Present: Hudgins, C. J., Eggleston, Spratley, Buchanan, Smith and Whittle, JJ.

NOAH THOMAS LEAR

-v- Record No. 4118.

OPINION BY JUSTICE C. VERNON SPRATLEY, Staunton, Va., Sept. , 1953.

COMMONWEALTH OF VIRGINIA

FROM THE CIRCUIT COURT OF ROCKINGHAM COUNTY;
Hamilton Haas, Judge.

Noah Thomas Lear was tried in the Circuit Court of Rockingham County, Virginia, upon an indictment which charged that he, "on or about the 17th day of June, 1951, in said County, with force and arms, in and upon one Ogretta Jane Dove, a female child under the age of sixteen years, to-wit, of the age of thirteen (13) years, unlawfully and feloniously did make an assault, and her, the said Ogretta Jane Dove, unlawfully and feloniously did carnally know and abuse, * * *." Code of Virginia, 1950, §18-54. The accused pleaded not guilty, and undertook to prove an alibi. The jury found him "guilty as charged in the indictment," and fixed his punishment at seven years in the penitentiary. We granted writ of error.

The assignments of error relate only to the granting and refusal of instructions. Before considering them, it will be help-

Present: Hudgins, C. J., Eggleston, Spratley, Buchanan, Smith and Whittle, JJ.

NOAH THOMAS LEAR

OPINION BY JUSTICE C. VERNON SPRATLEY, September 1, 1983.

-v- Record No. 811818. Staunton, Va., Sept. 1, 1983.

COMMONWEALTH OF VIRGINIA

FROM THE CIRCUIT COURT OF ROCKINGHAM COUNTY:
Hamilton Hass, Judge.

Noah Thomas Lear was tried in the Circuit Court of Rockingham County, Virginia, upon an indictment which charged that, "on or about the 17th day of June, 1981, in said County, with force and arms, in and upon one Ordreffa Jane Dove, a female child under the age of sixteen years, to-wit, of the age of fifteen (13) years, unlawfully and feloniously did make an assault, and her, the said Ordreffa Jane Dove, unlawfully and feloniously did carnally know and abuse; * * *." Code of Virginia, 1950, §18-2.4. The accused pleaded not guilty, and undertook to prove an alibi. The jury found him "guilty as charged in the indictment," and fix-ed his punishment at seven years in the penitentiary. We granted him of error.

The assignments of error relate only to the grounds and reasons of instructions. Before considering them, it will be help-

ful to consider the evidence which is certified to us in narrative form. It is necessary to set it out in more detail than would otherwise be required, since the accused in support of his defense of alibi contended in argument that the testimony of the prosecuting witness and her sister is inherently incredible.

Ogretta Jane Dove, the prosecutrix, did not arrive at the age of fourteen years until June 30, 1951. At the time of the offense charged, she was, therefore, but thirteen years of age. One of eleven children, she lived at the home of her parents in Bergton, in Rockingham County, Virginia. She attended school, being advanced as far as the seventh grade. Noah Thomas Lear, the accused, lived at the home of Mr. and Mrs. Willard Ritchie about one-half a mile from Bergton. In June, 1951, and for certain periods before that time, Lear worked at the home of Jess Dove, the father of the prosecutrix, as a farm laborer.

Ogretta said she first became acquainted with Lear in December, 1950; but that she came to know him better in 1951, when he "courted her some." She testified that on Sunday, June 17, 1951, Lear, together with a companion, Guy Dove, came to her home; that the rest of her family except her sister, Katherine, then sixteen years of age, were visiting that day at the home of relatives in near-by West Virginia; that Lear and Guy Dove came

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Oretta said she first became acquainted with Lear in December, 1950; but that she came to know him better in 1951, when he "courted her some." She testified that on Sunday, June 17, 1951, Lear, together with a companion, Guy Dove, came to her home; that the rest of her family except her sister, Katherine, then sixteen years of age, were visiting that day at the home of relatives in near-by West Virginia; that Lear and Guy Dove came

into the house while she and her sister, Katherine, were in their bedroom combing their hair; that Katherine and Guy Dove went out on the porch while she and Lear remained in the house; and that later while she and Lear were in the kitchen, Lear picked her up, carried her into her mother's bedroom, and there had sexual intercourse with her. She consented, made no outcry, nor any subsequent complaint. Lear and Guy Dove left, and the two girls then went to church.

Ogretta further testified, without objection, that Lear had sexual relations with her upon occasions after that, that specifically on July 8, 1951, he tore the screen off the window of the room where she was sleeping with Katherine and some of her other sisters; that he did not bother her at first, but lay across the foot of her bed; that she and Katherine got him out on the porch; and that when her sister went back into the house, Lear had "relations" with her on the porch.

Ogretta also testified that as a result of the intercourse on June 17, 1951, she bled and some of the blood got on her underclothing and on the bedclothing, adding that she had been menstruating that day; but no one seemed to notice the blood. She said that she first learned that she was pregnant in July, 1951, when she

info the house while she and her sister, Katherine, were in their bedroom combing their hair: that Katherine and Guy Dove went out on the porch while she and Jess remained in the house: and that Jessie "talked with her on the porch.

Odriaffa also testified that as a result of the intercourse on June 17, 1921, she died and some of the blood got on her nuger-clothing and on the bedclothing, giving that she had been menstru-ting: but no one seemed to notice the blood. She said that she first learned that she was pregnant in July, 1921, when she

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missed her menstrual period. She stopped school in February, 1952, because of the approaching birth of her child. A girl was born to her on April 11, 1952. She testified positively that she had not kept company with any other boy or man; that Lear was responsible for her pregnancy; and that he is the father of her child. She added that Lear left the community in August, 1951, and had nothing to do with her after that time.

No other witness testified as to the actual fact of intercourse with the prosecutrix. There was some corroboration by the mother and sister of Ogretta upon incidental and collateral matters. The mother said she noticed the accused "talking to Ogretta a lot." She said she was absent from home on June 17, 1951, with her husband and children, except Ogretta and Katherine, and that she returned late in the evening; but noticed nothing unusual about her bed and didn't bother about the other beds in the house. She and her daughter, Katherine, said they never knew Ogretta to have a date with any boy or man except Lear. Katherine corroborated Ogretta's testimony that the accused and Guy Dove came to their home on June 17, 1951. She heard Ogretta and the accused talking in her mother's bedroom as she sat on the porch with Guy Dove. She added that they remained in the bedroom about

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No other witness testified as to the actual fact of intercourse with the prosecutrix. There was some corroboration by the mother and sister of Odreffa upon incidental and collateral matters. The mother said she noticed the accused "talking to Odreffa a lot." She said she was absent from home on June 17, 1951, with her husband and children, except Odreffa and Kafnerine, and that she returned late in the evening; but noticed nothing unusual about her bed and didn't notice about the other beds in the house. She and her daughter, Kafnerine, said they never knew Odreffa to have a date with any boy or man except Leah. Kafnerine corroborated Odreffa's testimony that the accused and Guy Dove came to their home on June 17, 1951. She heard Odreffa and the accused talking in her mother's bedroom as she sat on the porch with Guy Dove. She added that they remained in the bedroom about

half an hour, and when they came out, she noticed nothing unusual. Katherine also remembered the occasion when Lear came into their home through the window of her mother's room and went to sleep on the bed of Ogretta. She did not recall that Ogretta left the house on that occasion, and both she and Ogretta were somewhat confused as to whether the exact date was July 8, 1951.

Mrs. Willard Ritchie testified that the accused left her home on June 16, 1951, with his brother, Charles Lear, and two friends, Samuel Byers and Bobby Smoot in Charles Lear's car, taking his belongings and saying that he was going to the home of his parents at Conicsville, Virginia. He was not at her home on June 17, 1951, and she did not know where he was that day. He returned to her home July 1, 1951, and stayed there three weeks, during which time he worked for the father of the prosecutrix. He then left and returned in November for a short stay.

Byers, Charles Lear and Smoot were called as witnesses for the defendant. They testified that they went to Bergton on June 16th, and took Lear to his parents' home at Conicsville. Each said that they were with the accused all of the following day. The certificate of evidence tells us that they "were in great confusion as to Lear's and their own whereabouts on June 17th. While they all testified they were with him, they testified they were

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with him at various places." Byers said that he and Smoot stayed in the home of the accused the night of June 16th, and that both of them were with him at Conicsville all of June 17th. Charles Lear said that they remained at Bergton about half an hour on June 16th, and then took Byers to his own home at Mt. Jackson, Virginia. Smoot said that he "knew that Lear remained at Conicsville all of June 17th."

