JAN 5 1979

IN THE

Supreme Court of Virginia

AT RICHMOND

RECORD NO. 781091

BOBBY J. CUMBEE,

.....Appellant

v.

COMMONWEALTH OF VIRGINIA,

.....Appellee

JOINT APPENDIX

James E. Cornwell, Jr.
WARREN, CORNWELL & GIBB, P.C.
225 Main Street
Narrows, Virginia 24124

Counsel for Appellant

J. Marshall Coleman
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COMP. FORM 18 - 200M 7/76

COMMONWEALTH OF VIRGINIA

COUNTY [CITY] OF Giles

To Wit:

No.

ARREST WARRANT
(Rule 3A:4)

TO ANY SHERIFF, POLICE OFFICER, OR OTHER AUTHORIZED OFFICER:

You are hereby commanded in the name of the Commonwealth forthwith to arrest

Bobby Cumbee - Sugar Ridge - Pearisburg Va

(Name of accused, or a description by which the accused can be identified)

and to bring him (her) before the Giles County Juvenile & Domestic Relations Ct

(Designation of Court)

to answer a charge that he (she) committed an offense in the County (City) of Giles

Pearisburg Va on or about Sept. 21, 1977,

namely (give a brief description of the offense)

He did Unlawfully and Feloniously on or about Sept 21, 1977 Commit fornication with his daughter Debbie Lynn Cumbee Aged 14 in Violation of Section 18.2-366

On the basis of the sworn statement(s) of Kay Stafford (based on information given by Debbie Cumbee)

the undersigned has found probable cause to believe the accused has committed the offense.

If a written complaint has been made, it is attached to the original of this warrant.

You are also commanded, in the name of the Commonwealth, to summon the following as witnesses:

Name _____ Address _____ ☐

Name _____ Address _____ ☐

Name _____ Address _____ ☐

Name _____ Address _____ ☐

Given under my hand and seal, this 26th day of October, 1977.

Stuart W. Edwards (SEAL)
(Signature of Issuing Officer)

Magistrate
(Title of Issuing Officer)

COMMONWEALTH OF VIRGINIA,
COUNTY [CITY] OF Giles

Bobby Cumbee (Name of accused) and Jessie Lee Payne. (surety)

each (if more than one) acknowledges himself indebted to the Commonwealth of Virginia in the sum of Fifteen hundred and no/100 ($ 1500.00) and waives all benefit under the homestead exemption laws of the State of Virginia as to this obligation.

The condition of this obligation is that if Bobby Cumbee (Accused) shall appear personally before the County J. & D. R. Court (Designation of court) on the 3rd day of Nov., 1977, at 9:30 A m., and at any time or times to which the proceedings may be continued in that court or heard on appeal, to answer for the offense with which he is charged, and shall not depart without leave of the court and shall keep the peace and be of good behavior, then this obligation shall be void when final disposition of the charge is made; otherwise, this obligation shall remain in full force and effect until declared void and released by order of a competent court. Non-appearance before any court referred to herein shall be deemed to constitute a waiver of trial by jury.

Whenever the context so requires, the masculine shall be deemed to refer to the feminine or neuter and the singular to the plural.

Given under our hands and seals this 29th day of October, 1977

(Name of corporate surety) Bobby Joe Cumbee (SEAL) (Accused)

by Jessie Lee Payne (SEAL)

Attorney-in-fact (or title of signing officer) (Individual Surety)

Acknowledged before me in my County (City) on the date last above written. Stuart W. Edwards

(Signature of acknowledging official)

(Address of surety) Magistrate

(Title of acknowledging official)

DOCKET NO. A-376 ~~77-4999~~

COMMONWEALTH vs. Bobby Joe Cumbee

WARRANT OF ARREST

Bobby Joe Cumbee

Jessie Lee Payne

Executed this, the 29 day of Oct. 19 77

Robert E. W. Allen

Serving Officer

11-3-77 9:30 a.m.

DISPOSITION OF CHARGE

The following witnesses were recognized to appear before the _____ Court of _____ County (City), Virginia, at _____ Virginia, at _____ M., on the _____ day of _____ 19 ____.

Fine $ _____

Costs $ _____

Total $ _____

Fine $ _____

Liquidated Damages $ _____

COSTS

Warrant $ _____

Trial _____

Bail _____

Arrest _____

Clerk of Court _____

Committal (Date _____)

Witnesses _____

Sheriff/Sergeant:

Fees _____

Mileage _____

Commonwealth Attorney _____

Weighing Fee _____

Reportable Violation D.M.V. ($5.00) _____

D.M.V. Abstract Fee (50¢) _____

Blood (Sample $ _____ Analysis $ _____)

Court Appointed Attorney _____

under penalty of $ _____

VIRGINIA:

IN THE CIRCUIT COURT OF GILES COUNTY

COMMONWEALTH

VS.

BOBBY JOE CUMBEE
DEFENDANT

ORDER -- FELONY NO. A-379

This 25th day of April, 1978, came James Hartley, Acting Attorney for the Commonwealth; and Bobby Joe Cumbee, who stands indicted for a felony, to-wit: feloniously and unlawfully commit fornication with his daughter, as charged in the Indictment, appeared according to the condition of his recognizance; and came also James E. Cornwell, Jr., his attorney heretofore appointed.

Whereupon the accused was arraigned and after private consultation whis his said attorney, pleaded not guilty to the Indictment, which plea was tendered by the accused in person, who requested trial by jury.

The Court then impanelled twenty qualified jurors, free from exception for the trial of the defendant, in the manner provided by law. Whereupon the Acting Attorney for the Commonwealth and the attorney for the defendant each alternately exercised their rights to strike the names of four veniremen from the panel, as provided by law, and the remaining twelve jurors, constituting the jury for the trial of the defendant, were duly sworn.

After opening statement, the Court and jury heard the evidence presented by the Commonwealth and the defendant.

After hearing the evidence, the instructions of the Court and argument of counsel, the jurors were sent to the jury

room to consider their verdict. They subsequently returned their verdict in open court, in the following words:

> "We, the jury, find the defendant guilty of fornication with his daughter as charged in the Indictment and fix his punishment as follows:
>
> No fine
> 5 years in State Penitentiary
>
> George E Pearson
> Foreman"

The attorney for the defendant then moved the Court to set aside the verdict, for reasons stated to the record, which motion was overruled, to which ruling the defendant by counsel excepted.

The Court then asked the defendant whether he desired to make a statement or to advance any reason why judgment should not be pronounced against him. The defendant having declined, the Court finds the defendant guilty of fornication with his daughter as charged in the Indictment and sentences the defendant to confinement in the penitentiary of the Commonwealth for the term of five years.

It is adjudged that the Commonwealth recover from the defendant the sum of $_____, the costs assessed in this proceeding.

After pronouncing sentence, the Court advised the defendant of his right to petition for an appeal to the Supreme Court of Virginia and his right to proceed in forma pauperis and to have the assistance of court-appointed counsel.

Counsel for the defendant advised the Court the defendant desires to appeal the judgment rendered.

The Court further directs that the transcript be made

a part of this record.

~~And~~ The Court appoints James E. Cornwell, Jr., an able and competent attorney at law to represent the defendant in said appeal.

The Court certifies that at all times during the trial of this case the defendant was present in person and his attorney was likewise present in person and represented the defendant capably for which services he is allowed an attorney's fee of $_____.

The defendant is remanded to jail.

ENTER: May 8, 1978

Robert L. Powell
JUDGE

ASSIGNMENTS OF ERROR

I.

The Trial Court erred in excluding from the Courtroom members of the general public and spectators.

II.

The Trial Court erred in allowing the Commonwealth to call the defendant's wife as a witness.

III.

The Trial Court erred in allowing the Commonwealth to produce evidence of the defendant's conduct subsequent to the alleged crime.

I think, basically, this case is going to come down to one (1) major thread, and that's the credibility of the witnesses.

As I said in the beginning of my opening statement, this is not a pleasant charge; this is a charge which is difficult to prove and more difficult to disprove, but as I said, the defendant does not have the burden to disprove this charge; the Commonwealth has the burden to prove it.

I want you to consider all the evidence, the law as given to you by the Court and that you will make a fair and just verdict. Thank you.

MR. HARTLEY:

Your Honor, I moved to exclude the witnesses and I now ask that the spectators be removed from the Courtroom due to the victim being a juvenile and this being an incest case, a case of such a nature that at least while the victim is testifying that the spectators be excluded from the Courtroom.

MR. CORNWELL: Your Honor, I object to the spectators being removed from the Courtroom. The defendant, under the Fifth Amendment of the Constitution of the United States, has the right to a public trial and I object to the clearing of the Courtroom and excluding the spectators. It is not the defendant's desire or wish to upset and make a spectacle of the witnesses for the Commonwealth, but, again, the defendant has the right to a public trial; he desires that right and he feels that to deny him a right to

a public trial is to take away his rights and I would object.

THE COURT:

IN VIEW OF THE TYPE OF CASE WE ARE ABOUT TO CONSIDER, THE COURT WILL ORDER THE COURTROOM CLEARED OF ANY SPECTATORS.

MR. CORNWELL:

I renew my objection and move for a mistrial.

THE COURT:

THE MOTION IS OVERRULED.

XXX

A. Because I would always get up and go on to school.

Q. Now, Debbie, you first started having problems with your father in September of 1976?

A. Yes, sir.

Q. Why didn't you tell someone?

A. I was afraid of what he might do.

Q. You were afraid to go to your mother?

A. Yes, sir, because he had made threats.

Q. What did he say he would do?

A. At one time, he told us that he would kill me and her and hisself if I told.

Q. After 1976, were you afraid of your father?

A. Yes, sir.

Q. How afraid?

A. I tried to stay away from him as much as possible.

Q. Were you afraid to be alone with him?

A. Yes, sir.

Q. Now, I believe, Debbie, you testified that you live in Rich Creek, now?

A. Yes, sir.

Q. Do you live with your parents?

A. No, I live with foster parents.

Q. Have you received any phone calls from your parents?

A. Yes, sir.

Q. Have you talked to your father on the telephone since you have been down there?

A. One (1) time.

Q. How did that arise?

A. Mom had called and she put dad on the phone and he told me that if I hung up that he would just call back and that -- he asked me, he said that if I would come back home that he would take and leave so that I could be home with mom and the kids.

Q. He would leave from where?

A. Leave from where he was staying, is what I thought that he meant.

Q. Where did you think he was staying?

A. At home with mom and the kids.

Q. And he told you that he would leave home if you went back home?

A. Yes, sir.

Q. Have you seen your father since you have been living down in Rich Creek?

A. Yes, sir.

Q. Would you tell the Jury on what occasions you have seen him?

A. He came down in November when I had first moved

down there and Mr. Morrison, and that's the father in this foster home that I'm staying in now, he met him out on the porch and dad told him that he was wanting to see me and then Mr. Morrison told him that he had got rules to where I wasn't supposed to see him.

Q. Now, Debbie, you were inside when this was happening?

A. Yes, sir.

Q. And just tell the Jury what you saw?

A. Well, I just saw that they were talking.

Q. Did you watch your father the whole time he was there?

A. No, sir, I went back in the bedroom.

Q. Why?

A. I just didn't want to see him.

Q. Have you seen him any other times down there?

A. Yes, sir.

Q. Tell the Jury about that.

A. The 19th of last month, he came down and it was on Sunday and we was going to church and he was parked down at the end of our road in front of the meat market and when Mrs. Morrison was getting ready to pull out, I looked up to where he was sitting and I told her that, that was my dad sitting up there and so we went on down the road and then we turned the

corner and went two (2) blocks down and then we turned down beside the post office and we didn't see him, but when we turned in, he must have followed us, because when we stopped down at the post office, he had come down to the next corner and come in front of us on the highway, through -- went through the middle of town and when he saw that we were sitting there, he turned -- he pulled over in the bank parking lot and turned and we pulled out and he followed us and when we got down there on the four (4) lane, he pulled up alongside of us and drove beside us for awhile, about a minute or two (2) minutes and then Cindy told her mom to slam on the brakes because there wasn't any cars so that he could go on past us and then when she done that, dad, he sped up and he went on up the road and then he started weaving across the road and he done that two (2) times.

Q. Did you catch up to him? Did your car catch up to him when he was in front of you?

A. No, sir, we slowed down so that he could stay way in front of us.

Q. Did he look at you while he was driving alonside of you?

MR. CORNWELL: (Interrupting)

Your Honor, I have been quiet so far, but I'm going to have to question the relevancy of this and I object to

2 it on those grounds. I don't see where it's relevant to the
3 issues at all.
4 MR. HARTLEY:
5 Your Honor, this evidence goes to show that not
6 only is the defendant here still scared of her father, but
7 she---
8 MR. CORNWELL: (Interrupting)
9 ---Your Honor, I don't think the Commonwealth---
10 THE COURT: (Interrupting)
11 ---I OVERRULE THE OBJECTION; GO AHEAD.
12 MR. HARTLEY: (Continuing)
13 Q. Did he look at you while he was driving alongside
14 you?
15 A. I looked at him once and then Mrs. Morrison told
16 me not to look at him and so I didn't look at him and that time
17 that I did look at him, he was looking over towards the car.
18 Q. All right, did you see him down there any other
19 time?
20 A. Yes, sir, on the 23rd, he came down and me and
21 Cindy, we were getting ready to go to school and she was going
22 to drive that day and he must have been watching for us to
23 come out the door, because when we got down on the sidewalk,
24 he had pulled in front of the house and he drove by real slow
25 and Cindy seen him coming around the corner and she said that

that looked like dad and I told her that it was and so Mrs. Morrison told us to come on in the house as fast as we could, so I ran in the house and then I called Mrs. Fisher and she told me and Cindy to stay---

MR. CORNWELL: (Interrupting)

---objection.

THE COURT:

JUST EXPLAIN WHAT YOU KNOW AND NOT THE CONVERSATION.

THE WITNESS: (Continuing)

A. Well, I called Mrs. Fisher.

MR. HARTLEY: (Continuing)

Q. Okay, that's enough, because you can't testify to what she told you.

All right, Debbie, answer any questions Mr. Cornwell might ask you.

CROSS EXAMINATION BY MR. CORNWELL:

Q. Debbie, you are pretty precise on these dates and times and so forth. Is there any particular reason for that, to know exactly what day and time that these things supposedly happened?

A. I knew a couple of them, on July 28th, because it was the day after my birthday and October 30th, because that was on Mary Ann's birthday and then the other ones were on or about

MR. HARTLEY:

Your Honor, I would like to call as a witness for the Commonwealth, Mrs. Virginia Cumbee, for the sole purpose of establishing that the defendant is the father of the victim.

MR. CORNWELL:

Your Honor, I object to the Commonwealth calling Virginia Cumbee as a witness and move for a mistrial.

MR. HARTLEY:

Your Honor, of course, the Statute provides that the wife of the defendant can testify in a prosecution case for a crime committed against the minor child of either parent and this is---

THE COURT: (Interrupting)

---THE OBJECTION IS OVERRULED.

MR. CORNWELL:

Could I state it a little further, Judge? My understanding of the crime that Mr. Cumbee is being charged with is not a crime against the child and that is part of the basis of my objection, also, and, again, Judge, we move for a mistrial.

THE COURT:

OBJECTION OVERRULED.

MR. CORNWELL:

I note an exception.

THE COURT:

I SUSTAIN THE OBJECTION.

MR. CORNWELL:

I would ask the Court to instruct her as to what hearsay is.

MR. HARTLEY:

Mrs. Blankenship, just testify as to what happened.

MR. HARTLEY: (Continuing)

Q. Now, while Debbie was at your house, did Mr. Cumbee come to your house?

A. Yes.

Q. What did Debbie do when she saw her father? Tell the Jury what Debbie did when she saw her father.

A. Okay, Debbie was in the bedroom with my daughter and when he drove up, she commenced saying, "oh, my God, no, he is going to come in and get me."

MR. CORNWELL: (Interrupting)

I object, Your Honor.

MR. HARTLEY: (Continuing)

Q. Just testify as to what she did, her actions.

THE COURT:

JUST STATE WHAT YOU SAW, BUT NOT WHAT ANYBODY SAID TO YOU, UNLESS IT WAS IN THE PRESENCE OF MR. CUMBEE,

HIMSELF.

THE WITNESS:

A. Well, I saw her when she said -- I heard her when she said---

MR. HARTLEY: (Interrupting and Continuing)

Q. ---I know, but you cannot testify to what Debbie said unless Mr. Cumbee was also present.

A. Oh, okay. Well, Mr. Cumbee came in the front door to the living room and Mrs. Steiffert was on the phone and Mr. Cumbee asked where his daughter was at, asked me, and I said -- he asked was she there and I said, "yes, she's in the front bedroom" and then Mrs. Steiffert had gotten off the phone and he said that he didn't know what was going on and Mrs. Steiffert said, "well---

MR. CORNWELL: (Interrupting)

---Your Honor, I would object---

MR. HARTLEY: (Interrupting)

---Your Honor, if it was said in his presence---

THE WITNESS:

It was said in my presence.

MR. HARTLEY: (Continuing)

Q. Never mind, we'll move on. Were you in the bedroom with Debbie when Mr. Cumbee drove up?

A. No, me and Mrs. Steiffert left out of the bedroom

and she was in there with my daughter.

Q. Who is your daughter?

A. Lynn Blankenship.

Q. All right, that's all the questions I have. Answer any questions Mr. Cornwell might have.

CROSS EXAMINATION BY MR. CORNWELL:

Q. Mrs. Blankenship, did you have cause that day to talk to Mrs. Cumbee over the telephone?

A. No, I didn't.

Q. Mrs. Cumbee didn't call you and ask you if her daughter was there?

A. She talked to my daughter.

Q. She didn't talk to you?

A. No, she didn't talk to me.

MR. HARTLEY: (Interrupting)

Your Honor, I object to this. Mr. Cornwell just sat there and objected to hearsay a minute ago and I will object to this hearsay.

THE COURT:

WELL, SHE CAN'T ANSWER THE QUESTION AND I SUSTAIN THE OBJECTION.

MR. CORNWELL: (Continuing)

Q. Did you talk to Mrs. Cumbee that day?

A. No, I didn't.

Lynn Blankenship, having first been duly sworn upon her oath, testified as follows:

DIRECT EXAMINATION BY MR. HARTLEY:

Q. Lynn, would you state your name to the Judge and Jury?

A. Lynn Blankenship.

Q. Lynn, how old are you?

A. Thirteen (13).

Q. What grade are you in?

A. Eighth.

Q. Now, I want to direct your attention to October 13th, 1977. Now, on October 13th, 1977, did you see Debbie Cumbee?

A. Yes.

Q. When did you first see her?

A. In the morning after I got off the bus.

Q. How did she appear to you?

A. Nervous, scared.

Q. Was she upset?

A. Yes.

Q. All right, and did she go home with you that afternoon?

A. Yes, sir.

Q. How did she appear to you when she went home with

you?

A. Upset.

Q. Were you in the bedroom at your house with her that afternoon? Well, let me ask you this. Did you see Mr. Cumbee come to your house that afternoon?

A. Yes, sir.

Q. Where were you when he came to your house?

A. In the bedroom.

Q. Was anyone with you?

A. Yes, Debbie.

Q. What did Debbie do?

A. She grabbed my hand and held on real tight.

Q. Did she see her father?

A. Yes.

Q. How did she appear or react when she saw her father?

MR. CORNWELL: (Interrupting)

Your Honor, I don't see the relevancy of this at all.

MR. HARTLEY:

This is to, once again, show the relationship between the defendant and the complaining witness.

THE COURT:

OBJECTION OVERRULED.

MR. HARTLEY: (Continuing)

Q. Go ahead and answer the question. What did she do and how did she react when she saw her father?

A. She grabbed my hand just real tight and held it and wouldn't let go.

Q. Did she want to go home?

MR. CORNWELL: (Interrupting)

Objection!

THE COURT:

SUSTAINED.

MR. HARTLEY:

I have no further questions of this witness. Answer any questions Mr. Cornwell might ask you.

CROSS EXAMINATION BY MR. CORNWELL:

Q. Did you talk to Mrs. Cumbee that day?

A. Yes, sir.

Q. How many times did you talk to her?

A. Two (2).

Q. Did she ask you where her daughter---

MR. HARTLEY: (Interrupting)

Objection, Your Honor; it is hearsay.

MR. CORNWELL:

Your Honor, it's just as to the conversation.

THE COURT:

2 of the night and she would holler and she didn't sleep very
3 good at all; she would holler and scream in the night and you
4 could hear her hollering "help," and most of it was inaudible,
5 but she did holler.
6 Q. Do you recognize the defendant sitting to your
7 right?
8 A. Yes.
9 Q. Who is that man?
10 A. It's Debbie's father.
11 Q. Have you seen him since Debbie began living with
12 you?
13 A. Yes.
14 Q. When was the first time you saw him?
15 A. It was in November.
16 MR. CORNWELL: (Interrupting)
17 Your Honor, I'm going to object to this line of
18 questioning.
19 THE COURT:
20 OVERRULED.
21 MR. CORNWELL:
22 It's irrelevant.
23 MR. HARTLEY: (Continuing)
24 Q. When was the first time you saw him?
25 A. It was in November.

Q. What was he doing?

A. He came down to the house and he came up to the front door and it was in the wintertime, so the door was shut and my father went to the door and went outside to see him.

Q. Did Debbie see him at that time?

A. Yes, she did.

Q. What did she do?

A. She started shaking just kind of violently and we told her that it was okay, that daddy was outside and that he would get rid of him and then she seemed to calm down just a little bit and then she went in the bedroom.

Q. After that time, did you see the defendant at any time?

A. Yes, sir.

Q. When was the next time you saw him?

A. The next time, he followed us to church one morning.

Q. Do you remember what morning that was?

A. Not right off.

Q. Well, what day of the week was it?

A. It was on Sunday.

Q. All right, tell the Jury about that time?

A. Well, we left the house and we live up above the Rich Creek Provision and we got down to the end of the road to

pull out on the highway and Debbie looked over and her daddy was sitting in the parking lot of the Provision and mom said not to do anything, that we would just go on to church like we had planned, so we went down to Rich Creek and went out a back road and this was to avoid him, you know, if he came through town and we pulled down by the post office and, undoubtedly, he had come through town and passed us and he was coming back through like he was going to Peterstown and he saw us and he whirled in the bank parking lot and turned around and waited for us to pull out and when we did, he pulled out directly behind us and followed us up the river and we were going up the river on the straight stretch and he pulled up beside us and drove beside us at the same speed we did and when we slowed down, he slowed down and when we speeded up, he speeded up and he was looking at us all the time. He was just laying over looking at us like this. (witness indicating) Mom, she was real nervous and I told her just to slam on her brakes and she did and when she did, he gunned the car and went around us like he was mad and the car just zigzagged in the road and he went on up and we called the Sheriff's Department and they told us that---

MR. CORNWELL: (Interrupting)

Objection!

MR. HARTLEY: (Continuing)

Q. Now, that's alright, Cindy, you are not to tell the Jury anything the Sheriff might have told you, what people said, but when was the next time you saw him, the defendant?

A. The next time he came down was one morning before we went to school.

Q. What time of the morning would that be?

A. It was about fifteen or twenty after 8:00.

Q. What happened on that particular morning?

MR. CORNWELL: (Interrupting)

Your Honor, of course, I would renew my objection to that question.

THE COURT:

OVERRULED; GO AHEAD AND ANSWER THE QUESTION.

THE WITNESS:

A. He -- well, we were coming out of the house and we were at the end of the walk and he come up the road, driving very slow and he was leaning over, looking at us, again, and when he came around the corner, I said, "Debbie, I think that's your daddy," and her eyes got real big and when he got up close enough to where we could tell it was, she started for the house and mom said to get in the house as quick as we could and by the time mom said that, Debbie was already on the porch and she was acting like she was kind of scared of him.

MR. HARTLEY: (Continuing)

Q. All right, have you seen the defendant since that time?

A. Yes, sir, he followed us to school one morning.

Q. What morning was that?

A. I can't remember the morning.

Q. Was it in March or April?

A. I think it was the last part of March or first part of April.

Q. Okay, describe what happened on that particular morning.

A. Well, we left for school like we always do and I usually drive and we were driving up 460, right after we left out of Rich Creek and I looked in the rearview mirror and I said, "there is a car behind us that resembles your daddy's" and Debbie turned around and she said, "well, maybe it is him."

MR. CORNWELL: (Interrupting)

Objection!

THE COURT:

SUSTAINED.

MR. HARTLEY: (Continuing)

Q. Cindy, don't say what Debbie said, but did the defendant come up behind you on that road?

A. He came up beside us and he smiled at us; he smiled at us and---

Q. ---what did Debbie do when he smiled at you?

A. She wasn't looking at him; she tried not to look at him at all.

Q. What happened then?

A. It scared us both, because we didn't know what he would do.

MR. CORNWELL: (Interrupting)

Objection!

THE COURT:

SUSTAINED.

MR. CORNWELL:

I would ask the Court to instruct the Jury to ignore that remark.

THE COURT:

I'LL ASK THE JURY TO DISREGARD ANY STATEMENT TO WHICH AN OBJECTION IS SUSTAINED AND TRY TO KEEP YOUR TESTIMONY TO JUST WHAT YOU SAW AND WHAT YOU KNOW, INSTEAD OF WHAT PEOPLE SAID TO YOU.

THE WITNESS:

Okay.

MR. HARTLEY: (Continuing)

Q. Cindy, how did you feel at this time?

MR. CORNWELL: (Interrupting)

Objection; I don't believe that is relevant at all.

THE COURT:

OBJECTION SUSTAINED.

MR. HARTLEY: (Continuing)

Q. Well, where did the defendant drive to?

A. Well, we drove on up the river and I usually pull in the first place to go up to the high school and he was in front of us and he pulled in there just like he was going up to the high school, so I went on up to Mitchener's and turned around and came back and we didn't see him anymore.

Q. All right, that's all the questions I have. Answer any questions Mr. Cornwell might have.

MR. CORNWELL:

No questions.

(Witness aside)

XXX

Benjamin F. Morrison, having first been duly sworn upon his oath, testified as follows:

DIRECT EXAMINATION BY MR. HARTLEY:

Q. Mr. Morrison, will you tell the Judge and Jury your name, please?

A. Benjamin F. Morrison.

Q. Where do you live, Mr. Morrison?

A. Rich Creek.

Q. Does Debbie Cumbee live with you now?

A. She came there in October.

Q. How did she act, react and appear to you when she first got there in October?

MR. CORNWELL: (Interrupting)

I renew my objection, Your Honor.

THE COURT:

OVERRULED; HE CAN STATE HER REACTION.

THE WITNESS:

A. She was nervous and upset when she came. She came in one night late and she talked in her sleep some at night and she was -- you couldn't understand her, she was making noise in talking.

MR. HARTLEY: (Continuing)

Q. Now, Mr. Morrison, is Debbie a well-behaved girl in your house?

A. She has never give us no trouble at all.

Q. Any discipline problem whatsoever?

A. No, sir.

Q. All right, that's all the questions I have. Answer any questions Mr. Cornwell might have.

MR. CORNWELL:

No questions.

(Witness aside)

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MR. HARTLEY:

The Commonwealth calls Mary Morrison.

MR. CORNWELL:

The Court realizes that the defendant objects to all this evidence as it is irrelevant and immaterial and should not be allowed as to the facts that may or may not have happened after October 13th.

THE COURT:

PROCEED.

Mary Morrison, having first been duly sworn upon her oath, testified as follows:

DIRECT EXAMINATION BY MR. HARTLEY:

Q. Mrs. Morrison, would you tell the Jury your name, please?

A. Mary Morrison.

Q. Where do you live, Mrs. Morrison?

A. Rich Creek, Virginia.

Q. Does Debbie Cumbee live with you?

A. Yes, sir.

Q. Do you recognize the defendant?

A. Yes, sir.

Q. Who is he?

A. Mr. Cumbee.

Q. Is he related to Debbie Cumbee?

A. He's her father.

Q. Have you seen him at your house?

A. Yes, sir.

Q. When did Debbie come to live with you?

A. October 13th.

Q. When did you see the defendant?

A. The first time he came to our house was in November, November 11th, I believe. I'm not sure on the date, but it was in November.

Q. All right, have you seen the defendant since that time?

A. Yes, sir, on March 19th, on a Sunday morning at 9:30, he was down at my house and we were going to church and it was 9:30 and he followed us up the highway, up 460, and he pulled up beside us and he drove side by side of us and he done that a little while and then my daughter told me to stop real fast and so I stopped real fast in the road, right in the highway and then he went by me and he whipped over in front of me and his car went this way and went back that way and then he went straight ahead and I never did pass him. When I got at Harris's Market, which is beside of Akers Dodge, he---

Q. ---don't testify to anything that might have been said.

A. Okay.

withdrawn; she went to her bedroom and stayed alone quite a bit; she did not talk to any of us very much and she was a very nervous child and she hollered out quite a bit in her sleep for quite awhile and I guess it was about a month or maybe over before she really settled down in our home.

Q. Does she continue to have nightmares?

A. Yes, sir, she still hollers out, not as much as she used to, but she still hollers out.

Q. All right, Mrs. Morrison, thank you. I don't have any further questions. Answer any questions that Mr. Cornwell might ask you.

MR. CORNWELL:

I don't have any questions of Mrs. Morrison.

(Witness aside)

(Lunch break from 12:30 P.M. to 1:30 P.M.)

(The trial continues at 1:30 P.M.)

THE COURT:

ARE YOU READY TO PROCEED, GENTLEMEN?

MR. HARTLEY:

Yes, Your Honor.

MR. CORNWELL:

We are, Your Honor.

THE COURT:

CALL THE JURY IN.

(The Jury is seated)

MR. CORNWELL:

The defense calls Virginia Cumbee.

Virginia Cumbee, having first been sworn upon her oath, testified as follows:

DIRECT EXAMINATION BY MR. CORNWELL:

Q. First of all, Your Honor, the defense would renew its prior objection to the Commonwealth's calling her.

Please state your name.

A. Virginia Cumbee.

Q. Mrs. Cumbee, are you related to Bobby Joe Cumbee?

A. He's my husband.

Q. Are you related to Deborah Cumbee?

A. She's my daughter.

Q. Mrs. Cumbee, what has been the relationship between yourself and your daughter over a period of years?

A. I thought it was normal.

Q. In what respects, normal?

A. Just like a mother and daughter should be.

Q. Were you fairly strict on her?

A. Yes, I am.

Q. In what way are you strict on her?

A. Well, she wanted to go with boys and I wouldn't let her go with boys and she would want to talk to them on the phone and I told her that she could wait for that until in later

she has been in the Morrison home?

MR. CORNWELL: (Interrupting)

Objection, it's irrelevant.

THE WITNESS:

A. Yes.

MR. HARTLEY:

I believe it will be relevant, Your Honor.

THE COURT:

OBJECTION OVERRULED.

MR. HARTLEY: (Continuing)

Q. Answer the question, Mrs. Cumbee; have you visited with her?

A. Yes, I have.

Q. When you have visited with her, have you ever given her money to run away from the Morrison's home?

MR. CORNWELL: (Interrupting)

Objection, Your Honor; this is going too far.

MR. HARTLEY:

I believe it is relevant, Your Honor, to show the attitude of Mrs. Cumbee.

THE COURT:

I SUSTAIN THE OBJECTION.

MR. HARTLEY: (Continuing)

Q. When you visited Debbie, have you ever relayed

threats that Mr. Cumbee has told you to relay to her?

MR. CORNWELL: (Interrupting)

Objection, Your Honor; it at least, calls for hearsay.

THE COURT:

I OVERRULE THE OBJECTION.

MR. HARTLEY: (Continuing)

Q. Answer the question. Have you ever related to Debbie the threats made by her father?

A. Yes.

Q. Will you tell the Jury about those threats?

A. I don't even remember the way it was said.

Q. You just remember that---

A. ---I do know that I was upset and I said something and I don't even remember what I said, what it was, because I was upset, but I don't remember what I said.

Q. Did your husband tell you to tell Debbie to run away from the Morrison's home?

MR. CORNWELL: (Interrupting)

Objection, Your Honor!

THE COURT:

OBJECTION OVERRULED.

MR. HARTLEY: (Continuing)

Q. Answer the question.

A. What was the question?

Q. Did your husband tell you to tell Debbie to run away from the Morrison's home?

A. No, he didn't.

Q. Did he give you money to give to her?

MR. CORNWELL: (Interrupting)

Objection!

THE COURT:

OBJECTION OVERRULED.

MR. HARTLEY: (Continuing)

Q. Answer the question, please. Did your husband give you any money to give to Debbie to run away from the Morrison's home?

A. I had the money myself.

Q. You gave her money?

A. Yes, I gave her money.

Q. Why did you give her money?

A. Because she said that she wanted to come back home and I told her that I could not take her back home with me; that she left on her own when she left and I figured that if she was to come back home, that is the way she would have to come back is on her own.

Q. Now, Mrs. Cumbee, you testified that you went to Princeton during the period between December of 1976 and

majority of the time in September?

A. Yes, sir.

Q. You didn't have much time at home then, did you?

A. No, sir, I didn't.

Q. About how long were you at home during the day?

A. Well, I usually left at 5:30 every morning when I was working at Keystone and I would get back, well, sometimes I worked eight (8) and sometimes, I worked ten (10) and sometimes, I worked twelve (12) hours a day and then there, sometimes, I worked fourteen (14) hours a day because they was wanting two guys to clean the dozer tracks off to keep from freezing.

Q. So you weren't at home most of the time during the day except at night, long enough to sleep?

A. That's just about it, go to bed and get up.

Q. Once again, and I'll close on this, did any of these things happen?

A. No.

Q. And you will tell that to the Jury under oath?

A. I'll tell that to anybody.

Q. That's all.

CROSS EXAMINATION BY MR. HARTLEY:

Q. When Debbie lived down at the Morrisons at Rich Creek, you told your wife to go down there and threaten Debbie,

didn't you?

A. No, I didn't tell her to threaten her.

Q. Well, she testified that you did.

A. I told her that if she wanted to say it, say it; I was mad and I'm still mad and I'm a fellow that hurts easy and I have got a mean temper, but if you know me, I ain't never hurt nobody.

Q. So you do have a mean temper and you acknowledge that?

A. Yes, sir, I got a mean temper and you know that, too, don't you?

Q. What did you tell your wife to tell Debbie if she wanted to?

A. To be honest, I don't remember.

Q. You just remember that it was some threatening message?

A. Yes, sir; I threaten everybody, even you and a lot of people, and when I get mad, that's just the way that I talk.

Q. Even though you loved her, you threatened her?

A. Yeah.

Q. Have you ever made any threats to anyone else, to anyone in the Social Services Department?

A. Yes.

1 might lose your temper and you weren't responsible?

2 A. I told him that if he had anything to say to me

3 that would make me mad, I said to just tell me and I'll get out

4 of here, but he was willing to sit down there and talk to me

5 about it, so I sat there and talked with him.

6 Q. And you were all three (3) sitting down at a desk

7 or something, right?

8 A. Yeah.

9 Q. And didn't you get up immediately and tell them

10 that "if you make me say something and I will lose my temper

11 and I'm not responsible for anything I do when I lose my temper?"

12 A. No, I didn't say it like that.

13 Q. What did you say?

14 A. I said, "don't make me mad." I said, "if you

15 don't want to talk to me, don't talk to me, but I want to tell

16 you my depinion of it," because my wife has -- she is about

17 ready to crack and that's all I got in this world is my wife

18 and my kids.

19 Q. Now, when you were driving, do you remember that

20 Sunday when you followed the Morrisons up---

21 A. ---yes, I do.

22 Q. And you were driving alongside of them?

23 A. Yes, sir.

24 Q. Yet, you loved your daughter?

25

A. Yes, sir.

Q. And you drove alongside of them on a high speed highway and kept even with that car?

A. Yes, sir.

Q. Didn't you think that was a dangerous condition?

A. No, it ain't dangerous.

Q. To look at them and to look to drive -- while you were driving to look over at a car like that?

A. No, I do that a lot of times.

Q. You do?

A. Yes, sir.

Q. And you don't consider that dangerous?

A. No, I don't.

Q. Why were you looking over at them?

MR. CORNWELL: (Interrupting)

Your Honor, he is going too far.

MR. HARTLEY:

Your Honor, he has testified that he loved his daughter and he cared for her and---

MR. CORNWELL: (Interrupting)

---I thought the man was charged with one particular crime and the Commonwealth seems to---

THE COURT: (Interrupting)

---I SUSTAIN THE OBJECTION.