

#1826

FEB - 1843

COMMONWEALTH

V.) Felony (rape)

McCHESNEY SMITH

J.

N. G.

Mar. 16

5 pro-
ceed

7
50

- 1 John Flick
- 2 Perry F. Soren
- 3 Wm. Kulng
- 4 Laurence Leind
- 5 J W. Macallister
- 6 C B Proffentage
- 7 W. F. Borten
- 8 J. M. Kramer
- 9 Grover L. Carpenter
- 10 H. Crebaugh
- 11 Leal L. Thompson
- 12 Geo. M. Thompson

Shiriff & Co.

Sum. Wit. 3.20

Dr. Jurg 1.50

4.70

COMMONWEALTH VS. mc chesney Smith

DESCRIPTION OF PRISONER

Last known address Bridgewater Va
Color col - Height 5-4 Eyes br - Hair black Weight 130
Marks _____
Age 47 Occupation farmer
Date of Trial March 16-1943
Result _____

DESCRIPTION OF PRISONER

COMMONWEALTH vs

McClellan

Last known address

Princeton, N.J.

Color

Red

Height

5-4

Eyes

Blue

Hair

Dark

Weight

150

Marks

Age

47

Occupation

Farmer

Date of Trial

March 16-1942

Result

Cross v. McCleskey Smith.
HWB

INSTRUCTION 3

The Court instructs the jury that, in arriving at their verdict in this case, they may consider in connection with all the other facts and circumstances of the case, the demeanor of the witnesses, their relationship to the parties, and their interest in the case.

John W. McCleary
Hans
Smith

INSTRUCTION 3

The Court instructs the jury that, in arriving at their verdict in this case, they may consider in connection with all the other facts and circumstances of the case, the demeanor of the witnesses, their relationship to the parties, and their interest in the case.

*Com. v. McCleskey Smith
HWP.*

INSTRUCTION 4

The Court instructs the jury that in order to constitute the crime of rape there must be penetration of the female organ by the male genital organ, and that this must be proved the same as any other fact in the case, but any penetration, however slight, is all that is necessary.

Wm. v. McGowan
Smith

INSTRUCTION

The Court instructs the jury that in order to constitute the crime of rape there must be penetration of the female organ by the male genital organ, and that this must be proved the same as any other fact in the case, but any penetration, however slight, is all that is necessary.

Com. v. McChesney Smith
HVB

INSTRUCTION NO. 12

The Court instructs the jury that the law presumes every person charged with crime to be innocent until the Commonwealth has established his guilt by evidence so strong, so clear and so conclusive that there is left in the minds of the jury no reasonable doubt as to his guilt. This presumption is an abiding presumption and goes with the accused through the entire case and applies at every stage thereof until repelled by proof. And in this connection the jury is instructed that it is never sufficient that the accused, upon speculative theory or conjecture, may be guilty, or that by preponderance of the testimony his guilt is more probable than his innocence; for until his guilt has been proved beyond all reasonable doubt (in the precise and narrow terms as charged in the indictment,) the presumption of innocence still applies, and they must acquit him.

Commonwealth v. [illegible]
[illegible]

INSTRUCTION NO. 2

The Court instructs the jury that the law presumes every person charged with crime to be innocent until the Commonwealth has established his guilt by evidence so strong, so clear and so conclusive that there is left in the minds of the jury no reasonable doubt as to his guilt. This presumption is an abiding presumption and goes with the accused through the entire case and applies at every stage thereof until repelled by proof. And in this connection the jury is instructed that it is never sufficient that the accused, upon speculative theory or conjecture, may be guilty, or that by preponderance of the testimony his guilt is more probable than his innocence; for until his guilt has been proved beyond all reasonable doubt in the precise and narrow terms as charged in the indictment, the presumption of innocence still applies, and they must acquit him.

TRIAL JUSTICE COURT

CRIMINAL

DOCKET NO.

5465
5865

COMMONWEALTH

V.)

McCHESNEY SMITH

2/25/43

GRAND JURY



Commonwealth of Virginia:
County of Rockingham, to-wit:

To the Sheriff of said County, Greeting:

You are hereby commanded, in the name of the Commonwealth of Virginia, to summon

Florence Washington and Green Williams

to appear before the Trial Justice Court of said County, sitting at **Harrisonburg, Virginia**,
in said County, on **25th** day of **February**, 19 **43**, at the hour of **2:30 P. M.**,
of that day to give evidence in behalf of **Commonwealth**

in the pending case of **Commonwealth**

v. **McChesney Smith**

Given under my hand this **25th** day of **February**, 19 **43**.

J. R. Donnelley
Clerk

Execution 2/20/43 By delivering a true copy

of the within summons to

Florence

Washington and Green

Williams

each in person. B. L. Travis Dep for
Sara W. Callender S. R.C.

Trial Justice Court

Docket No.

Commonwealth

V. { Witness Subpoena

McChesney Smith

In the Name of the Commonwealth of Virginia:

To the Sheriff of Rockingham County, Greeting:

You are hereby commanded to summon

Charity Temple and
Odessa Lee

to appear before the Judge of the Circuit Court of Rockingham County, at the Court House thereof,
at 9:30 o'clock, a. m., on the *16th* day of *March* 19*43*,
to testify and the truth to say in behalf of the Commonwealth against

McKenney Smith

who stands charged with and indicted for a felony ~~misdemeanor~~.

And this you shall not omit under penalty of £100. And have then and there this Writ.

Witness, J. ROBERT SWITZER, Clerk of our said Court, at the Court House, the *15th*
day of *March*, 19*43*, and in the 16^{*th*} year of the Commonwealth.

Laguarda H. Stoores, Clerk
Commonwealth's Attorney

executed 3/16/43 by delivering a true copy
of the within summon to Lehardy Temple
and Odessa Lee

each in person Sam H. Alexander
S.H.A.

1943
Mar. 16

McHenry Smith

Commonwealth

Commonwealth of Virginia:

To the Sheriff of Rockingham County, Greeting:

You are hereby commanded to summon

Florence Washington
+ Green Williams

to appear before the Judge of the Circuit Court of Rockingham County, at the Court House thereof,
at 9:30 o'clock, a. m., on the *9th* day of *March* 19 *43*,
to testify and the truth to say in behalf of the Commonwealth before the GRAND JURY

Mc Chesney Smith
who stands charged with a felony ~~misdemeanor~~.

And this you shall not omit under penalty of £100. And have then and there this Writ.

Witness, J. ROBERT SWITZER, Clerk of our said Court, at the Court House, the *6th*
day of *March* 19 *43*, and in the *167th* year of the Commonwealth.

J. Robert Switzer, Clerk

EXECUTED 3/6/43 IN THE COUNTY OF
ROCKINGHAM BY DELIVERING A TRUE
COPY OF THE WITHIN Sum.
TO Harriet Washington
IN PERSON.

Burkin Bookkin, Deb.
For S. H. Callender, S. H. C.

State .80

1943
Mar. 9

Corn

✓

Mr Chesney Smith

EXECUTED 3/6/43 IN THE COUNTY OF
ROCKINGHAM BY DELIVERING A TRUE
COPY OF THE WITHIN Sum.
TO Green. Williams
IN PERSON.

Burkin Bookkin, Deb.
For S. H. Callender, S. H. C.

In the Name of the Commonwealth of Virginia:

To the Sheriff of Rockingham County, Greeting:

You are hereby commanded to summon.....

Dr. A. C. Byers

to appear before the Judge of the Circuit Court of Rockingham County, at the Court House thereof,
at 9:30 o'clock, a. m., on the 16th day of Mar. 1943 to testify and the truth to
say in behalf of the Defendant in the prosecution of the Commonwealth against.....

Mc Chesney Smith

who stands charged with and indicted for a felony misdemeanor.

And this you shall not omit under penalty of £100. And have then and there this Writ.

Witness, J. ROBERT SWITZER, Clerk of our said Court, at the Court House, the 12th
day of Mar. 1943, and in the 16th year of the Commonwealth.

J. Robert Switzer, Clerk

The Channing Smith

In the Name of the Commonwealth of Virginia:
To the Sheriff of Rockingham County, Greeting:
Comd.

Edith Brown
p.d.

40

State

Mar. 16
1943

EXECUTED 3/12/43 IN THE COUNTY OF
ROCKINGHAM BY DELIVERING A TRUE
COPY OF THE WITHIN Summons
TO Edith Brown
IN PERSON.

Paul H. Walburn, Sec.

Paul H. Walburn, Sec.

In the Name of the Commonwealth of Virginia:

To the Sheriff of Rockingham County, Greeting:

You are hereby commanded to summon

Maurice Washington,
Gene Williams, Harry Temple &
E. E. Kiser

to appear before the Judge of the Circuit Court of Rockingham County, at the Court House thereof,
at 9:30 o'clock, a. m., on the *16th* day of *March* 19 *43*,

to testify and the truth to say in behalf of the Commonwealth against

Mc Chesney Smith

who stands charged with and indicted for a felony ~~misdemeanor~~.

And this you shall not omit under penalty of £100. And have then and there this Writ.

Witness, J. ROBERT SWITZER, Clerk of our said Court, at the Court House, the *13th*
day of *Mar.*, 19 *43*, and in the 16 *th* year of the Commonwealth.

J. Robert Switzer, Clerk

Executed 3/13/43 by delivering a true copy

of the within summons to Florence Washington,

Green Williams, Harry Tinsler &

E. E. Kiser

each in person. Berling Bodkin, Wm.
for S. H. Hallender, S. H. C.

State

Mar. 16

1943

\$1.60

✓
Mc Chesney Smith

Corn

In the Name of the Commonwealth of Virginia:

To the Sheriff of Rockingham County, Greeting:

You are hereby commanded to summon..... "Des" Lee, Arthur Wallace,

Charity Temple, Kate Temple, Janie
Anderson, ^{Strathey} G. I. Riddit, Mornie Strathey
Mrs. Lee Murray

to appear before the Judge of the Circuit Court of Rockingham County, at the Court House thereof,
at 9:30 o'clock, a. m., on the 16th day of Mar. 1943 to testify and the truth to
say in behalf of the Defendant in the prosecution of the Commonwealth against.....

Mc Chesney Smith

who stands charged with and indicted for a felony misdemeanor.—

And this you shall not omit under penalty of £100. And have then and there this Writ.

Witness, J. ROBERT SWITZER, Clerk of our said Court, at the Court House, the 13th
day of Mar. 1943, and in the 167th year of the Commonwealth.

J. Robert Switzer, Clerk

Mr Chesney Smith

ad.

Corn.

1943

Mar. 16

Executed 3/15/43 by delivering a true copy
of the within summons to the following:

James Anderson Stratton

each in person.

Bertie Bodkin Dep.
For S. H. Hallunder, S. R. C.

In the Name of the Commonwealth of Virginia:

To the Sheriff of Rockingham County, Greeting:

You are hereby commanded to summon.....

Rev. Foy

forthwith to appear before the Judge of the Circuit Court of Rockingham County, at the Court House thereof,
at 9:30 o'clock, a. m., on the *16* day of *March* 19 *43* to testify and the truth to
say in behalf of the Defendant in the prosecution of the Commonwealth against.....

Mc Crestney Smith

who stands charged with and indicted for a felony misdemeanor.

And this you shall not omit under penalty of £100. And have then and there this Writ.

Witness, J. ROBERT SWITZER, Clerk of our said Court, at the Court House, the *16th*
day of *March* 19 *43*, and in the *167* year of the Commonwealth.

J. Robert Switzer, Clerk

EXECUTED 3/6/43 IN THE COUNTY OF
ROCKINGHAM BY DELIVERING A TRUE
COPY OF THE WITHIN Summons

TO Rev. Foy
IN PERSON.

R. L. Fisher Dep for
Sam H. Callender S. R. C.

Mc Chestney Smith

ads

Com. of Virginia

3/10/43

Rev. Foy

The Commonwealth of Virginia, }
 Rockingham County, } To-wit
 To the Sheriff of Said County:

Whereas, Lawrence H. Hoover of said County, has this day
 made complaint and information on oath before me, J. R. Donnelly, Clerk
 of the said County, that McChesney Smith
 on the 16th day of February, 1943, in the said County, Did unlawfully and
feloniously in and upon one Florence Washington did make an assault, and
her, the said Florence Washington, by force and arms, and against her will,
did carnally know and abuse, against the peace and dignity of the
Commonwealth of Virginia.

These are therefore, in the name of the Commonwealth of Virginia, to command you forthwith to apprehend and bring
 before the Trial Justice of the said County, the body of the said
McChesney Smith

to answer the said complaint and to be further dealt with according
 to law.

Given under my hand this 17th day of February, 1943.

J. R. Donnelly
Clerk T. J. or J. P.

Memo. of Commonwealth Witnesses:

Name	Address
<u>Florence Washington</u>	<u>Bridgewater, Virginia</u>
<u>Green Williams</u>	<u>" "</u>
<u> </u>	<u> </u>
<u> </u>	<u> </u>
<u> </u>	<u> </u>

JUDGEMENT

February 25-1943

Upon the hearing of the within charge,

the defendant is held to await the action of

the next grand

Jury of Rockingham

County, Va.

Fine	-	-	-	-	-	\$
Issuing Justice's Fee	-	-	-	-	-	\$ 1.00
Clerk's Fee	-	-	-	-	-	\$.25
Trial Justice Fee	-	-	-	-	-	\$ 2.00
Arrest and Mileage	-	-	-	-	-	\$
Summoning Witness	-	-	-	-	-	\$ 1.00
Witness	-	-	-	-	-	
Attendance and Mileage	-	-	-	-	-	\$ 2.40
Commonwealth's Attorney	-	-	-	-	-	\$ 5.00
Jail Fees	-	-	-	-	-	\$.50
Total	-	-	-	-	-	\$ 12.15

S. C. Moore
Trial Justice

S. S.

Trial Justice Court

Criminal Docket No. 5865

Commonwealth

vs.

{ Arrest Warrant

McChesney Smith

Executed the within warrant by arresting and delivering the body of

McChesney Smith

before in jail

this 17th day of

February, 19 ~~43~~

E. C. Kiser

Officer's Mileage

Miles travelled by officer - -

Miles carried prisoner - -

Total mileage - -

Not guilty

2/25/43 @ 2:30 P.M.

STATE OF VIRGINIA—COUNTY OF ROCKINGHAM, TO-WIT:

I, _____, in and for the County of Rockingham, State of _____, T. J. or J. P. or Bail Commissioner of Virginia, do hereby certify that _____ and _____

_____ as his suret _____, have this day acknowledged themselves indebted to the Commonwealth of Virginia in the sum of _____ dollars (\$ _____) as to

which they severally waived their exemption, to be made and levied of their goods and chattels, yet upon this condition: That the said

_____ shall appear before the Trial Justice Court of Rockingham County at

_____ on the _____ day of _____, 19 _____, at _____ o'clock A. M., and not depart hence without leave of said Court, and at such other time or times to which the proceedings may be continued or further heard, and before any court or judge hereafter having or holding any proceedings in connection with said charge, and then and there answer the Commonwealth of Virginia concerning the within charge until the same is finally disposed of, then this recognizance shall be null and void, otherwise to remain in full force and effect.

Given under my hand this, the _____ day of _____, 19 _____.

T. J. or J. P. or Bail Commissioner

Com. v. McChesney Smith
Nov 23

INSTRUCTION 1

The Court instructs the jury that in order to constitute the offence of rape, force must be used. It is a necessary ingredient of the crime; and that force must be such as may reasonably be supposed adequate to overcome the physical resistance of the woman upon whom the rape is charged to have been committed, taking into consideration the relative strength of the parties and other circumstances of the case, such as making outcries and giving alarm.

Wm. V. Buchanan Smith
Hwy

INSTRUCTION 1

The Court instructs the jury that in order to constitute the offence of rape, force must be used. It is a necessary ingredient of the crime; and that force must be such as may reasonably be supposed adequate to overcome the physical resistance of the woman upon whom the rape is charged to have been committed, taking into consideration the relative strength of the parties and other circumstances of the case, such as making outcries and giving alarm.

Com. v. McCleary

Smith.

1893

INSTRUCTION 21

The Court instructs the jury that they may convict the defendant on the evidence of the prosecuting witness, Florence Washington, alone, although such evidence may be uncorroborated in whole or may be corroborated only in part, if the jury believe the defendant guilty beyond all reasonable doubt, from such evidence; and the jury are instructed that they may convict the defendant on the evidence of the prosecuting witness, Florence Washington, if they believe from such evidence and the corroborating facts and circumstances in the case, if such facts and circumstances appear, that the defendant is guilty beyond all reasonable doubt, although the defendant has testified in direct contradiction to the testimony of the prosecutrix, Florence Washington.

Smith
1903
Cm. v. McGowan

2 INSTRUCTION

of the prosecutrix, Florence Washington.
the defendant has testified in direct contradiction to the testimony
that the defendant is guilty beyond all reasonable doubt, although
circumstances in the case, if such facts and circumstances appear,
they believe from such evidence and the corroborating facts and
the evidence of the prosecuting witness, Florence Washington, if
and the jury are instructed that they may convict the defendant on
defendant guilty beyond all reasonable doubt, from such evidence;
whole or may be corroborated Any in part, if the jury believe the
ington, alone, although such evidence may be uncorroborated in
fendant on the evidence of the prosecuting witness, Florence Wash-
The Court instructs the jury that they may convict the de-

State.

Prisoners Report of Rockingham County Jail

Name McChesney Smith Date Arrested 2/17/43
Date Bailed Out _____ Again Placed in Jail _____
Male ☒ Female _____ Age 47 Race Colored Single _____ Married ☒ Divorced _____
Home Address Bridgewater Va
Place of Birth _____ If Foreign Born _____ Time in U. S. _____ Years _____ Months _____
Physical Condition _____ Is Person a Drunkard? _____ or Drug Victim? _____
Can Read? ☒ Write? ☒ Occupation Labor Offense Committed Rape
City Ordinance _____ State _____ Held for Grand Jury _____
Held for Trial 3/16/43 Sentence 5 Years _____ Months _____
Fine _____ Costs _____ Time in Jail _____ Held for Penitentiary _____
Held as Insane _____ Held for Other Authorities _____
Behavior _____ Date of Discharge _____

DESCRIPTION OF PRISONER

Height 5:4 Weight 147 Color of Eyes Brown Color of Hair Black
Teeth Marks _____ Hand Marks _____
Arm Marks _____ Face Marks _____
Shoulder Marks _____ Back Marks _____
Thigh Marks _____ Knee Marks _____
Calf of Leg Marks _____ Foot Marks _____
Fingers Off _____ Mole Marks _____
Neck Marks _____ Brest Marks _____
Left Arm Marks _____ Right Arm Marks _____
Left Leg Marks _____ Right Leg Marks _____
Fine After Prisoner at Jail; Amount to State \$ _____ Amount to City \$ _____

Date Reported

Deputy and Jailor

Sheriff

E. E. Kiser.

11
16
27

Prisoners Report of Rockingham County Jail

Name Michael Anthony Smith
Date Arrested 2/17/43
Date Bailed Out _____
Again Placed in Jail _____
Male ☒ Female _____
Age 27 Race Caucasian Single ☒ Married _____
Divorced _____
Home Address Bridgewater Va
Place of Birth _____
If Foreign Born _____ Time in U. S. _____ Years _____ Months _____
Physical Condition _____
Is Person a Drunkard _____ or Drug Victim _____
Can Read? ☒ Write? ☒
Occupation Police Offense Committed _____
City of Residence _____ State _____
Held for Grand Jury _____
Held for Trial 3/10/43 Sentence 5 Years _____ Months _____
Fine _____ Costs _____
Time in Jail _____ Held for Penitentiary _____
Held as Insane _____
Held for Other Authorities _____
Date of Discharge _____ Behavior _____

DESCRIPTION OF PRISONER

Height 5'4" Weight 147 Color of Eyes Brown Color of Hair Black
Teeth Marks _____
Hand Marks _____
Arm Marks _____
Shoulder Marks _____
Back Marks _____
Foot Marks _____
Mole Marks _____
Birth Marks _____
Left Arm Marks _____
Right Arm Marks _____
Left Leg Marks _____
Right Leg Marks _____
Fine After Trial at Jail Amount to State \$ _____
Amount to City \$ _____

Date Reported _____
Deputy and Jailor _____
Sheriff _____

E. E. Kerner

11
10
1/4

We the jury find
the accused guilty
^{or charged in the indictment}
of rape, and fix
his punishment to
the penitentiary for
(5) five years.

Signed
G. C. Carpenter
Foreman

Mr. the young friend

the account of the

of paper, and for

his friend's account to

the present day for

(2) time years.

Signed

L. B. B. B.

Thomas

IN THE CIRCUIT COURT OF ROCKINGHAM COUNTY, VIRGINIA

COMMONWEALTH)

v.)

McCHESNEY SMITH)

CHARGE TO JURY

If you find the accused, McChesney Smith, guilty of rape, as charged in the indictment, you will say so and fix his punishment at death, or by confinement in the penitentiary for life, or for any term not less than five years.

If you do not find the accused guilty of rape, as charged in the indictment, but find him guilty of attempted rape, as therein charged, then you will say so and fix his punishment at death, or, in your discretion, by confinement in the penitentiary for life, or for any term not less than three years.

If you do not find the accused guilty of either rape or attempted rape, as charged in the indictment, but find him guilty of assault and battery, as also therein charged, then you will say so and fix his punishment by confinement in jail for a period not exceeding twelve months, or by a fine not exceeding five hundred dollars, or by both such fine and imprisonment.

If you find him not guilty, you will say so and no more.

COMMONWEALTH

v.)

Charge to Jury

McCHESNEY SMITH

COMMONWEALTH

v.

McCHESNEY SMITH

CHARGE TO JURY

IN THE CIRCUIT COURT OF ROCKINGHAM COUNTY, VIRGINIA

If you find the accused, McChesney Smith, guilty of rape, as charged in the indictment, you will say so and fix his punishment at death, or by confinement in the penitentiary for life, or for any term not less than five years.

If you do not find the accused guilty of rape, as charged in the indictment, but find him guilty of attempted rape, as therein charged, then you will say so and fix his punishment at

death, or, in your discretion, by confinement in the penitentiary for life, or for any term not less than three years.

If you do not find the accused guilty of either rape or attempted rape, as charged in the indictment, but find him guilty of assault and battery, as also therein charged, then you will say so and fix his punishment by confinement in jail for a period not exceeding twelve months, or by a fine not exceeding five hundred dollars, or by both such fine and imprisonment.

If you find him not guilty, you will say so and no more.

COMMONWEALTH OF VIRGINIA,

COUNTY OF ROCKINGHAM, to-wit:

IN THE CIRCUIT COURT OF SAID COUNTY:

The grand jurors of the Commonwealth of Virginia, in and for the body of the County of Rockingham, and now attending the Circuit Court of said County, at its February term, 1943, upon their oaths do present that McChesney Smith, on or about the 16th day of February, 1943, in said County, with force and arms, in and upon one Florence Washington, a female over the age of sixteen years, to-wit, of the age of seventy-two years, violently, unlawfully and feloniously did make an assault; and her, the said Florence Washington, then and there, to-wit, on the day and year aforesaid, in the County aforesaid, unlawfully and feloniously did ravish and carnally know, against her will and by force, against the peace and dignity of the Commonwealth of Virginia.

This indictment is found upon the testimony of Florence Washington and Green Williams, witnesses sworn in Court and sent before the grand jury to give evidence.

RAPE

COMMONWEALTH

v.) Indictment

McCHESNEY SMITH - N.B.

Mar-16

Felony:

February Term, 1943.

A True Bill:

Foreman

Witnesses:

1. Florence Washington
2. Green Williams

Lawrence H. Hoover

Commonwealth's Attorney.