The accused testified that he worked for the father of the prosecutrix until June 16, 1951, during which time he lived at the Ritchie residence; that on June 16th, he went from Bergton to Conicsville with Byers, Charles Lear and Smoot; and that on the following day he went to New Market with Smoot and Charles Lear, and did not return to Bergton until July 1, 1951. He stated that he was at the home of the prosecutrix on May 27, 1951, with Guy Dove, but was not there on July 8, 1951. He denied having sexual relations with the prosecutrix at any time.

Guy Dove said that the only time he was with the accused at the home of the prosecutrix was on the morning of May 27, 1951; and that he noticed nothing out of the ordinary on that occasion.

There are two assignments of error. One relates to the giving of an instruction at the request of the Commonwealth, and the other to the refusal of the trial court to grant an instruction

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There are two assignments of error. One relates to the giving of an instruction at the request of the Commonwealth, and the other to the refusal of the trial court to grant an instruction

requested by the accused. Instruction No. 4, the only one of the six given the jury to which accused objected, reads as follows:

"The Court instructs the jury that if you believe from the evidence beyond a reasonable doubt that the defendant, Noah Thomas Lear, had sexual intercourse with Ogretta Jane Dove at any time before she became 14 years of age, you shall find the defendant guilty regardless of whether or not force was used by him in the accomplishment of such act and regardless of whether or not such act was done with or without her consent, and shall fix his punishment in accordance with the charge to the jury."

The instruction which was refused reads:

"The Court instructs the jury that before the defendant can be convicted of the offense charged in the indictment, they must be satisfied from all the evidence beyond a reasonable doubt that Ogretta Jane Dove was on the 17th day of June, 1951, under the age of 14 years, that on said date the defendant had sexual intercourse with her, and the Court further instructs the jury that unless they believe that the offense charged took place on or about said date, then they should find the defendant not guilty."

While the record shows an exception was noted in each

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While the record shows an exception was noted in each

instance, it does not show that any specific ground of objection was assigned to either ruling of the trial court as required by Rule of Court 1:8. The accused, however, here contends that the grounds for the objections made are apparent from the language of the instruction refused.

The accused specifically argues that the words "at any time" in instruction No. 4 referred to a vague and indefinite date and could have been considered by the jury as applying to the alleged offense of July 8, 1951, for which he was not indicted. He, therefore, contends that the jury might have believed him guilty only of the act charged as of July 8th, and, in that event, he was subject to be convicted only for a lesser offense than that charged, because the prosecutrix was then between fourteen and sixteen years of age. He overlooks the qualifying clause, "before she became fourteen years of age," which immediately follows the words "at any time," and the fact that the only offense charged against him is that of June 17th. The finding of the jury that the accused was "guilty as charged in the indictment" shows that they fully comprehended the plain, simple and precise language of the instruction read as a whole.

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The accused specifically argues that the words "at any time" in instruction No. 4 referred to a very sure and indefinite time" in instruction No. 4 referred to a very sure and indefinite time and could have been considered by the jury as applying to the alleged offense of July 8, 1951, for which he was not indicted. He, therefore, contends that the jury might have believed him guilty only of the act charged as of July 8th, and, in consequence that they fully comprehended the plain, simple and precise language of the instruction read as a whole.

offense then that charged, because the prosecutrix was then permeen fourteen and sixteen years of age. He overlooks the duplicity clause, "before she became fourteen years of age," which immediately follows the words "at any time," and the fact that the only offense charged against him is that of June 17th. The finding of the jury that the accused specifically argues that the words "at any

As a general rule, time is not a material ingredient of the offense of rape, and it need not be proved precisely as alleged, it being sufficient in prosecutions for the offense on females under the age of consent to prove the commission of the offense on any day when the female was still under the statutory age. All that is necessary is that the evidence, in its entirety, show that the crime charged was committed within the period when the female was under that age. 75 C. J. S., Rape, §45b (3), page 515; 44 Am. Jur., Rape, §53, page 931.

This is a case of statutory rape. The question of the consent of the prosecutrix is immaterial. In Virginia, carnal knowledge of a female child under the age of sixteen years constitutes rape, whether or not the act be accomplished against her will, or with or without her consent. The degree of punishment to be determined by the jury depends upon the peculiar circumstances of the case and the particular age of the female. Code of Virginia, 1950, §18-54.

In prosecutions for rape, an accused may be convicted upon the sole and uncorroborated testimony of the prosecutrix, and this is true even though the prosecutrix be a child of tender years. The weight to be given to her testimony is a question ex-

As a general rule, time is not a material ingredient of the offence of rape, and it need not be proved precisely as alleged, if period sufficient in prosecution for the offence on females under the age of consent to prove the commission of the offense on any day when the female was still under the statutory age. All that is necessary is that the evidence, in its entirety, show that the crime charged was committed within the period when the female was under that age. 17 C. L. S., Rape, §42b (3), page 215; 44 Am. Jur., Rape, §23, page 137.

This is a case of statutory rape. The question of the consent of the prosecutrix is immaterial. In Virginia, certain knowledge of a female child under the age of sixteen years constitutes rape, whether or not the act be accomplished against her will, or with or without her consent. The degree of punishment to be determined by the jury depends upon the peculiar circumstances of the case and the particular age of the female. Code of Virginia, 1920, §18-24.

In prosecutions for rape, as accused may be convicted upon the sole and uncorroborated testimony of the prosecutrix. And this is true even though the prosecutrix be a child of tender years. The weight to be given to her testimony is a question ex-

clusively for the jury. Givens v. Com., 29 Gratt. (70 Va.) 830, 835; Stump v. Com., 137 Va. 804, 810, 119 S. E. 72; Addington v. Com., 161 Va. 975, 977, 170 S. E. 565; King v. Com., 165 Va. 850, 856, 183 S. E. 173.

See Bailey v. Com., 82 Va. 107, 114; Smith v. Com., 85 Va. 924, 927, 9 S. E. 148; Glover v. Com., 86 Va. 382, 10 S. E. 420.

The evidence is conflicting, and as to the fact of sexual intercourse it may be said that the verdict is supported only by the testimony of the prosecutrix, which is corroborated upon certain incidental and collateral matters. However, there is no denial that the prosecutrix was under fourteen years of age until her birthday on June 30, 1951. The indictment charges only one act, an offense committed "on or about the 17th day of June, 1951." This was the only offense accused was called upon to defend. No evidence of any other offense prior to the fourteenth birthday of the prosecutrix was submitted. No objection was made to the admission of testimony of subsequent acts of intercourse, and its admission is not here contended to be error. It is conceded that it was offered as corroboration of the intimacy and familiarity of the parties. Neither the indictment nor the instructions cover any offense occurring after the prosecutrix became fourteen years

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of age. Moreover, it is stated in the brief of the accused that "Lear was tried for only an act taking place on June 17, 1951."

We conclude, therefore, that there was no error in the granting of instruction No. 4. Nor was there error in refusing the instruction requested by accused. This instruction is repetitious in part and confusing and misleading in other parts. The jury had already been instructed that the offense must be proved "beyond a reasonable doubt." The age of Ogretta Jane Dove was not in question. There was no attempt to contradict the evidence that she was under the age of fourteen years on the 17th day of June, 1951. Putting her age in the form of a question to the jury was misleading. The instruction first told the jury that they "must be satisfied" that the accused had sexual intercourse with the prosecutrix on June 17, 1951, and in a following clause told them that unless they believed "that the offense charged took place <u>on or about said date</u>, then they should find the defendant not guilty." (Italics added.) The two statements were confusing and misleading, and the first in conflict with instruction No. 4.

We have repeatedly held that an instruction which tends to mislead or confuse the jury, or which is contradictory of an instruction already given should be refused. 10 M. J., Instructions,

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We have repeatedly held that an instruction which tends to mislead or confuse the jury, or which is contradictory of an instruction already given should be refused. 10 M. J., Instructions,

§27, page 228, and cases cited. Instruction No. 4 adequately instructed the jury as to the law applicable.

No request was made for an instruction relating to the defense of alibi.

In Draper v. Com., 132 Va. 648, 663, 111 S. E. 471, 475; Fenner v. Com., 152 Va. 1014, 1020, 148 S. E. 821; and Noblett v. Com., 194 Va. 241, 248, 72 S. E. 2d, 241, we approved the following statement from the text in 2 Am. & Eng. Enc. (2d Ed.), page 56:

"The true doctrine seems to be that where the State has established a prima facie case and the defendant relies upon the defense of alibi, the burden is upon him to prove it, not beyond a reasonable doubt, nor by a preponderance of the evidence, but by such evidence, and to such a degree of certainty, as will, when the whole evidence is considered, create and leave in the mind of the jury a reasonable doubt as to the guilt of the accused."

While it is contended before us that the testimony of the prosecutrix and her sister, Katherine Dove, was such as to be inherently incredible, there is no assignment of error that the verdict is contrary to the evidence or without evidence to support it. There is no merit in the contention. The facts related by the witnesses are not so extraordinary and improbable

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Lest v. Com., Record No. 4118.

§57, page 558, and cases cited. Instruction No. 4 adequately instructed the jury as to the law applicable.

No request was made for an instruction relating to the defense of alibi.

In Dreher v. Com., 135 Va. 848, 863-111 S. E. 417, 412; Eanner v. Com., 125 Va. 1014, 1050, 148 S. E. 857; and Moplett v. Com., 194 Va. 341, 348, 73 S. E. 54, 341, we approved the following instruction from the text in 5 Am. & Eng. Enc. (2d Ed.), page 20:

"The true doctrine seems to be that where the State has established a prima facie case and the defendant relies upon the defense of alibi, the burden is now him to prove it, not beyond

as to deny belief, nor contrary to human experience. The question of the credibility of the witnesses was one for the jury to determine, and they were adequately instructed to that effect. No question of corroboration is involved.

The accused has had a fair trial. The jury was fully and correctly instructed. The evidence was sufficient to support the verdict, and the judgment must be affirmed.

Affirmed.

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No question of corroboration is involved.

The accused has had a fair trial. The jury was fully and correctly instructed. The evidence was sufficient to support the verdict, and the judgment must be affirmed.

Affirmed.

Sup. Ct. of App. Form 9—2M—3-28-51

1/24/53.

VIRGINIA:

In the Supreme Court of Appeals held at the Court-Library Building in the City of Richmond on Thursday the 22nd day of January, 1953.

Noah Thomas Lear, Plaintiff in error,

against

Commonwealth of Virginia, Defendant in error.

From the Circuit Court of Rockingham County.

Upon the petition of Noah Thomas Lear a writ of error and supersedeas is awarded him to a judgment rendered by the Circuit Court of Rockingham County on the 25th day of August, 1952, in a prosecution by the Commonwealth against the said petitioner, for a felony; but said supersedeas is not to operate to discharge the petitioner from custody, if in custody, or to release his bond, if out on bail.

A copy, Teste:

H G Gibson
Clerk

8/413 1/24/53

November 21, 1952

In Re: Commonwealth
vs.
Noah Thomas Lear

Hon. Lemuel F. Smith, Justice
Supreme Court of Appeals of Virginia
Charlottesville, Virginia

Dear Sir:

At the request of all counsel in the above case, I am transmitting herewith, by Mr. Harry Blatt, of counsel for appellant, the original record in the above case.

Yours very truly,

J. Robert Switzer, Clerk

JRS:mb

November 21, 1952

In Re: Commonwealth
vs.
Noah Thomas Lest

Hon. Lemuel P. Smith, Justice
Supreme Court of Appeals of Virginia
Charlottesville, Virginia

Dear Sir:

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JRS:mb

VIRGINIA: IN THE CIRCUIT COURT OF ROCKINGHAM COUNTY

COMMONWEALTH OF VIRGINIA

v.) Fel - Bail Bond

NOAH THOMAS LEAR

STATE OF VIRGINIA, COUNTY OF ROCKINGHAM, to-wit:

BE IT REMEMBERED, that on the 10th day of March, 1953, NOAH THOMAS LEAR, principal, and GEORGE W. LINDAMOOD, surety, who justified to his sufficiency on oath before me, came before me, Harry Blatt, Bail Commissioner of the said County of Rockingham, in the State of Virginia, and acknowledged themselves, jointly and severally, to be held and firmly bound unto and indebted to the Commonwealth of Virginia in the just and full sum of TWO THOUSAND FIVE HUNDRED DOLLARS ($2,500.00) to be levied of their respective goods and chattels, lands and tenements, to the use of the Commonwealth of Virginia to be rendered, to the payment whereof well and truly to be made they bound themselves, their heirs and personal representatives, jointly and severally, and they each severally waived their homestead exemption to this recognizance; yet upon this condition:

THAT WHEREAS, the said Noah Thomas Lear was, on the 22nd day of January, 1953, granted a Writ of Error and Supersedeas by the Supreme Court of Appeals of Virginia to the judgment pronounced in the Circuit Court of Rockingham County, Virginia against him on the 25th day of August, 1952, whereby said defendant was sentenced, pursuant to the verdict of the jury to confinement in the Penitentiary of this State for a term of seven years, and said defendant having been committed to the said Penitentiary of this State;

AND WHEREAS, on the 7th day of March, 1953, it was ordered by said Circuit Court of Rockingham County that said Noah Thomas Lear be let to bail pending his said appeal in the foregoing sum,

VIRGINIA: IN THE CIRCUIT

COURT OF ROCKINGHAM COUNTY

COMMONWEALTH OF VIRGINIA

v.) Fel

NOAH THOMAS LEAR

Bail Bond $2500.00

For appearance before the Circuit Court of Rockingham County, Virginia, ten days after affirmation by Supreme Court of Appeals of Virginia, or ten days after case remanded by said appellate court.

Harry Blatt, Bail Commissioner

his recognizance to be conditioned as set out in said order;

NOW, THEREFORE, if the said Noah Thomas Lear shall make his personal appearance before the Circuit Court of Rockingham County, Virginia, if the sentence of said Court be affirmed by the Supreme Court of Appeals of Virginia, within ten days from the day on which said sentence is affirmed, to abide by the sentence pronounced against him by said Court on the 25th day of August, 1952; or, if said case be remanded to the Circuit Court of Rockingham County, Virginia, then if the said Noah Thomas Lear shall make his personal appearance before said Circuit Court of Rockingham County, Virginia, within ten days from the day on which said case is remanded, to answer the Commonwealth of Virginia concerning the indictment of the Special Grand Jury of Rockingham County, Virginia, on June 30, 1952, for statutory rape of Ogretta Jane Dove, a female child thirteen years of age, whereof said Noah Thomas Lear would stand charged, and at such other time or times to which said proceedings may be continued or further heard, and before any court or judge thereafter having or holding any proceedings in connection with the said indictment, and shall not depart thence without the leave of the said Court, the said obligation to remain in full force and effect until the said indictment is finally disposed of or until it is declared void by order of a competent court; and in either event, said appearance to be made at the Court House of said County at Harrisonburg, Virginia, then the foregoing recognizance shall be null and void; otherwise to remain in full force and effect.

GIVEN under my hand this 10th day of March, 1953.

Harry Blatt
Bail Commissioner

VIRGINIA: IN THE CIRCUIT

COURT OF ROCKINGHAM COUNTY

COMMONWEALTH OF VIRGINIA

v.) Fel

NOAH THOMAS LEAR

Bail Bond $2500.00

For appearance before the Circuit Court of Rockingham County, Virginia, ten days after affirmation by Supreme Court of Appeals of Virginia or ten days after case remanded by said appellate court.

Harry Blatt, Bail Commissioner

VIRGINIA: IN THE CIRCUIT COURT OF ROCKINGHAM COUNTY

COMMONWEALTH OF VIRGINIA

V.) Felony - Statutory Rape

NOAH THOMAS LEAR

ORDER GRANTING BAIL

This 7th day of March, 1953, came the Attorney for the Commonwealth, and came also the attorneys for the defendant, Noah Thomas Lear, and it appearing that the defendant was, on the 22nd day of January, 1953, granted a Writ of Error and Supersedeas by the Supreme Court of Appeals of Virginia to the judgment pronounced in this case by the Court on the 25th day of August, 1952, whereby said defendant was sentenced, pursuant to the verdict of the jury, to confinement in the Penitentiary of this State for a term of seven years, and the Court having maturely considered the motion made by the attorneys for the defendant on the 30th day of January, 1953, that said defendant, Noah Thomas Lear, be admitted to bail pending the prosecution of his said appeal in the Supreme Court of Appeals of Virginia, the Court doth grant said motion, and doth ORDER said Noah Thomas Lear to be let to bail pending his said appeal upon condition that he enter into a recognizance before the Bail Commissioner or the Clerk of this Court in the sum of Twenty five hundred Dollars ($2500.00), with good and sufficient surety thereon; said recognizance to be conditioned for the said defendant to make his personal appearance before this Court, if the sentence of this Court be affirmed, within ten days from the day on which said sentence is affirmed, to abide by the sentence pronounced against him by this Court on

COMMONWEALTH OF VIRGINIA

v.) Felony - Shenandoah Case

ROOM THOMAS PEAR

ORDER GRANTING BAIL

Came the defendant, Room Thomas Pear, by counsel, and the Commonwealth, by the Attorney for Shenandoah County, and presented a writ of Error and Supersedeas by the Supreme Court of Appeals of Virginia to the judgment pronounced in this case by the Court on the 25th day of January, 1951, whereby said defendant was sentenced, between the hours of 7:00 A.M. and 7:00 P.M. on the 22nd day of January, 1951, to confinement in the Penitentiary of this State for a term of seven years, and the Court having carefully considered the motion made by the attorneys for the defendant on the 30th day of January, 1951, that bail be granted, Room Thomas Pear, be admitted to bail pending the prosecution of his said appeal in the Supreme Court of Appeals of Virginia. The Court doth grant said motion, and doth ORDER that Room Thomas Pear, be admitted to bail pending his said appeal upon condition that he enter into a recognizance before the bail commissioner of the Clerk of this Court in the sum of Dollars ($ 2,000.00).

Room Thomas Pear, and Fidelity Deposit Company of Maryland good and sufficient surety thereon; said recognizance to be conditioned for the said defendant to make his personal appearance before this Court. If the sentence of this Court be affirmed, which can only arise from the yet no mistake, the said sentence is affirmed, to abide by the sentence pronounced against him by this Court on the 25th day of January, 1951, whereupon said defendant was sentenced, between the hours of 7:00 A.M. and 7:00 P.M. on the 22nd day of January, 1951, came the Attorney for the Commonwealth, and came also the attorneys for the defendant, Room Thomas Pear, and it appearing that the defendant

on the 25th day of August, 1952; or, if this case be remanded to this Court, then for the said defendant to make his personal appearance before this Court within ten days from the day on which this case is remanded, to answer the Commonwealth of Virginia concerning the indictment herein, and thereafter at such time or times to which the proceedings may be continued or further heard, until the said indictment be finally disposed of.

And it appearing that said Noah Thomas Lear has been committed to the Virginia State Penitentiary, and is presently in confinement at Southampton Farm, Capron, Virginia, being there in custody of the Superintendent or other person in charge of said institution, it is further ORDERED that the Sheriff of Rockingham County, Virginia, shall proceed forthwith to said Southampton Farm, and that the Superintendant or other person in charge of said institution shall, upon being presented an attested copy of this order, which shall be his authority for so doing, deliver the body of said Noah Thomas Lear to said Sheriff of Rockingham County, taking his receipt therefor in accordance with this order; and the said Sheriff of Rockingham County shall transport the body of said Noah Thomas Lear to the Rockingham County Jail, to be by him there safely kept until he shall enter into his recognizance with surety and conditioned as aforesaid.

ENTER THIS:

_____, Judge Designate.

8/428

Lear

Order for Bail

Milan 7-53

ON the 25th day of August, 1952; or, if this case be remanded to this court, then for the said defendant to make his personal appearance before this court within ten days from the day on which this case is remanded, to answer the commonwealth of VIRGINIA concerning the indictment herein, and thereafter as such state concerning the indictment herein, and thereafter as such time or times to which the proceedings may be continued or indefinitely disposed of;

and it appearing that said Noah Thomas Lear has been committed to the Virginia State Penitentiary, and is presently in custody of the superintendent or other person in charge of the institution, it is therefore ORDERED that the Sheriff of Buchanan County, Virginia, shall proceed forthwith to said Buchanan Farm, and that the superintendent or other person in charge of said institution shall then and there deliver the said Noah Thomas Lear to the Sheriff aforesaid, copy of this order, which shall be his authority for so doing, delivery the body of said Noah Thomas Lear to said Sheriff of Buchanan County, taking his receipt therefor in accordance with this order; and the said Sheriff of Buchanan County shall transport the body of said Noah Thomas Lear to the Buchanan County Jail, to be by him there safely kept until he shall enter into his recognizance with surety and conditioned as aforesaid.

ENTER THIS:

_____, Judge Designate.

Commonwealth

vs. On an indictment for a felony (statutory rape)

Noah Thomas Lear

This day came the attorney for the commonwealth, and the accused, Noah Thomas Lear, came pursuant to his recognizance and by his own attorney, ~~Noah Thos~~ Harry Blatt. And from persons summoned by the sheriff under a writ of venire facias, twenty persons were examined by the court and found duly qualified and free from exception; whereupon, a list containing the names of said twenty persons was handed to the attorney for the commonwealth and the accused who each alternately struck therefrom the names of four persons, the remaining twelve, namely: Woodrow Lowry, S. J. Flook, Ernest F. Myers, Jr., J. H. Miller, H. R. Coffelt, S. R. Mathias, G. Ralph Smith, Glen H. Emswiler, W. H. Heatwole, John J. Nicholas, Elmer O. Rodes, and G. R. Baylor, selected as aforesaid to constitute the jury, were sworn to well and truly try and true deliverance make between the commonwealth and the prisoner at the bar and a true verdict render according to the law and the evidence. And it appearing to the Court that the charge read to the jury is not a correct one, thereupon, on motion of the attorney for the commonwealth, it was ordered that said charge be vacated and annulled; and the attorney for the commonwealth thereupon submitted a corrected charge. Whereupon the court advised the jury that the first charge as read did not correctly state the punishment to be imposed should said accused be found guilty and directed the jury to disregard ~~said~~ the same, ~~first charge as read,~~ and the clerk thereupon read to the jury said corrected charge; to which action of the court in allowing the withdrawal of the first charge and the giving of the ~~second charge~~ corrected charge the accused, by counsel, objected and excepted. Thereupon, on motion of the attorney for the commonwealth, in which motion the accused, by counsel, concurred, it was ordered that all witnesses and spectators be excluded from the court room during this trial. And having completed the hearing of the evidence herein, this case ~~is~~ WAS continued until tomorrow morning at ~~xxx~~ nine o'clock. ~~and the accused was remanded to jail.~~

8/317

Commonwealth

vs. On an indictment for a felony (statutory rape)

Noah Thomas Lear

This day came the attorney for the commonwealth, and the accused, Noah Thomas Lear, came pursuant to his recognizance and by his own attorney, ~~xxxxxxxx~~ Harry Blatt. And from persons summoned by the sheriff under a writ of venire facias, twenty persons were examined by the court and found duly qualified and free from exception; whereupon, a list containing the names of said twenty persons was handed to the attorney for the commonwealth and the accused who each alternately struck therefrom the names of four persons, the remaining twelve, namely: Woodrow Lowry, S. J. Flook, Ernest F. Myers, Jr., J. H. Miller, H. R. Coffelt, S. R. Mathias, O. Ralph Smith, Glen H. Emswiler, W. H. Heatwole, John J. Nicholas, Elmer O. Rodes, and C. R. Baylor, selected as aforesaid to constitute the jury, were sworn to well and truly try and true deliverance make between the commonwealth and the prisoner at the bar and a true verdict render according to the law and the evidence. And it appearing to the Court that the charge read to the jury is not a correct one, thereupon, on motion of the attorney for the commonwealth, it was ordered that said charge be vacated and annulled; and the attorney for the commonwealth thereupon submitted a corrected charge. Whereupon the court advised the jury that the first charge as read did not correctly state the punishment to be imposed should said accused be found guilty and directed the jury to disregard said charge and the clerk thereupon read to the jury said corrected charge; to which action of the court in allowing the withdrawal of the first charge and the giving of the ~~xxxxxxxxxxxx~~ corrected charge the accused, by counsel, excepted. Thereupon, on motion of the attorney for the commonwealth, in which motion the accused, by counsel, concurred, it was ordered that all witnesses and spectators be excluded from the court room during this trial. And having completed the hearing of the evidence herein, this case was continued until tomorrow morning at ~~xxxx~~ nine o'clock.

VIRGINIA:

In the Supreme Court of Appeals held at the ~~Court-Library~~ Masonic *Building in the City of* ~~Richmond~~ Staunton *on* Thursday *the* 10th *day of* September, 1953.

Noah Thomas Lear, Plaintiff in error,

against Record No. 4118

Commonwealth of Virginia, Defendant in error.

Upon a writ of error and supersedeas to a judgment rendered by the Circuit Court of Rockingham County on the 25th day of August, 1952.

This day came as well the plaintiff in error, by counsel, as the Attorney General on behalf of the Commonwealth, and the court having maturely considered the transcript of the record of the judgment aforesaid and arguments of counsel, is of opinion, for reasons stated in writing and filed with the record, that there is no error in the judgment complained of. It is therefore adjudged and ordered that the same be, and is hereby affirmed, and that the plaintiff in error pay to the defendant in error thirty dollars damages, and also her costs by her expended about her defense herein.

Which is ordered to be certified to the said circuit court.

Defendant in error's costs:

Attorney's fee	$50.00
Printing brief	37.20
Total	$87.20

A Copy,

Teste: J. E. Burrus
Clerk

Teste: J. E. Burrus
Clerk

8/486 9/21/53

Commonwealth of Virginia:

To the Sheriff of Rockingham County, Greeting:

You are hereby commanded to summon

Ogretta Jane Dove, Bergton, Virginia
Jesse Dove, Bergton, Virginia

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 30th *day of* June 19 52, *to testify and the truth to say in behalf of the Commonwealth before the GRAND JURY*

against NOAH THOMAS LEAR

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* 24th *day of* June 19 52, *and in the* 176th *year of the Commonwealth.*

Commonwealth's Attorney, ~~Clerk~~

THE SERVICE PRESS, HARRISONBURG, VA.

COMMONWEALTH

V.) Grand Jury Summons

NOAH THOMAS LEAR

To June 30, 1952, at
9:30 a.m.

EXECUTED 6/6/52 IN THE COUNTY OF ROCKINGHAM BY DELIVERING A TRUE COPY OF THE WITHIN Summons TO Gretta Jane Davis Jane Dave. IN PERSON.

W. A. Shifter Deputy

A. L. STRAWDERMAN
SHERIFF
ROCKINGHAM COUNTY

Sheriff Fee
.80

In the Name of the Commonwealth of Virginia:

To the Sheriff of Rockingham County, Greeting:

You are hereby commanded to summon Norma Ritchie (Bergton, Va.) lives with husband, Willard Ritchie, 10 mi. from Bergton on Mine Mountain

to appear before the Judge of the Circuit Court of Rockingham County, at the Court House thereof, at 10 *o'clock, a. m., on the* 18th *day of* August, 1952 *to testify and the truth to say* ***in behalf of the Defendant*** *in the prosecution of the Commonwealth against* Noah Thomas Lear

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 14th *day of* August, 19 52, *and in the* 177th *year of the Commonwealth.*

J. Robert Switzer, *Clerk*

In the Name of the Commonwealth of Virginia:

To the Sheriff of Rockingham County, Greeting:

You are hereby commanded to summon Norma Ritchie (Bergton, Va.) lives with husband, Willard Ritchie, 10 mi. from Bergton on Mine Mountain

to appear before the Judge of the Circuit Court of Rockingham County, at the Court House thereof, at 10 *o'clock, a. m., on the* 18th *day of* August, 1952 *to testify and the truth to say in* ***behalf of the Defendant*** *in the prosecution of the Commonwealth against*

Noah Thomas Lear

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 14th *day of* August, 19 52, *and in the* 177th *year of the Commonwealth.*

J. Robert Switzer, *Clerk*

Norman Ritchie not found, and is not an inhabitant of my bailiwick. Aug 15 1952.

A. L. Huntsberman
SHERIFF, COUNTY OF ROCKINGHAM, VA.

BY W. A. Baker DEPUTY SHERIFF

COMMONWEALTH VS. Noah Francis Lear

DESCRIPTION OF PRISONER

Last known address Louisville Va

Color W Height 5-10 Eyes Br Hair Br Weight 145

Marks C 1/

Age 21 Occupation Laborer

Date of Trial 8/18+19 -

Result 7 yr - sentenced aug 26

COMMONWEALTH VS. [illegible]

DESCRIPTION OF PRISONER

Last known address [illegible]

Color [illegible] Height [illegible] Eyes [illegible] Hair [illegible] Weight [illegible]

Marks [illegible]

Age [illegible] Occupation [illegible]

Date of Trial [illegible]

Result [illegible]

In the Name of the Commonwealth of Virginia:

To the Sheriff of Rockingham County, Greeting:

You are hereby commanded to summon

Mrs. Jesse Dove, Bergton, Va.
Katherine Dove, " "

to appear before the Judge of the Circuit Court of Rockingham County, at the Court House thereof, at 10:00 o'clock, a. m., on the 18th day of August 19 52 to testify and the truth to say in behalf of the Commonwealth against

NOAH THOMAS LEAR

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

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

Witness, ~~ROBERT SWITZER, Clerk of our said Court~~, at the Court House, the 8th day of August, 19 52, and in the 177th year of the Commonwealth.

Commonwealth's Attorney ~~, Clerk~~

THE SERVICE PRESS, HARRISONBURG, VA.

EXECUTED 8/18/52 IN THE COUNTY OF ROCKINGHAM BY DELIVERING A TRUE COPY OF THE WITHIN Summons TO Mrs. June Dove IN PERSON.

W. A. Switzer Dep. for
A. L. Strawderman Shff

COMMONWEALTH
V.) Witness Subpoena
NOAH THOMAS LEAR
To August 18, 1952, at 10:00 a.m.

Not finding Katherine Dove at his usual place of abode, Executed 8/18/52 by delivering a true copy of this Summon to Jannie Dove Her mother in person, at said Katherine Dove usual place of abode Jannie Dove, being a member of his family above the age of 16 years, and explaining the purport thereof to her.

W. A. Switzer Dep. for
A. L. Strawderman Shff

Sheriff Fee
.80

In the Name of the Commonwealth of Virginia:

To the Sheriff of Rockingham County, Greeting:

You are hereby commanded to summon

Ogretta Jane Dove, Bergton, Va.
Jesse Dove, Bergton, Va.

to appear before the Judge of the Circuit Court of Rockingham County, at the Court House thereof, at 10:00 o'clock, a. m., on the 18th day of August 1952, to testify and the truth to say in behalf of the Commonwealth against

NOAH THOMAS LEAR

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

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

Witness, ~~J. ROBERT SWITZER, Clerk of our said Court,~~ at the Court House, the 7th day of August, 1952, and in the 177th year of the Commonwealth.

Commonwealth's Attorney, ~~Clerk~~

THE SERVICE PRESS, HARRISONBURG, VA.

Not finding Gretta Jane Dove at her usual place of abode, Executed 8/8/52 by delivering a true copy of this Summon to Mannie Dove Her mother in person, at said Gretta Jane Dove usual place of abode Mannie Dove, being a member of her family above the age of 16 years, and explaining the purport thereof to her.

W. U. Setzer Dep. for
A. L. Stroudermann Sec.

COMMONWEALTH
V.) Witness Subpoena
NOAH THOMAS LEAR
To August 18, 1952,
at 10:00 a.m.

Sheriff Fee .80

Not finding Jene Dove at his usual place of abode, Executed 8/8/52 by delivering a true copy of this Summon to Mannie Dove His Wife in person, at said Jene Dove usual place of abode Mannie Dove being a member of his family above the age of 16 years, and explaining the purport thereof to her.

W. U. Setzer Dep. for
A. L. Stroudermann Sec

Virginia: In the Circuit Court of Rockingham County

Commonwealth of Virginia

v.

Noah Thomas Lear

The judgment of the Court rendered on August 25, 1952, having been on September 10, 1953, affirmed by the Supreme Court of Appeals of Virginia, and the defendant having been, on March 7, 1953 let to bail pending his said appeal with condition that he appear before the Court within 10 days after the final determination of his said appeal, and defendant having surrendered himself pursuant to his said recognizance, on September 21, 1953, to the Jailor of Rockingham County, it is ORDERED this 23d day of October, 1953 that defendant be delivered into the custody of the Superintendent of the Virginia State Penitentiary to serve out the unexpired portion of his term of confinement heretofore imposed, and that he shall be credited upon his said term the period of time from September 21, 1953 until he is delivered to said Superintendent of the Va. State Penitentiary pursuant to this order.

H.W.

8/495

SUPREME COURT OF APPEALS
OF VIRGINIA

Richmond 10
October 3, 1953

Mr. J. Robert Switzer, Clerk
Circuit Court of Rockingham County
Harrisonburg, Virginia

Dear Mr. Switzer:

The case of Noah Thomas Lear v. Commonwealth of Virginia, Record No. 4118, having been disposed of in this court, I am returning herewith the original record.

Please acknowledge receipt.

Yours very truly,

H G Turner

Clerk

HGT-h

Encls.

HOWARD G. TURNER
CLERK
HUBERT D. BENNETT
EXECUTIVE SECRETARY

SUPREME COURT OF APPEALS
OF VIRGINIA

Richmond 10
October 3, 1953

Mr. J. Robert Switzer, Clerk
Circuit Court of Rockingham County
Harrisonburg, Virginia

Dear Mr. Switzer:

The case of Noah Thomas Lear v. Commonwealth of Virginia, Record No. 4118, having been disposed of in this court, I am returning herewith the original record.

Please acknowledge receipt.

Yours very truly,

Clerk

HGT-h

Encls.

Sup. Ct. of App. Form 9—2M—3-28-51

VIRGINIA:

In the Supreme Court of Appeals held at the Court-Library Building in the City of Richmond on Thursday the 22nd day of January, 1953.

Noah Thomas Lear, Plaintiff in error,

against

Commonwealth of Virginia, Defendant in error.

From the Circuit Court of Rockingham County.

Upon the petition of Noah Thomas Lear a writ of error and supersedeas is awarded him to a judgment rendered by the Circuit Court of Rockingham County on the 25th day of August, 1952, in a prosecution by the Commonwealth against the said petitioner, for a felony; but said supersedeas is not to operate to discharge the petitioner from custody, if in custody, or to release his bond, if out on bail.

~~A copy, Teste:~~

~~Clerk~~

X

X

Commonwealth of Virginia

J. LINDSAY ALMOND, JR.
ATTORNEY GENERAL

G. STANLEY CLARKE
KENNETH C. PATTY
D. GARDINER TYLER, JR.
C. CHAMPION BOWLES
HENRY T. WICKHAM
FREDERICK T. GRAY
THOMAS M. MILLER
CLARENCE F. HICKS
ASSISTANTS

OFFICE OF THE ATTORNEY GENERAL
RICHMOND

Recd January 30, 1953

Mr. H. G. Turner, Clerk
Supreme Court of Appeals
Richmond
Virginia

Re: Noah Thomas Lear
v.
Commonwealth of Virginia

Dear Mr. Turner:

Referring to the printed record in the above styled case, this is to advise that the office of the Attorney General desires nothing further to be included therein than has already been designated.

Very sincerely yours,

J. Lindsay Almond Jr.
J. Lindsay Almond, Jr.
Attorney General

16-25

Clerk's Office

Circuit Court of Rockingham County

Harrisonburg, Virginia

HON. HAMILTON HAAS, JUDGE
TWENTY-FIFTH JUDICIAL CIRCUIT
HARRISONBURG, VIRGINIA
J. ROBERT SWITZER, CLERK

DEPUTIES
HARRY LEE BRYAN
MARGIE BOWERS
MARGARET B. WENGER

December 23, 1952

4118

Hon. Lemuel F. Smith, Justice
Supreme Court of Appeals of Virginia
Charlottesville, Virginia

Re: Commonwealth v. Noah Thomas Lear

Dear Sir:

At the request of Mr. Harry Blatt, of counsel for appellant, I am transmitting herewith the original record in the above case.

Yours very truly,

J. Robert Switzer

J. Robert Switzer, Clerk

JRS:mb

Clerk's Office

Circuit Court of Rockingham County

Harrisonburg, Virginia

HON. HAMILTON HAAS, JUDGE
TWENTY-FIFTH JUDICIAL CIRCUIT
HARRISONBURG, VIRGINIA
J. ROBERT SWITZER, CLERK

DEPUTIES
HARRY LEE BRYAN
MARGIE DOWERS
MARGARET B. WENGER

December 23, 1952

H118

Hon. Lemuel F. Smith, Justice
Supreme Court of Appeals of Virginia
Charlottesville, Virginia

Re: Commonwealth v. Noah Thomas Lear

Dear Sir:

At the request of Mr. Harry Blatt, of counsel for appellant, I am transmitting herewith the original record in the above case.

Yours very truly,

J. Robert Switzer, Clerk

JRS:wb

HARRY BLATT
ATTORNEY AT LAW
HARRISONBURG, VIRGINIA
THE NATIONAL BANK BUILDING

December 23, 1952

Hon. J. Robert Switzer
Clerk of the Circuit Court of Rockingham County
Harrisonburg, Virginia

Re: Commonwealth v. Noah Thomas Lear

Dear Mr. Switzer:

At the request of all counsel in the above case, the original of the record thereof was transmitted to Hon. Lemuel F. Smith, Justice of the Supreme Court of Appeals of Virginia, at his office in Charlottesville, Virginia, on November 21, 1952. The purpose of transmission of the record was to permit an application for bail on behalf of defendant pending his petition for a writ of error.

The application for bail was denied and the record was returned to me to be transmitted again when the petition for a writ of error was filed.

You are therefore requested, pursuant to Rule 5:1, Section 7, to transmit said record to Hon. Lemuel F. Smith, Justice of the Supreme Court of Appeals of Virginia, Albemarle County Court House, Charlottesville, Virginia, on the 23rd day of December, 1952.

A copy of this letter has been mailed this date to George D. Conrad, Esq., Attorney for the Commonwealth for Rockingham County, Virginia.

Very truly yours,

Harry Blatt

Harry Blatt

HB/lm

Clerk's Office

Circuit Court of Rockingham County

Harrisonburg, Virginia

HON. HAMILTON HAAS, JUDGE
TWENTY-FIFTH JUDICIAL CIRCUIT
HARRISONBURG, VIRGINIA
J. ROBERT SWITZER, CLERK

DEPUTIES
HARRY LEE BRYAN
MARGIE BOWERS
MARGARET B. WENGER

November 21, 1952

In Re: Commonwealth
vs.
Noah Thomas Lear

Hon. Lemuel F. Smith, Justice
Supreme Court of Appeals of Virginia
Charlottesville, Virginia

Dear Sir:

At the request of all counsel in the above case, I am transmitting herewith, by Mr. Harry Blatt, of counsel for appellant, the original record in the above case.

Yours very truly,

J. Robert Switzer

J. Robert Switzer, Clerk

JRS:mb

Clerk's Office

Circuit Court of Rockingham County

Harrisonburg, Virginia

HON. HAMILTON HAAS, JUDGE
TWENTY-FIFTH JUDICIAL CIRCUIT
HARRISONBURG, VIRGINIA
J. ROBERT SWITZER, CLERK

DEPUTIES
HARRY LEE DRYAN
MARGIE BOWERS
MARGARET B. WENGER

November 21, 1952

In Re: Commonwealth
vs.
Noah Thomas Leer

Hon. Lemuel P. Smith, Justice
Supreme Court of Appeals of Virginia
Charlottesville, Virginia

Dear Sir:

At the request of all counsel in the above case, I am transmitting herewith, by Mr. Harry Blatt, of counsel for appellant, the original record in the above case.

Yours very truly,

J. Robert Switzer

J. Robert Switzer, Clerk

JRS:mb

VIRGINIA: IN THE CIRCUIT COURT OF ROCKINGHAM COUNTY

COMMONWEALTH OF VIRGINIA

v.) REQUEST FOR TRANSMISSION OF RECORD

NOAH THOMAS LEAR

TO THE HONORABLE J. ROBERT SWITZER CLERK OF THE SAID COURT:

The undersigned, being all the Counsel for the Appellant and for the Commonwealth of Virginia in the above styled case, hereby request the Clerk to transmit the record of said case to the Honorable Lemuel F. Smith, Justice of the Supreme Court of Appeals of Virginia, Albemarle County Court House, Charlottesville, Virginia, on the 22nd day of November, 1952.

Given under our hands this 18th day of November, 1952.

Harry Blatt

Julian V. Heikman
Counsel for Appellant

Attorney for the Commonwealth for the County of Rockingham Virginia

Attorney for the Commonwealth for the County of Rockingham Virginia

Counsel for Appellant

Given under our hands this 18th day of November, 1925.

VIRGINIA: IN THE CIRCUIT COURT OF ROCKINGHAM COUNTY

COMMONWEALTH OF VIRGINIA

v.) REQUEST FOR TRANSMISSION OF RECORD

NOAH THOMAS DEAN

TO THE HONORABLE J. ROBERT SWITZER CLERK OF THE SAID COURT:

The undersigned, being all the counsel for the Appellant and for the Commonwealth of Virginia in the above styled case, hereby request the Clerk to transmit the record of said case to the Honorable Lemuel P. Smith, Justice of the Supreme Court of Appeals of Virginia, Alexandria County Court House, Charlottesville, Virginia, on the 25th day of November, 1925.

LAW OFFICES
GEORGE D. CONRAD
HARRISONBURG, VA.
Court House
November 21, 1952

Honorable Lemuel F. Smith
Justice of the Supreme Court of Appeals of Virginia
Charlottesville, Virginia

Dear Sir:

In connection with the case of Commonwealth of Virginia V. Noah Thomas Lear, notice has been served on me by Counsel for Lear that they will make a motion before you on Saturday, November 22, 1952 at Charlottesville that the prisoner be admitted to bail.

On behalf of the Commonwealth, I wish to object to such motion. Lear was found guilty by a jury and after the verdict was returned a motion was made that he be admitted to bail pending application for a writ of error. Judge Haas refused to take such action, but stated that he might reconsider the matter in case an appeal was allowed. The motion was not made until several days after the trial and Lear had already been sent to the penitentiary.

Under the circumstances, the Commonwealth feels that this man should not be admitted to bail at this time.

Respectfully,

George D. Conrad

GDC/dl

LAW OFFICES
George D. Conrad
HARRISONBURG, VA.
Court House
November 21, 1952

Honorable Lemuel F. Smith
Justice of the Supreme Court of Appeals of Virginia
Charlottesville, Virginia

Dear Sir:

In connection with the case of Commonwealth of Virginia V. Noah Thomas Deer, notice has been served on me by Counsel for Deer that they will make a motion before you on Saturday, November 22, 1952 at Charlottesville that the prisoner be admitted to bail.

On behalf of the Commonwealth, I wish to object to such motion. Deer was found guilty by a jury and after the verdict was returned a motion was made that he be admitted to bail pending application for a writ of error. Judge Haas refused to take such action, but stated that he might reconsider the matter in case an appeal was allowed. The motion was not made until several days after the trial and Deer had already been sent to the penitentiary.

Under the circumstances, the Commonwealth feels that this man should not be admitted to bail at this time.

Respectfully,

George D. Conrad

GDC/dl

VIRGINIA: IN THE CIRCUIT COURT OF ROCKINGHAM COUNTY

COMMONWEALTH OF VIRGINIA

Filed in the Clerk's Office
Rockingham County, Va.
NOV 18 1952
J. Robert Switzer Clerk

v.) NOTICE

NOAH THOMAS LEAR

TO GEORGE D. CONRAD, ESQUIRE, ATTORNEY FOR THE COMMONWEALTH FOR THE COUNTY OF ROCKINGHAM, VIRGINIA:

You are hereby notified that the undersigned will, on Friday, November 21, 1952, at 10 o'clock a.m., move the Circuit Court of Rockingham County, Virginia, then to be sitting at Harrisonburg, Virginia, to admit the above name appellant, Noah Thomas Lear, to bail pending his petition for a writ of error to Supreme Court of Appeals of Virginia, and further appellate proceedings thereafter; and you are further notified that if such bail be denied, or if such motion be not made, then the undersigned will, on Saturday, November 22, 1952, at 10 o'clock a.m., move the Honorable Lemuel F. Smith, a Justice of the Supreme Court of Appeals of Virginia, at his office in the Albemarle County Court House, in Charlottesville, Virginia, to admit said Noah Thomas Lear to such bail.

Given under our hands this 18th day of November, 1952.

Harry Blatt

Julian W. Hickman
Counsel for Appellant

I certify that the foregoing Notice was served on George D. Conrad, Esquire, Attorney for the Commonwealth for the County of Rockingham, Virginia, by handing him a copy thereof, this 18th day of November, 1952.

Harry Blatt
Of Counsel for Appellant

VIRGINIA: IN THE CIRCUIT COURT OF ROCKINGHAM COUNTY

COMMONWEALTH OF VIRGINIA

Filed in the Clerk's Office
Rockingham
NOV 19 1925
Clerk

v.) NOTICE

NOAH THOMAS LEAR

TO GEORGE D. CONRAD, ESQUIRE, ATTORNEY FOR THE COMMONWEALTH FOR THE COUNTY OF ROCKINGHAM, VIRGINIA:

You are hereby notified that the undersigned will, on Friday, November 27, 1925, at 10 o'clock a.m., move the Circuit Court of Rockingham County, Virginia, then to be sitting at Harrisonburg, Virginia, to admit the above named appellant, Noah Thomas Lear, to bond, pending his petition for a writ of error to Supreme Court of Appeals of Virginia, and that upon the hearing of said motion he may also and you are further notified that if such bail be denied, or if such motion be not made, then the undersigned will, on Saturday, November 28, 1925, at 10 o'clock a.m., move the Honorable Lemuel P. Smith, Judge of the Supreme Court of Appeals of Virginia, at his office in the Alleghany County Court House, in Charlottesville, Virginia, to admit said Noah Thomas Lear to such bail.

Given under our hands this 16th day of November, 1925.

Noah Thomas Lear
By counsel for Appellant

I certify that the foregoing Notice was served on George D. Conrad, Esquire, Attorney for the Commonwealth for the County of Rockingham, Virginia, by handing him a copy thereof, this 16th day of November, 1925.

Noah Thomas Lear
By counsel for Appellant

VIRGINIA: IN THE CIRCUIT COURT OF ROCKINGHAM COUNTY

COMMONWEALTH OF VIRGINIA

v.) DESIGNATION OF PARTS OF RECORD TO BE PRINTED ON APPEAL

NOAH THOMAS LEAR

TO THE HONORABLE J. ROBERT SWITZER CLERK OF THE SAID COURT:

Counsel for appellant in the above styled criminal case hereby designate the following parts of the record that they wish printed;

(1) Indictment with return of Grand Jury thereon, filed----------June 30, 1952------Page 2 of record

(2) Order of Court on return of Grand Jury, filed----------June 30, 1952------Page 3 of record

(3) Order of Court on Arraignment and Plea of Defendant, filed--------June 30, 1952------Page 3 of record

(4) Order of Court on first day of Trial, filed------August 15, 1952---Pages 4&5 of record

(5) Charge to Jury (first), filed----------August 18, 1952------Page 6 of record

(6) Charge to Jury (second) and original of the Jury's verdict, filed----August 18, 1952------Page 7 of record

(7) Instructions granted, filed----------August 19, 1952

a. Instruction 1 -----Page 8 of record

b. Instruction 2 -----Page 9 of record

c. Instruction 3 -----Page 10 of record

d. Instruction 4 -----Page 11 of record

e. Instruction 5 -----Page 12 of record

f. Instruction 6 -----Page 13 of record

Filed in the Clerk's Office
Rockingham County, Va.
NOV 17 1925
Clerk

VIRGINIA: IN THE CIRCUIT COURT OF ROCKINGHAM COUNTY

COMMONWEALTH OF VIRGINIA

v.) DESIGNATION OF PARTS OF RECORD TO BE PRINTED ON APPEAL

NOAH THOMAS DEAN

TO THE HONORABLE J. ROBERT SWITZER CLERK OF THE SAID COURT:

Counsel for appellant in the above styled criminal case hereby designate the following parts of the record that they wish printed:

(1) Indictment with testimony of grand jury thereon.
Filed---------June 30, 1925-------Page 2 of Record

(2) Order of court on motion for a new trial.
Filed---------June 30, 1925-------Page 3 of Record

(3) Order of court on motion of defendant, filed---------June 30, 1925-------Page 3 of Record

(4) Order of court on first day of trial, filed-------August 12, 1925---Pages 4&5 of Record

(5) Charge to jury (first).
Filed---------August 18, 1925-------Page 6 of Record

(6) Charge to jury (second)
and original of the
Commonwealth's verdict, filed----August 18, 1925-------Page 7 of Record

(7) Instructions granted.
Filed---------August 19, 1925

a. Instruction 1 -----Page 8 of Record

b. Instruction 2 -----Page 9 of Record

c. Instruction 3 -----Page10 of Record

d. Instruction 4 -----Page11 of Record

e. Instruction 5 -----Page15 of Record

f. Instruction 6 -----Page13 of Record

(8) Instructions refused,
filed----------August 19, 1952

g. Instruction 7 -----Page 14 of record

h. Instruction 8 -----Page 15 of record

i. Instruction 9 -----Page 16 of record

j. Instruction 10 -----Page 17 of record

(9) Order of Court on
Second day of Trial
(containing verdict)
filed----------August 19, 1952-Pages 18&19 of record

(10) Assignments of error,
filed----------August 19, 1952-Pages 20&21 of record

(11) Order of Court over-
ruling motion to set
aside the verdict and
imposing sentence in
Accordance with the
verdict of the Jury,
filed----------August 25, 1952-----Page 22 of record

(12) Notice of Appeal and
Assignments of Error,
filed----------September 8, 1952-Pages 23&24 of record

(13) Written statement in
narrative form of
Testimony, filed--------October 22, 1952-Pages 25-33 inclusive of record

(14) Exhibit bus ticket
(both sides) (described
in and introduced during
Testimony of Alfred Lee
Dove), filed----------August 18, 1952-----Page 34 of record

Harry Blatt

Julian W. Hickman
Counsel for Appellant

I certify that the foregoing Designation Of Parts Of The Record To Be Printed was served on George D. Conrad, Esquire, Attorney For The Commonwealth for the County of Rockingham, Virginia, by handing him a copy thereof, this 17th day of November, 1952.

Harry Blatt
Of Counsel for Appellant

(8) Instructions refused.
Filed----------August 19, 1952

g. Instruction 7 -----Page 14 of record

h. Instruction 8 -----Page 15 of record

i. Instruction 9 -----Page 16 of record

j. Instruction 10 -----Page 17 of record

(9) Order of Court on
Second day of Trial
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aside the verdict and
imposing sentence in
Accordance with the
verdict of the Jury.
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(12) Notice of Appeal and
Assignments of Error.
Filed----------September 8, 1952-Pages 23&24 of record

(13) Written statement in
narrative form of
Testimony. Filed--------October 22, 1952-Pages 25-33 inclusive
of record

(14) Exhibit one ticket
(both sides) (described
in and introduced during
Testimony of Alfred Lee
Dove). Filed----------August 18, 1952-----Page 34 of record

Counsel for Appellant

I certify that the foregoing Designation of Parts of The Record To Be Printed was served on George D. Conrad, Esquire, Attorney For The Commonwealth for the County of Rockingham, Virginia, by handing him a copy thereof, this 17th day of November, 1952.

Of Counsel for Appellant

J P. Bell Co.—No. B-500

Commonwealth of Virginia

In the Circuit Court of the County of ROCKINGHAM

Commonwealth of Virginia

vs.

NOAH THOMAS LEAR

TABLE OF CONTENTS

I J. Robert Switzer, Clerk of the above mentioned Court, certify that the papers listed above and filed herein, are the original papers in the above styled case.

Teste:

J. Robert Switzer, Clerk

J. E. Bell Co.—Va. 3-169

Commonwealth of Virginia

In the Circuit Court of the County of ROCKINGHAM

Commonwealth of Virginia

vs.

NOAH THOMAS LEAR

TABLE OF CONTENTS

I, J. Robert Switzer, Clerk of the above mentioned Court, certify that the papers listed above and filed herein, are the original papers in the above styled case.

Teste:

J. Robert Switzer Clerk

Comp. Form 18

STATE OF VIRGINIA
COUNTY OF ROCKINGHAM } To-Wit: No. 9643 A

TO ANY SHERIFF OR POLICE OFFICER:

Whereas, Jesse Dove, Bergton, Va.

has this day made complaint and information on oath before me, J. C. Swartz, Clerk of the (Name)

Trial Justice Court (Title) of the said County, that

NOAH THOMAS LEAR, Conicsville, Va. in the said County

did on the 17th day of June, 1951: ~~unlawfully~~ in and upon

one Ogretta Jane Dove, a female child under the age of sixteen years, to-wit, of the age of thirteen (13) years, unlawfully and feloniously did make an assault, and her, the said Ogretta Jane Dove, unlawfully and feloniously did carnally know and abuse, against the peace and dignity of the Commonwealth.

These are, therefore, to command you, in the name of the Commonwealth, to apprehend and bring before the Trial Justice Court of the said County, the body (bodies) of the above accused, to answer the said complaint and to be further dealt with according to law. And you are also directed to summon

_____ color _____ Address _____ ☐

_____ color _____ Address _____ ☐

_____ color _____ Address _____ ☐

_____ color _____ Address _____ ☐

_____ color _____ Address _____ ☐

as witnesses.

Given under my hand and seal, this 9th day of May, 1952

J. C. Swartz (Seal)
(Title of Issuing Officer) Clerk

-1-

STATE OF VIRGINIA ~~COUNTY~~ City OF Harrisonburg, Va., to-wit:

I, George R. Price a ~~Trial Justice~~ Justice of the Peace in and for the ~~County~~ City aforesaid, State of Virginia, do certify that Noah Thomas Lear and George W. Linamood, as his suret —, have this day each acknowledged themselves indebted to the Commonwealth of Virginia in the sum of One Thousand — 00/100 — Dollars ($1000.00), to be made and levied of their respective goods and chattels, lands, and tenements to the use of the Commonwealth to be rendered, yet upon this condition: That the said Noah Thomas Lear, shall appear before the ~~Circuit~~ Trial Justice Court of Rockingham County, on the 20 day of May, 1952, at 2:00 P. M., at Harrisonburg, Virginia, and at any time or times to which the proceedings may be continued or further heard, and before any court thereafter having or holding any proceedings in connection with the charge in this warrant, to answer for the offense with which he is charged, and shall not depart thence without the leave of said court, the said obligation to remain in full force and effect until the charge is finally disposed of or until it is declared void by order of a competent court; and upon the further condition that the said _____ shall keep the peace and be of good behavior for a period of _____ days from the date hereof.

Given under my hand, this 14 day of May, 1952.

George R. Price ~~T. J.~~, J.P.

DOCKET NO. 9643 A

COMMONWEALTH

vs.

WARRANT OF ARREST

NOAH THOMAS LEAR

Conicsville, Va.

Executed this, the 14 day of May, 1952

E. L. Zigler Dep. for
L. L. Throckmorton SPC

Judgment.

Upon the examination of the within charge, ~~NOW THEREFORE~~ and there being sufficient probable cause this case is sent on for action of the Grand Jury.

Given under my hand this 2nd day of June 1952.

Geo. R. Price T. J.

Total $ _____

Costs _____

Fine $ _____

Plea N.G. 5-20-52

The following witnesses were recognized to appear before the ~~Circuit~~ Trial Justice Court of _____ County, Virginia, at _____, Virginia, at _____ M., on the _____ day of _____, 19____, under penalty of $_____

COSTS

Warrant	$ 1.00
Trial	2.00
Bail	
Arrest	1.50
Mileage	
Clerk	1.25
Jail Fee and Board	.50
Witness Attendance	7.00
Summoning Witnesses	1.00
Commonwealth Attorney	2.50
Total Costs	$ 16.75
Fine	
Total	$

STATE OF VIRGINIA,

COUNTY OF ROCKINGHAM, to-wit:

IN THE CIRCUIT COURT OF SAID COUNTY:

The grand jurors of the State of Virginia, in and for the body of the County of Rockingham and now attending the Circuit Court of said County, at its June term, 1952, upon their oaths do present that NOAH THOMAS LEAR, on or about the 17th day of June, 1951, in said County, with force and arms, in and upon one Ogretta Jane Dove, a female child under the age of sixteen years, to-wit, of the age of thirteen (13) years, unlawfully and feloniously did make an assault, and her, the said Ogretta Jane Dove, unlawfully and feloniously did carnally know and abuse, against the peace and dignity of the Commonwealth.

This indictment is found upon the testimony of Ogretta Jane Dove and Jesse Dove, witnesses sworn in court and sent before the grand jury to give evidence.

True Bill

R. S. Bowers Foreman

0

Nolle Aug. 18

COMMONWEALTH

V. INDICTMENT

NOAH THOMAS LEAR

Bond Stat Rape
H. Blatt

FELONY

June Term, 1952

A true bill:

P. L. Bowers
Foreman

WITNESSES:

Ogretta Jane Dove
Jesse Dove

George D. Conrad
Commonwealth's Attorney

Circuit Court of the County of Rockingham on Monday, the 30th day of June, in the year of our Lord, nineteen hundred and fifty-two.

Present: Hon. Hamilton Haas, