross-Examination of Nancy Tennant

Thank you, Your Honor.

Q: Nancy, when you came back across the street with being with Sammy Epperly and Larry Smith, who did you talk to first?

A: She was still talking to Sammy and asking him if he could find her a way home.

Q: Did you talk to David Denton, Nancy?

A: She didn't know.

Q: Did you talk to a big, heavy-set boy?

A: (Shaking head no)

Q: You deny that Nancy? You say no?

A: Yes.

Q: Did you talk to a boy names Joseph Bonds?

A: (Shaking head no)

Q: Did you go inside the truck stop?

A: One time.

Q: One time. Did you see the telephone in front of the truck stop? Did you see the telephone?

A: Not until afterwards.

Q: Not until after what, Nancy?

A: Not until after she had had intercourse with Sammy and Larry.

Q: But you did see the telephone?

A: Yeah.

Q: Why didn't you call your mother?

A: I don't know.

Q: Why didn't you call your dad?

A: She wasn't thinking.

Q: Why didn't you call your husband?

A: She wasn't thinking.

Q: When you were talking to Jerry, Nancy, what did you say to him?

A: Asked if he could take her home so she could go to Charlie.

Q: Did you talk to David Bryant?

A: No.

Q: Did David ask you how old you were?

A: She didn't remember.

Q: Did you show David your birth certificate?

BY MR. GRAYBEAL:

Your Honor, I believe we've been through this whole line of questions ...

BY THE COURT:

Let him go ahead and go over it again. I'm not sure that all the jurors heard her answers. This way everybody will be able to get her answers.

BY MR. WHITEHURST:

A: The answer to that: She said that she thought she had it with her.

Q: Do you have it with you now, Nancy?

A: Yes.

Q: Can I see it?

(Witness showing birth certificate to Mr. Whitehurst)

Is this what you showed David, Nancy?

A: She couldn't remember whether she showed it to him.

Q: You carry this with you, Nancy?

A: When she goes out.

Q: You carry it where, when you go out?

A: Huh?

Q: Where do you carry it when you go out?

A: When she goes out.

Q: You carry it in your purse?

A: In her billfold.

Q: All right. Nancy, did you get in Jerry Carden's car?

A: He told her if she wanted a ride home to get in the car.

Q: Is that all that he said to you?

A: Yes.

Q: In which direction did he leave the truck stop, Nancy?

A: At the stop light.

Q: Did you stop on the way towards Roanoke, Nancy?

A: No.

Q: You didn't stop?

A: At the wooded place.

Q: You remember a boynamed David Smith?

A: (Shaking head no)

Q: He just had relations with her and he had been drinking?

A: Yes sir.

Q: Did he say how much he'd been drinking?

A: No sir, I think pretty well drunk.

Q: He said pretty well drunk?

A: Yes.

Q: Did he seem to remember the whole evening and sequence of events?

A: Yes sir, he did.

Q: But he was pretty well drunk?

A: Yes sir.

Q: Thank you.

Witness aside

SAMMY EPPERLY, a witness being duly and properly sworn, testified as follows:

DIRECT EXAMINATION BY MR. WHITEHURST:

Q: What's your name?

A: Sammy Epperly.

Q: What's you age?

A: Seventeen.

Q: Where do you live?

A: 10 Mill Lane, Christiansburg.

Q: Mr. Epperly, did you have occasion to be in Christiansburgat the truck stop on May 19, 1974?

A: Sir?

Q: Did you have an occasion to be in Christiansburg at the truck stop on the night of May the 18th and early morning hours of May 19, 1974?

A: Yes.

Q: What time did you arrive there?

A: I'm not really sure.

Q: Approximately what time did you arrive ?

A: Maybe 12:30, 1:00 o'clock.

Q: When did you first see Nancy Tennant?

A: Well she got out of a car with two other boys, she was standing there and I was talking to a friend of mine when I saw her. She was standing beside the telephone booth.

A: She was standing beside the telephone booth?

A: Yes sir.

Q: Did you have an occasion to speak to her?

A: Yes sir.

Q: What did she say to you?

A: Well the main conversation said she was looking for a way to Roanoke.

Q: Did she offer you anything?

A: Well myself - she said she wanted to go to Roanoke, so a friend of mine came up, I was going to get him to take her, but he wouldn't do it, then we got to talking and so I said I'd take her, then's when she offered it to me.

Q: What'd she offer?

A: We could have intercourse with her if we took her to Roanoke. Said she'd have intercourse with us if we took her to Roanoke.

Q: Did you have any other conversations with her prior to leaving the truck stop?

A: No sir.

Q: Did you and her go together and hug and kiss each other?

A: No, we were at the side of the building talking.

Q: You and her?

A: Yes sir.

Q: What were you doing?

A: Just talking.

Q: Did you happen to be across the street with Nancy Tennant?

A: She followed me across the street.

Q: Who was with you?

A: My cousin Larry Smith.

Q: Where did you go?

A: Went to a parked car across the street there.

Q: How many cars did you go to?

A: Three.

Q: Tell the Court and Jury how you came to choose a car?

A: Well went to one car and it was locked, and went up to another car and it was locked, and went to the third car was open and we got in the car.

A: What did Nancy Tennant do when you got in the third car?

A: She got in it.

Q: Did she get in before you or after you?

A: I think I got in first.

Q: What did she do after you got in the car?

A: She got in behind me in the back.

Q: When she got in the car did she have her clothes on?

A: Yes sir.

Q: Did she start to undress?

A: Yes sir.

Q: How did that occur?

A: Well I said I'd take her to Roanoke and she said she wanted me to go to Roanoke and I said I'd take her if she'd have intercourse.

Q: What did she do?

A: She took her clothes off and we had intercourse, then Larry, he had intercourse with her.

Q: Did she say anything to you while you were having intercourse with her?

A: No.

Q: Say anything about two other boys bringing her up from Roanoke?

A: She said she had intercourse with them two boys.

Q: The two boys that brought her up from Roanoke?

A: Yes sir.

Q: After you finished having sexual intercourse with her, what did you do?

A: I got in the front and Larry got in the back and he had intercourse with her, and after he had intercourse with

her, well me and him left. We walked up the street to get some cigarettes, but you know that late there was nothing up the street, nothing was open, so we walked down to the truck stop to get some cigarettes. She was walking up there and she got in the car with David and Jerry.

Q: You say that Larry Smith got in the car after you with her, Nancy Tennant. Had he had intercourse with her?

A: Yes.

Q: Was she complaining to him?

A: No.

Q: Did she holler or resist in any way?

A: No sir.

Q: Did she resist you?

A: No sir.

Q: And she told you boys,who were having sexual intercourse with her, that she had had intercourse with two boys who had brought her up from Roanoke?

A: Yes sir.

Q: Well what happened after Larry finished having sexual intercourse with her?

A: Well me and Larry got out of the car and left.

Q: Where did the two of you go at that point?

A: We walked up the street.

Q: Did you have occasion to come back to the truck stop?

A: Yeah, we went back to the truck stop.

Q: Did you see Nancy Tennant back at the truck stop?

A: Yes.

Q: With whom was she talking?

A: I'm not sure.

Q: Was she talking to some other people?

A: I'm not sure.

Q: What was she doing to the best of your recollection?

A: The best I can remember she was standing there looking for a way to Roanoke.

Q: Did she ever speak with David Denton?

A: Yes, she was talking to him.

Q: Did you hear what she said to David Denton?

A: No.

Q: Did you have an occasion to see her talking to Jerry Carden and David Bryant?

A: After I was getting ready to leave she was talking to them.

Q: Did you see her get in their car?

A: Yes sir.

Q: How did she get in the car?

A: Just like any normal person would get in a car.

Q: Did they open the door for her?

A: She opened the door, she got in.

Q: Where did she seat herself?

A: I'm not sure where she sat at.

Q: Front seat or back seat?

A: Front seat.

Q: How many people were in the car when this occurred?

A: There was three.

Q: Who were they?

A: David Smith, Jerry Carden, David Bryant.

Q: Did you see Jerry Carden drive off?

A: Yes sir.

Q: Which direction was he headed?

A: Headed towards Roanoke.

Q: Now you're testifying that Nancy Tennant walked up to them and asked them for a ride home?

A: No, she didn't ask me for a ride home. She said she wanted a ride to Roanoke. I said I would try to get her a ride to Roanoke and then I went up to David Denton's car.

Q: All right. How did you get across the street? What led up to you crossing the street with Nancy Tennant?

A: I said I had a car over across the street.

Q: Did you in fact have a car?

A: No.

Q: What did she say to you in reference to going to Roanoke?

A: She just wanted a ride to Roanoke.

Q: Did she say she'd give you a piece if you took her to Roanoke?

A: Yeah, have intercourse.

CROSS EXAMINATION BY MR. GRAYBEAL:

Q: Your name is Sammy Epperly, I believe?

A: Yes.

Q: And you're 17 years old?

A: Yes sir.

Q: And on this night of May 19th you were at the truck stop with a fellow named Larry?

A: Yes sir.

Q: What was his last name?

A: Smith.

Q: Larry Smith. And you saw Mrs. Tennant there?

A: Yes sir.

Q: And she was standing there and you came up and said Larry and you wanted to check her out, is that right?

A: Yes sir.

Q: Wanted to check her out?

A: What do you mean by checking her out?

Q: I don't know. What did you mean by checking her out? Did you say you wanted to check her out?

A: Well I wanted to know - you know - what she was doing - you know.

Q: Did you say you wanted to check her out?

A: Well what do you mean by checking her out?

A: Well I didn't say it. Did you say that? Did you say that to Mrs. Tennant that you wanted to check her out?

A: Well I didn't say that, talk to her is what I done.

Q: All right. Now was Larry there?

A: Yes sir.

Q: Had you been drinking?

A: No.

Q: Had Larry been drinking?

A: I think so.

Q: You think so.

A: Yes sir.

Q: Now you then were talking to another girl, is that correct?

A: Yes sir.

Q: And you asked her for a piece of ass?

A: Yes.

Q: Yes?

A: Yes sir.

Q: She said no she had a date with somebody else?

A: Nancy was standing right there at the time.

Q: And she heard every word of it, is that correct?

A: Sir?

Q: When she says that's what took place,that's a true statement, isn't that right?

A: Sir?

Q: That you asked this girl for a piece of ass but she said she already had a date with another boy, that's a true statement?

A: Yes sir.

Q: "Sammy and Larry were drinking." That's not true?

A: I wasn't drinking, Larry was.

Q: You hadn't had anything to drink?

A: No.

Q: "Then I asked them if they would take me home and they said we will take you home if you give us a piece of ass."

A: Yes.

Q: You both said that?

A: Yes sir.

Q: Did you have a car?

A: No sir.

Q: Did Larry have a car?

A: No sir.

Q: You were just faking her out, is that it? You'd take her to Roanoke if she would give you a piece of ass?

A: I didn't have no car, but I'd try to find her a way home.

Q: You didn't have a car and Larry didn't have a car, but you told her you would take her home?

A: I told her I'd try to find her a way home.

Q: Try to find her a way home? What did she say when you told her that?

A: She said - well that's when I went over to David Denton and asked him if he would take her home.

Q: Now all you said was "well"?

A: What?

Q: All you said was "well" and you walked away from her?

A: She followed me back over to David Denton's car.

Q: I see. Did she say that she would have relations with you?

A: Yes sir.

Q: When did she say that?

A: When she got a way to Roanoke.

Q: Didn't she tell you to go on she just wanted to go homeand go to bed?

A: No sir.

Q: So when she says, "I said just go on and take me home I was tired and I wanted to go to bed and get some sleep", that's not a true statement?

A: No.

Q: Pardon?

A: No sir.

Q: No. "This all took place in front of the truck stop on the outside." Is that true?

A: Yes sir.

Q: "This was about 11:00 o'clock." Is that true?

A: I didn't know what time it was.

Q: Before midnight?

A: Might have been after midnight.

Q: Might have been. "Then they told me to go with them across the road to the Amoco and get in their car and they would take me home."

A: That's right.

Q: You told her to get in a car over there?

A: Yeah.

Q: The two of you lied to her about having a car?

A: Yes sir.

Q: "I went across the road and got in a car expecting to be taken home."

A: We went up to three different cars.

Q: Oh.

A: Two of them were locked.

Q: You did, or Larry did, or all three of you?

A: All three of us, me and Larry was in front, she was behind me and Larry.

Q: "They put me in the back seat then they began to take my slip, skirt and hose off." "Sam was removing the clothes." Is that true, Sam?

A: That's not true. She removed her own clothes.

Q: I see. "And then Sam assaulted me."

A: That's not true, no.

Q: "I was crying and trying to holler, but Sam said if I didn't shut up he was going to knock my teeth down my throat." That's not true either?

A: No sir.

Q: Sir?

A: No sir.

Q: I see. Weren't you tried for something on this ...

A: No sir. I was in the Courtroom. Mr. Dillow, my lawyer, said I wasn't charged with this.

Q: What were you charged with?

A: I don't remember what he did say it was.

Q: He was talking about this offense, wasn't he?

A: Yes.

Q: You told the same story to the Judge over there, didn't you?

A: Yes.

Q: You didn't mention the two boys bringing her up here to Christiansburg, did you?

A: Yes sir.

Q: You did?

A: Yes sir.

Q: Was I in the room when you said that?

A: See I went to Court two or three times over that, but I don't believe you was there.

Q: All right. But you did remember the two boys bringing her up here. You remember that distinctly now, is that true?

A: Yes sir.

Q: And as the result of it you were not acquitted over there, were you?

A: No.

Q: You were not turned loose. What was the end result at that point?

A: Six months probation.

Q: After you told the Judge that she voluntarily gave in to you, is that it?

A: Yes sir.

Q: Thank you very much.

RE DIRECT BY MR. WHITEHURST:

Q: Mr. Epperly, did you know she was a married woman?

BY MR. GRAYBEAL:

I object, Your Honor ...

A: Yes sir.

BY THE COURT:

All right.

IN COURT

BY THE COURT:

All right, call the next witness.

DAVID DENTON, a witness being duly and properly sworn, testified as follows:

DIRECT EXAMINATION BY MR. WHITEHURST:

Q: What is your full name?

A: David Lee Denton.

Q: How old are you, Mr. Denton?

A: Twenty-six.

Q: Where do you live?

A: I live in Christiansburg.

Q: Mr. Denton, did you have an occasion to be in Christiansburg Truck Stop on the night of May 19th, early morning hours of May 19, 1974?

A: Yes sir.

Q: Approximately what time did you arrive?

A: I don't really know.

Q: With whom did you arrive?

A: I was with Buford Saunders.

Q: Were you driving an automobile?

A: Yes sir, I was in my truck.

Q: Where did you park at?

A: Right in front of the truck stop.

Q: Did you have occasion to see a young lady named Nancy Tennant that evening? Did you have an occasion to see that lady seated back there?

A: Yes sir. (Looking at Mrs. Tennant)

Q: Did you have an occasion to speak to her?

A: Yes sir.

Q: What did she say to you?

A: She asked me to take her to Roanoke.

Q: What was your response?

A: I just asked what was in it for me and she said take me and find out.

Q: Did you have occasion to observe her anytime with Sammy Epperly and Larry Smith?

A: Yes sir.

Q: What did you see?

A: Well Sammy was talking to her right beside my truck and I told Sammy to get away from my truck before somebody thought she was with me, and they walked up around the building. Then somebody said something and we got out of the truck, walked up to the corner of the building and they were standing between the truck stop and the motor cycle shop down there.

Q: You observed them?

A: Yeah, they were standing there together.

Q: What were they doing?

A: Well when we got there Sammy was just standing there with his arm around her and then this other girl walked up there and they just started talking to her.

Q: Sammy had his arm around who?

A: This girl back here. (Indicating Mrs. Tennant)

Q: Did you have an occasion to observe her speaking to anyone else that evening?

A: I don't remember if she talked to Larry or anything or not.

CROSS EXAMINATION BY MR. GRAYBEAL:

Q: Mr. Denton, you got there what time in the morning?

A: I'm not sure what time it was.

Q: Before midnight or after midnight?

A: I'd say probably after.

Q: After midnight. And who was with you?

A: Buford Saunders.

Q: Buford Saunders. And Mrs. Tennant came to you and said - asked you to take her to Roanoke?

A: Yes sir.

Q: And you waid what's in it for me?

A: Yes sir.

Q: And she said what?

A: She said take me and find out and I told her no I wasn't going to take her nowhere.

Q: Take her and find out?

A: That's what she said.

Q: That's all she said?

A: Yes sir.

Q: Now you said you saw her and Sammy Epperly?

A: Yes sir.

Q: How long have you known Sammy?

A: I don't know how many years. I've known him a long time.

Q: All right. You saw him and he was standing with his arm around her?

A: Yes sir.

Q: You're sure of that?

A: Yes sir.

Q: You called it hugging?

A: I wouldn't say he was hugging her, no, I just said he had his arm around her.

Q: And if he said he didn't he was just talking to her, then he'd be mistaken on that, wouldn't he?

A: I'd say he would

Q: You would. He didn't say he was hugging her, he said he was just talking to her.

Witness aside

Joseph Bonds, a witness being duly and properly sworn, testified as follows:

DIRECT EXAMINATION BY MR. WHITEHURST:

Q: What is your full name?

A: Joe Ray Bonds.

Q: How old are you, Mr. Bonds?

A: Twenty-two.

Q: Where do you live, Mr. Bonds?

A: Christiansburg - Trailer Court.

Q: Did you have an occasion to be at the Christiansburg Truck Stop on the evening of May the 18th and early morning hours of May the 19, 1974?

A: Yes sir.

Q: And what time approximately did you arrive?

A: I guess about 1:30 or 2:00.

Q: With whom did you arrive?

A: With David and Ann Pannel.

Q: David who?

A: David Bryant, Ann Pannel, Larry Smith, David Smith and Sammy Epperly.

Q: Did you have occasion on that night to observe a young lady talking to David Bryant?

A: Yes sir, I did.

Q: Is she seated here in the Courtroom?

A: Yes sir.

Q: Did you have occasion to speak with her on that night?

A: Yes sir.

Q: What did she say to you?

A: Well she offered me some if I'd take her home.

Q: You say she asked you to take her to Roanoke?

A: Yes sir.

Q: What was she going to do for you in turn?

A: She was going to give me some.

Q: What do you mean by that?

A: Pussy.

Q: Did you accept her offer?

A: No sir.

Q: Did you subsequently hear or see her speak with Jerry Carden and David Bryant?

A: Yes sir.

Q: What did she say?

A: She offered them some.

Q: What was that?

A: She said she'd give them some if they'd take her home.

Q: Well what did David Bryant say to her?

A: David said if you give me some of that cock I'll see that you get home.

BY MR. GRAYBEAL:

Excuse me, what was the name?

A: David said if you'll give me some cock I'll see that you get home.

BY MR. GRAYBEAL:

I'll see that you get home.

A: Yes.

BY MR. WHITEHURST:

Q: Did you hear Mr. Bryant make any remarks to her about her age?

A: Yes sir.

Q: What did she say in response?

A: She said she'd show him her birth certificate to prove that she was 21.

Q: Did she show him a piece of paper?

A: Yes sir.

Q: Did you see it?

A: Yes sir.

Q: How did she show it to him?

A: She just handed it to him.

Q: Did you see her get in anyone's car that night?

A: Yes sir.

Q: Whose car did she get into?

A: Jerry Carden's.

Q: How did she get in the car?

A: She just opened the door and got in.

Q: How many people were in the car, Mr. Carden's car that is?

A: There was Jerry Carden, David and ...

Q: David who?

A: David Bryant and David Smith.

Q: You did see Mrs. Tennant in the car?

A: Yes sir.

Q: Where was she seated in the car?

A: She was seated in between the two.

Q: Did you see Mr. Carden's automobile leave at a later time?

A: Yes sir.

Q: Which direction was he going?

A: Went down towards Roanoke.

Q: Did you have occasion to observe Mrs. Tennant with a gentleman by the name of Sammy Epperly that evening?

A: I took him home.

Q: Did you have occasion to observe Mrs. Tennant speaking with Sammy Epperly?

A: No.

Q: But you have testified that she asked you if you would take her home?

A: Yes sir.

Q: She would give you some if you did?

A: Yes sir.

Q: And you refused?

A: Yes sir.

Q: That's all.

CROSS EXAMINATION BY MR. GRAYBEAL:

Q: Whose car were you riding in?

A: Me? I was riding in my car.

Q: And did you have all these other fellows with you in your car?

A: Yes sir, I brought them from the Cow Palace.

Q: Brought them from the Cow Palace?

A: Yes sir.

Q: All right. And in your car was Sammy Epperly?

A: Yes sir.

Q: A seventeen year old?

A: Yes sir.

Q: And Larry Smith?

A: Yes sir.

Q: David Smith had been?

A: Yes sir.

Q: All right. Now you got to this place from the Cow Palace - the Cow Palace was open at the time, or had they closed?

A: They were closed and we were on our way home.

Q: It had closed. So you all went to the Christiansburg Grill?

A: Yes sir.

Q: What were you going to do then?

A: We was going to get something to eat then go home.

Q: Something to eat at 1:30 in the morning, get something to eat then go home?

A: Yes sir.

Q: Had you ever met Nancy Tennant before this night?

A: No sir.

Q: She just walked up to you and asked you to take her home?

A: Yes sir.

Q: And she said she would give you some if you would take her home?

A: Yes sir.

Q: And you said what?

A: I told her no.

Q: Told her no?

A: Yes sir.

Q: Did you know at that time where Mr. Carden's car was parked?

A: Yes sir.

Q: Well did I understand you correctly that you were going to get some what?

A: Said if she'd give me some cock, I'd take her home.

Q: I'll take you home, or see that you get home?

A: Well see that you get home, same difference.

Q: Well I'm just wanting to make sure I'm quoting you correctly. I'll see that you get home. Is that what he said?

A: Yes sir.

Q: All right then when he left, did you see him when he left?

A: Yes sir, her and David and Jerry Carden and David Smith.

Q: You don't know what happened down the mountain down in Shawsville?

A: No, cause I come back in Christiansburg.

Q: You weren't in the car down there?

A: No sir.

Q: You don't know if she changed her mind, or he changed the bargain?

A: No sir, I sure don't.

Q: You don't know if she fought or resisted?

A: No sir.

Q: You don't even know how they went, do you?

A: All I know is that they took off in the car, is all I know.

Q: You remember that this is the woman that came to the car?

A: Yes sir.

Q: When did the birth certificate question come up?

A: Well David didn't seem to believe that she was 21, so she showed him that she was.

Q: So at that time apparently he had planned to take her up on having relations with him?

A: I don't know what his plans were.

Q: Had he been drinking pretty heavy?

A: He'd been drinking some. I don't know how much he'd drunk.

Q: Had you been drinking pretty heavy?

A: I didn't drink much.

Q: But would you say that he was pretty well drunk - David?

A: I don't believe he was drunk.

Q: I didn't say drunk, I said pretty well drunk?

A: No sir, not really.

Q: All right. Thank you, sir.

WITNESS ASIDE

ANN PANNEL, a witness being duly and properly sworn, testified as follows:

DIRECT EXAMINATION BY MR. GILLIS:

Q: State your name please?

A: Ann Pannel.

Q: How old are you, Ann?

A: Twenty.

Q: Where do you live?

A: East Main St.

Q: Were you at the Christiansburg Truck Stop in the early morning hours of May 19, 1974?

BY MR. GRAYBEAL:

Excuse me, your answer was no?

A: Yes.

BY MR. GILLIS: (Direct Examination of Ann Pannel)

Q: Did you see her get in Jerry Carden's car?

A: Yes sir.

Q: What side of the car did she get in on?

A: Right-hand side.

Q: Was Jerry in the car at the time?

A: When she got in it he was in the car.

Q: When she got in he was in the car?

A: Yes.

Q: Did David Bryant get in the car?

A: Yes.

Q: Was anybody else in the car?

A: They were going to take David Smith home.

Q: David Smith?

A: Yes.

Q: Where was he?

A: Well he was in Joe's car then he got into Jerry's car.

Q: Did you hear Nancy Tennant make any kind of an offer to David Bryant or Jerry Carden?

A: David said he'd take her home if she'd give him some and she said well if you take me home I will.

Q: David said he would take her home if she would give him some?

A: Yes.

Q: And she said what?

A: She said if he would take her home she would, if he'd take her home she would.

Q: Did David ask her to produce any birth certificate?

A: David asked her if she had something to show that she was 21 and she showed him a birth certificate.

Q: Did she hand it to him?

A: Yes, she gave it to him.

Q: Could you see what it was?

A: It was a birth certificate because I seen the top part of it.

Q: At that time there were three men in the car - David Smith, David Bryant, Jerry Carden and Nancy Tennant?

A: Yes.

Q: And Nancy was sitting where in the car?

A: In the front seat in the middle.

Q: Did you see them drive off?

A: Yes sir.

Q: Which direction were they going?

A: Towards Roanoke.

Q: Do you know approximately what time in the morning it was when they drove away?

A: It was after one.

Q: And she didn't say anything about what she would do for him?

A: No.

Q: Did you hear any conversation between her and David Bryant?

A: Yes sir.

Q: What was that?

A: David said he'd get Jerry to take her home if she'd give him some and she said she would.

Q: You heard her say that?

A: Yes, I did.

Q: Okay. Now you said a moment ago that they got into Jerry's car?

A: David said he'd get Jerry to take her home.

Q: Did you ever hear Jerry say he would?

A: Yeah.

Q: You did?

A: Yeah.

Q: You heard Jerry say that he would take Mrs. Tennant home?

A: Jerry's car was next to Joe's.

Q: I know, but you said you heard Jerry say that he would take Mrs. Tennant home?

A: David asked would he, and he said yeah.

Q: David asked Jerry and Jerry said yeah?

A: Yes.

Q: Pardon?

A: Yes sir.

Q: When did you first see Nancy Tennant?

A: Well me and David went out to the car to get a drink of liquor.

Q: What David?

A: David Bryant. And she came up and grabbed me by the arm and wanted to know if I'd take her home.

Q: Is that all she said to you?

A: Yes sir, at the time.

Q: What did you say in response to her question?

A: I told her to wait awhile and me and David continued on and went to the car and got us a drink and came back in and I started shooting pool again, and we came back out to go get another drink and Joe - I can't think of his last name - was with some girl was sitting right beside of me in a car. She came down there and asked me would I take her home. I told her yes and I got in the car with Joe and his date and taking a drink of liquor, and David Bryant siad we would take her home if she would give us a little.

Q: What was herresponse to that?

A: I couldn't understand what she said. She did say something, but I wouldn't swear to what it was.

Q: Did you hear David say anything to her?

A: Yes sir, I heard him ask her if we took her home would she give us some.

Q: What was her response to that?

A: Well she got in the car - so. I got in the driver's side, she got in the middle and David got in on the

passenger side, and there was another boy came down there - David Smith - and wanted to know if I'd give him a ride home. I told him yeah get in. I took him down to ...

Q: Why did you agree to take her home?

A: Well I figured she could give us some, you know.

Q: Did you hear David question her about her age?

A: Yes sir, he said how old are you and she said I'm 21 and David said I don't believe it, so she showed us an I.D. card.

Q: Did you see her pull out something and show it to him?

A: Yes sir.

Q: How did she go about getting in your automobile?

A: She got in on the passenger side and slid over into the middle and then David got in.

Q: Where were you sitting?

A: I was seated under the driver's side.

Q: Anyone else in the car?

A: David Smith had got in the back seat. I was going to give him a ride to where he lived.

Q: Did you subsequently leave the truck stop?

A: Yes sir, then we left.

Q: Which direction did you go?

A: Towards Roanoke.

Q: Jerry, did you stop anywhere after you left the truck stop?

A: Yes sir, I stopped before you get to the top of the mountain, there's a little fruit stand on the left. I stopped there and let David Smith out of the car.

Q: What occurred at the first stop?

A: Well then I asked her if she would like to get in the back seat with me and she said yes, then I got out on the driver's side, David got out on the passenger side, and she got out and she got in the back seat in the door that David Smith got out.

Q: Was you car a four-door or two-door?

A: Four-door. And David came around and got under the wheel and started to drive.

Q: Now you testified that she got out?

A: Yes sir, she got out of the car and got in the back seat with me.

Q: Where was your next stop?

A: It was on the old road on the mountain.

Q: How far from the road did you pull off?

A: I was not driving, I was in the back seat.

Q: How far from the road did David pull off?

A: Well I'd say about fifteen foot, twenty foot off the main road into what used to be a gravel pit.

Q: Between the time you left the top of the mountain and the second stop, what occurred in the back seat?

A: Well I put my arm around her, started kissing and she responded - you know - and we got down there and I asked her if she would give me some and she said not with David in the car, and so David got out and went up the road, walking up the road and ...

Q: Was she dressed at this point?

A: Yes sir.

Q: How did she become undressed?

A: I unbuttoned her bra and she pulled it off and pulled her bra of and helped pull her skirt and underpants off.

Q: Did you have sexual intercourse with her?

A: Yes sir, I did.

Q: Was she responding to you?

A: Yes sir, she did.

Q: What if anything did she say to you while you were having sexual intercourse with her?

A: She said I like you and wanted to know my name, so I told ~~her~~ my name.

Q: What did you do after the two of you finished having sexual ~~inter~~course?

A: I got out of the back and David got in the back seat, and after David finished he got out, started getting dressed and she started to get up and get her clothes on, she bumped her head on the door.

Q: Approximately what time in the morning was it?

A: Well it was about break of day so I figured it was between 6:00 and 7:00 o'clock.

Q: Did you make any statements to her in regards to your gasoline?

A: Yes sir. My gasoline was broke and she asked me would I take her home and my gas gauge did not work and at that time in the morning there was no filling stations open,

(Cross Examination of Jerry Carden by Mr. Graybeal)

Q: You don't know if it was asked?

A: What did you say?

Q: You don't know if it was asked?

A: It was not asked after she got in the car.

Q: All right. So Mr. Smith is wrong when he mentioned it being mentioned after he got in the car?

A: I deny I asked her and I can't recall David asking it after we got in the car or not.

Q: All right, after you got to the top of the mountain.

A: Yes sir.

Q: And you got out and you got in the back seat?

A: I stopped and let David Smith out of the car and I asked her, I says, would you like to get in the back seat with me.

Q: So I can do what?

A: Well so we could have relations with her.

Q: Is that what you said?

A: No sir, I didn't say that, but she got in the car, that's what we were taken her home for.

Q: You're telling the jury what she had in her mind, just ell me what you said. When you got in the back seat you said do you want to sit back here with me, is that correct?

A: I stopped and let David Smith out. I said, would you like to get out and get in the back seat with me, and she said yes. So I got out on the driver's side, David Bryant got out on the passenger's side and walked around the car, and

she got out and got in the back seat on the right-hand side and slid over next to me.

Q: And that's when you started undressing her?

A: No sir, that's when I started hugging her and kissing.

Q: And undressing her?

A: No, I did not undress her. We got to the bottom of the mountain and David got out of the car.

Q: And you took her clothes off?

A: No sir, she had taken them off.

Q: And you had relations with her?

A: Yes sir, I had sexual intercourse with the lady.

Q: Because when she got in the car you took it that that was the agreement?

A: Yes sir, that's what I took it to be.

Q: Did she tell you she did not want to have relations with you?

A: No sir.

Q: Did she scratch you while you were having relations?

A: No sir.

Q: Did she fight you?

A: No sir.

Q: Didn't try to push you off of her?

A: No sir, she did not.

Q: To use the question of the other attorneys: She responded to you, is that right?

A: Yes sir, she responded.

Q: You didn't get overly vigorous, is that what you're saying?

A: No sir. While I was having sexual intercourse with the lady she told me she like me and wanted to know my name, which I told her my name.

Q: So if she had lacerations and hemmoraging around her sexual organ, that must have happened after you had relations with her, didn't it?

A: It could have been after, or it could have happened before.

Q: I could have happened after, is that correct?

A: Sir?

Q: Did she complain any of discomfort when you were having relations with her?

A: She said she was sore.

Q: All right. And then after you had relations with her, David did. Is that Correct?

A: Yes sir, David had sexual intercourse with the young lady too.

Q: Then you all put her out down in Shawsville?

A: We took her to a telephone booth like she wanted me to do so she could call somebody to come get her, which I did and I left.

Q: Where did you see him?

A: He come in down at that truck stop.

Q: When did you first observe Mrs. Tennant?

A: It was early that morning. I hadn't been at the truck stop too long.

Q: Was was she doing when you first observed her?

A: She was up next to David Denton's truck.

Q: And what was she doing?

A: She was talking to Sammy Epperly.

Q: Was she doing anything more than talking?

A: That's all she was doing at the time.

Q: Did you see her do anything else with Sammy Epperly?

A: Well I stood there and talked to David and Buford for a few minutes, Sammy and that girl was walking towards the end of the building, few minutes somebody hollered out so we all walked up there to see what was going on, and Sammy and that girl were in the corner.

Q: What were they doing?

A: They looked like they were hugging and kissing.

Q: Did you see Sammy Epperly and Larry Smith cross the road with her?

A: No sir, I didn't.

Q: When did you next see Nancy Tennant?

A: She come down and asked Joe Bonds to take her home.

Q: Joe Bonds. What did she say to Mr. Bonds, to the best of your recollection?

A: I just heard her ask him to take her home. I didn't pay much attention to it, never did hear what he told her.

Q: Did you see or hear her speak to anyone else other than Joe Bonds?

A: Not at that, then she asked Jerry to take her home. I didn't catch what she said to him, or what he said to her. A few minutes later she asked him again, so I went up there and I asked what was in it for us to take her home.

Q: What were your words?

A: I asked her if she would have sexual intercourse with us.

Q: Then what did she say in response to that?

A: She said all right I will.

Q: Did you ask her for proof of age?

A: Yes sir, I told her,I said, you don't look like - I asked her how old she was and she said 21 and I said you don't look old enough, and she said well I got proof, then she produced her birth certificate.

Q: Did you see it?

A: Yeah.

Q: Well what happend after you saw the birth certificate, David?

A: I went on ahead and got back out of the car, standing there with the door open, Jerry - he was in the car, "Snuffy" Smith already got in the back seat.

Q: Would that be David Smith?

A: David Smith. We all call him "Snuffy".

Q: How many people were in the car altogether?

A: Well I opened the door, she got in, Jerry was in the front, David was in the back, and she got in, and I got in behind her.

Q: In otherwords, she was seated in the middle of the front seat?

A: Yes sir.

Q: What type of automobile does Mr. Carden have?

A: Red, four-door, Chevrolet.

Q: Four-door Chevrolet.

A: Yes sir.

Q: Did Mr. Carden later drive his automobile away from the truck stop?

A: Yes sir.

Q: Who was in the car at that time?

A: Jerry was driving, she was sitting in the middle, I was sitting on the passenger side, David Smith was in the back.

Q: In what direction did Mr. Carden drive?

A: He was headed towards Roanoke.

Q: Towards Roanoke. Where was the first place that you stopped?

A: We stopped up there on top of Christiansburg Mountain there at the fruit stand and let David out.

Q: What else occurred at that first stop?

A: Well Jerry asked if she wanted to get in the back and she said all right, so I just got out on the passenger side, walked around to the driver's side, David Smith - he left the door open in the back, he got out on the passenger side, she got out of the front, just got in the back seat on that side, Jerry got in the back seat on the driver's side.

Q: You say the car stopped, you got out on the passenger's side?

A: Yes sir.

Q: And you walked around?

A: Walked around the front of the car.

Q: All right. What did Mrs. Tennant do?

A: She got out on the passenger's side right after me and got in the back seat.

Q: Was anybody standing beside her when she got out?

A: No sir.

Q: Did anyone make her get in the back seat?

A: No sir.

Q: Did she object to it?

A: No sir.

Q: She got in there - the door was open - she got in the back seat?

A: Yes sir.

Q: You say Jerry Carden got out of the driver's side and came and got in the back seat?

A: No, he didn't come around. All he done was gout out the driver's side, crawled on over the door and got in.

I walked around the passenger's side around to the front of the car and got in the driver's side.

Q: So then you were driving?

A: Yes sir.

Q: Approximately how far did you drive?

A: I guess it was about a mile over there.

Q: Did you pull of the highway?

A: Yes sir, pulled off the side of the raod there.

Q: How far were you from the edge of the road?

A: I don't know, about 30 feet, something like that.

Q: Was there any other homes around there?

A: One just down the road from us.

Q: Was there lights all round that area?

A: Yes sir, lighted up all raound there.

Q: What did you do after you stopped the car and pulled off the road, what did you do?

A: I got out of the car and walked around to the back. I wasn't feeling too good.

Q: What do you mean uou weren't feeling good?

A: I was starting to feel kind of sick.

Q: Do you know hwat occurred in the back seat after you got out of the car?

A: No sir. I didn't pay no attention to it. I walked on about at from here to that door over there from the car.

Q: When did you get in the back seat of that car?

A: After Jerry got out.

Q: After Jerry Carden got out?

A: Jerry Carden got out.

Q: Did you know they had had sexual relations?

A: I figured they did.

Q: But you didn't stand there and watch?

A: No sir.

Q: So you got in the back seat of the car. Where was Mrs. Tennant at this time?

A: She was sitting up in the back seat. I talked to her a couple of minutes. She asked me if we could take her home and I said yeah.

Q: Did you ask her again to have sexual intercourse with you?

A: Yes sir, I asked her again. I looked at her, I said are you ready and she just layed back on the seat, she never had put all her clothes back on - he blouse and skirt back on.

BY MR. GRAYBEAL:

Excuse me, put what?

A: When I got in the car she done put her blouse and skirt on.

BY MR. WHITEHURST:

Q: Did she have her pants on?

A: No, she had no pants on.

Q: You say she layed down on the seat?

A: Yes sir.

Q: And at that time did you engage in sexual intercourse with her?

A: Yes sir.

Q: Did she complain to you at this time?

A: No sir. Only thing she said to me at the time was ask me again to take her home and I said yeah.

Q: Did you say anything further to her at this point?

A: No sir, I didn't. Yes, I told her, I said, watch yourself. I had to open the door and get out and I got sick.

Q: Approximately what time in the morning was it, David?

A: I don't know, it was getting daylight then.

Q: Getting daylight. Who drove from where you pulled off the main highway?

A: Jerry took over the driving, rode down to this little store, told Jerry to let her out there to use the phone to call somebody to get her, to come get her and take her on home. She offered to pay Jerry but ...

Q: You say she offered to pay him?

A: She offered to pay him, but he told her he didn't know where there was a filling station open at this time of the morning.

Q: What time do you think it was in the morning?

A: I don't know cause I didn't stay down next to the car when he was having relations with her.

Q: How was she dressed when you left the car?

A: She had her skirt and blouse on.

Q: All right. "I was crying and begging Jerry not to do it and he said if I didn't stop he was going to put his thing down my mouth." You weren't there when that happened?

A: Yes sir, I was. I was sitting in the front seat then.

Q: You heardhim say that?

A: Yes sir.

Q: You heard her crying and beggin him not to do it?

A: She wasn't crying or nothing like that, she just kept asking him to take her on home.

Q: Take her home and not do do that to her, didn't she?

A: No sir, she didn't say that.

Q: Just said take her home?

A: Yes, just kept asking jerry to take her home. She - "When you going to take me home, when you going to take me home?" She just kept asking that.

Q: Had she had relations with him then?

A: Yes sir.

Q: She had?

A: That was the second time he got in.

Q: You say there was a second time he got in?

A: Yes sir.

Q: After you got in once?

A: Yes sir.

Q: He came back again for a second time?

A: Yes sir.

Q: Did you ever hear her crying and begging Jerry not to do it?

A: No sir, I didn't.

Q: You just said a moment ago she was saying, "When you going to take me home, when you going to take me home?"

A: She never did cry or beg him to stop. She just asked him several times to take her home, and when were we going to take her home and all that.

Q: Did she tell him to stop?

A: No sir.

Q: And he said if she didn't stop he was going to put his thing down her mouth?

A: He told her if she didn't shut up about taking her home he would.

Q: He would. This was before you had relations with her or after you had relations with her?

A: That was after I had.

Q: After you had. "When Jerry got through, David was coming back with me. Jerry slammed the car door and made a big knot on my head." Is that when she got the knot on her head?

A: She must have got the knot on her head when she got out.

Q: Which time when she got out?

A: After I had relations with her.

Q: All right. "Then when David finished, it was about daylight." Is that right?

A: Yes sir, about daylight, I'd say it was about daylight when I finished cause I was in there just a couple of minutes with her.

Q: Are you saying then that Jerry had relations with her, and then you did, and then Jerry did, and then you came back again?

A: No sir, that ain't what I'm saying. I'm saying Jerry had relations with her, then I did, and then Jerry came back for seconds.

Q: All right. She says when David finished it was about daylight. Then you're saying after that Jerry had relations with her?

A: Yes sir.

Q: And did she scratch you?

A: No sir.

Q: Leave a mark on your shoulder?

A: No sir.

Q: Tell you not to do it?

A: No sir.

Q: When you were getting in the car - a minute ago - she had on her skirt and a blouse?

A: Yes sir.

Q: Trying to pull up her pants?

A: No sir, she didn't even have them on when I got in the car with her.

Q: You heard her testify that she was pulling her clothes up and you pulled them down?

A: I heard her testimony, but she didn't even have them on when I got in the car with her.

Q: And you'd been drinking right much?

A: No, I hadn't been drinking that much.

Q: You told the Deputy you were pretty well drunk, didn't you?

A: I was high.

Q: Pretty well drunk. Isn't that the words you used to the Deputy?

A: I wasn't all that drunk I didn't know what I was doing.

Q: You knew you were going to have relations with her?

A: Yes sir.

Q: And you deny she told you not to do it?

A: Yes sir, I deny it.

Q: She had relations with you voluntarily, is that what you're saying?

A: Yes sir.

Q: And you don't know why she reported it was raped to the first person that came along?

A: No sir, I don't.

Q: Why she told the doctor it was rape?

A: No sir.

BY THE COURT:

Do you have any objection to Instruction # 1?

BY MR. GRAYBEAL:

Yes, Your Honor, on behalf of the Commonwealth I would object to Instruction # 1 in it is not an instruction but rather the defendant's view of the law and that which they hopefully supported in their closing arguments by the evidence brought out in the trial.

BY MR. WHITEHURST:

Your Honor, the case 187 Va. 133, Jones vs. Commonwealth, in the Supreme Court in overturning a Circuit Court, states that a defendant is entitled to an instruction on his theory of the case. As we have tried to present today, our theory of the case is that all this took place with consent. Each and every statement in this instruction is supported by some of the evidence, and the Court goes on, says, " If there is sufficient evidence on behalf of the accused to justify submission to the jury, the question whether or not in this case he acted in self-defense." My purpose in providing this instruction is to provide the jury with the theory relied upon by the accused. As far as I can determine, this has never been overruled, and we are entitled to that instruction on our theory of the case.

BY THE COURT:

The instruction is refused, it being argumentative

and simply a narrative statement of the feeling of the accused as furnished by the accused and not the law.

BY MR. WHITEHURST:

To which we respectfully take exception.

BY THE COURT:

Instruction A-2 is refused, that there is no charge against the accused David Bryant of fornication. He has been charged with commission of the act of rape and he is either guilty of rape or not guilty. The instruction is refused.

BY MR. WHITEHURST:

To which we respectfully take exception on facts that have been introduced in this case, this would be a lesser included offense.

BY THE COURT:

Instruction A-3 standing alone is a correct statement of the law, but - and will be given by the Court if that is the only reasonable doubt instruction that's to be offered, but if you want another reasonable doubt instruction covering the other points of the case, I can not give you two reasonable doubt instructions. So you make up you mind what you want. Youwant A-3, I'll give it to you. If you want some other reasonable doubt instruction I'll give that and not give A-3.

INSTRUCTION NO. 1

If you believe from the evidence beyond a reasonable doubt that the defendant had sexual intercourse with Nancy Anderson Tennant, against her will, by force, then you shall find him guilty of rape as charged in the indictment and fix his punishment at [redacted] confinement in the penitentiary for life or for any term not less than five years.

Given

WSJ

INSTRUCTION NO. 2

While the element of force is an essential element in the crime of rape, and while you must believe that the force used was sufficient to overcome the will of Nancy Anderson Tennant, yet if you believe that the mind and will of Nancy Anderson Tennant were overpowered by fear induced by David Joe Bryant, and therefore she made less resistance then she may otherwise have been capable of making, it is rape nevertheless. In this connection, you may consider the time, the place and relative physical strength and endurance of Nancy Anderson Tennant and David Joe Bryant, the whole situation as it confronted her, and all of the circumstances disclosed by the evidence.

Given

WSJ

INSTRUCTION NO. 3

The Court instructs the jury that you are the sole judges of the credibility of the witnesses; and in determining the weight given to the testimony of the witnesses, the jury may consider the appearance and demeanor of the witness on the witness stand; their manner of testifying; their apparent intelligence or lack of it; their interest or lack of it in the outcome of the case; their temper, feeling or bias, if any has been shown; their opportunity for knowing the truth and having observed the things concerning which they testify; and from these and all other surrounding circumstances at the trial, the jury are to determine which witnesses are more worthy of credit and give credit accordingly.

Given

WSJ

INSTRUCTION NO. 7

The Court instructs the jury that if you believe from the evidence that any witness has knowingly testified falsely as to any material fact in this case, you have a right to discredit all of the testimony of such witness or to give to such testimony such weight and credit as in your opinion it is entitled.

Given

WSJ

INSTRUCTION NO. 5

The Court instructs the jury that principals in the first degree are those who are the actual or immediate perpetrators of the crime. Principals in the second degree are those who did not commit the act themselves which constituted the crime, but who were present, aiding and abetting in its commission. The test for a principal in the second degree is whether he was encouraging or inciting the commission of a crime by words, gestures, looks or signs, or in some manner offering aid or consent to its commission.

Principals in the second degree are liable to the same punishment as principals in the first degree.

Given

WJ

INSTRUCTION NO. 6

The Court instructs the jury that the burden resting upon the Commonwealth to prove guilt of the defendant beyond a reasonable doubt does not require that such guilt be proven beyond every imaginable, conceivable or possible doubt, but only beyond a reasonable doubt. The jury must limit its consideration to the evidence introduced, and you are not to go outside the evidence to hunt up doubts, nor must you entertain doubts which are speculative or conjectural. And if, upon a consideration of all the evidence you are satisfied of the guilt of the defendant beyond a reasonable doubt, then you shall find him guilty.

Given

Instruction No. A

The Court instructs the jury that the burden is upon the Prosecution to prove by the evidence beyond a reasonable doubt every material and necessary element of the offense charged against David Bryant. It is not sufficient that the jury may believe his guilt probable, or more probable than his innocence. Suspicion or probability of guilt, however strong, will not authorize a conviction, but the evidence must prove his guilt beyond a reasonable doubt. The jury shall not speculate or go outside of the evidence to consider what they think might have taken place, but you are to confine your consideration to the evidence introduced by the Prosecution and David Bryant and unless you believe, upon a consideration of all the evidence before you, that guilt of David Bryant has been proved beyond a reasonable doubt as to every material and necessary element of the offense charged against him then you shall find David Bryant not guilty.

Given

Instruction No. B

The Court instructs the jury that David Bryant is presumed to be innocent of the offense with which he is charged and this presumption of innocence goes with him through the entire case and applies at every stage thereof and is sufficient to require you to find David Bryant not guilty unless and until the Prosecution upon whom the burden rests, proves his guilt beyond a reasonable doubt, and the Court further tells you that it is not sufficient that facts and circumstances proved be consistent with the guilt of David Bryant, but they must be inconsistent with every reasonable hypothesis consistent with the innocence of David Bryant.

Given

WSJ

Instruction No. A-1

The Court instructs the jury that if they believe from the evidence presented that Nancy Tennant, a married woman, over the age of 21 years, married, a resident of Roanoke, Virginia, after having arrived in Christiansburg, Virginia, at 12 o'clock midnight, unaccompanied by her husband thereafter formulated a plan in which she solicited or offered to engage in voluntary sexual intercourse with Larry Smith and Sammy Epperly in return for transportation to Roanoke, Virginia; thereafter, after having engaged in voluntary sexual intercourse with Sammy Epperly and Larry Smith wherein of her own free will she disrobed and placed herself in a parked automobile; thereafter returning to the Christiansburg Truckstop, a well-lit area, where other persons were present including a friend and at a place where a public telephone was readily available, without attempting to telephone her husband, family or police; and again thereafter solicited or offered voluntary sexual intercourse to David Denton in return for transportation to Roanoke, Virginia, which was refused; and again thereafter offering voluntary sexual intercourse to Joseph Ray Bonds in return for transportation to Roanoke, Virginia, which was refused; and having failed in her efforts to solicit transportation in return for voluntary sexual intercourse offered the same to Jerry Carden and David Bryant in return for transportation to

Refused

Roanoke and prior to leaving the Christiansburg Truckstop with David Bryant and Jerry Carden showed proof of her age upon request; thereafter entered the automobile voluntarily; and at a later time voluntarily entered the rear seat of the automobile with Jerry Carden; thereafter engaging in voluntary sexual intercourse with him; and subsequent to that act of voluntary sexual intercourse, engaged in sexual intercourse with David Bryant after having voluntarily removed her clothing and making no complaint as to any sexual activity, you must find David Bryant not guilty.

Instruction No. A-1

The Court instructs the jury that if upon a fair and impartial consideration of the evidence in the case you believe that an act of carnal intercourse took place between David Bryant and Nancy Tennant with her consent and further you believe that the act of sexual intercourse was accomplished without force on the part of David Bryant you, the jury, many find him guilty of fornication and fix his punishment accordingly.

Refused
WLJ

Instruction No. A-3

The Court instructs the jury that if upon a fair and impartial consideration of the evidence in the case you believe that an act of carnal intercourse took place between David Bryant and Nancy Tennant then it becomes the duty of the jury to determine whether or not such carnal intercourse was accomplished by force and against the will of the prosecutrix or otherwise and if the jury entertain a reasonable doubt as to whether it was accomplished by force and against the will of the prosecutrix such doubt is decisive and must be resolved in favor of David Bryant and it is the duty of the jury to find David Bryant not guilty of the crime of rape.

Refused

MLJ

Instruction No. C-1

The Court instructs the jury that the burden is on the Prosecution to prove every essential element of the crime charged. In this case, before you can convict, you must believe from the evidence beyond a reasonable doubt, not only that an act of intercourse had taken place between Nancy Anderson Tennant and David Bryant, but also that the act was accomplished by David Bryant by force and violence, and that Nancy Tennant resisted by every means within her power under all the circumstances then and there existing.

Unless you believe from the evidence that the Prosecution has proved each of these things beyond a reasonable doubt, then you shall find David Bryant not guilty.

Refused

CIRCUIT COURT OF THE COUNTY OF MONTGOMERY, ON WEDNESDAY, THE 16TH DAY OF OCTOBER, IN THE YEAR OF OUR LORD 1974.

PRESENT: The Honorable W. S. Jordan, Judge.

No. 6492
COMMONWEALTH OF VIRGINIA

V. ORDER

DAVID JOE BRYANT,
Defendant

On the 15th day of October, 1974, came the Attorney for the Commonwealth and the defendant, David Joe Bryant, born March 24, 1950, who stands indicted for a felony, to-wit: rape, appeared according to the condition of his recognizance, and came also Henry A. Whitehurst and Alan D. Gillis, his attorneys.

Whereupon the accused was arraigned and after consultation with his counsel, pleaded not guilty to the indictment, which plea was tendered by the accused in person. The Court then impanelled twenty qualified jurors, free from exception for the trial of the defendant, in the manner provided by law. Whereupon the Attorney for the Commonwealth and the Attorneys for the defendant exercised their rights to strike names from the panel, as provided by law, and the remaining twelve jurors, to-wit: Madeline C. Woolwine, James M. Trimble, Kelly J. Thompson, William M. Sterrett, Jr., Harry B. Shepherd, John V. Ridinger, Clarence C. Rice, Arnold H. Price, Sidney L. Oliver, Marvin R. Marshall, Ervin R. Linkous and Mrs. Edsel F. Francisco, constituting the jury for the trial of the defendant, were duly sworn.

After opening statements, the court and jury heard the evidence presented by the Commonwealth. At the conclusion of the Commonwealth's evidence the Attorney for the defendant moved the Court to strike the Commonwealth's evidence as insufficient to warrant a verdict against the defendant, which motion the Court overruled and the Attorney for the defendant excepted. After hearing all of the evidence presented by the Commonwealth and the defendant, the instructions of the court and argument of counsel, the jurors retired to their room to consider upon their verdict. Due to the lateness of the hour and the jurors not having reached a verdict at 6:00 o'clock P.M., court was adjourned until the following day, October 16, 1974, at 9:30 o'clock A. M.

On the 16th day of October, 1974, came again the Attorney for the Commonwealth, the defendant, David Joe Bryant, in person and by his attorneys, Henry A. Whitehurst and Alan D. Gillis. Thereupon the jurors again retired to their room to consider upon their verdict, and subsequently thereto returned into court and presented their verdict in the following words: "We the jury find the accused David Joe Bryant guilty of rape as charged in the indictment & fix his punishment at confinement in the penitentiary for 5 years. William M. Sterrett, Jr., Foreman." Whereupon the Attorneys for the defendant moved the Court to have the jury polled. Thereupon the jury was polled and each member thereof stated in open court that the verdict as read was his or her verdict. Whereupon, the defendant, by his attorneys, moved the court to set aside the verdict of the jury as contrary to the law and the evidence and for other reasons assigned at bar, which motion the Court overruled and the attorneys for the defendant duly excepted.

It being demanded of the defendant if anything for himself he had or

knew to say why judgment should not be pronounced against him according to law, and nothing being offered or alleged in delay of judgment, it is accordingly the judgment of this Court that the defendant, David Joe Bryant, be and he hereby is sentenced to confinement in the penitentiary of this Commonwealth for the term of five years, and that the Commonwealth of Virginia do recover against the defendant its costs in the amount of $766.45 by it about its prosecution in this behalf expended.

The Attorney for the defendant having signified his intention of appealing said case to the Supreme Court of Virginia, execution of said sentence is hereby stayed for a period of sixty days.

The Court certifies that at all times during the trial of this case the defendant was personally present and his attorney was likewise personally present and capably represented the defendant.

Enter: Oct. 16, 1974

Judge.

Crim Ob 10, Pg. 448

ASSIGNMENT OF ERROR

15) That the Court erred in refusing to grant defendant's instruction A-1 in that the defendant was entitled to an instruction on his theory of the case.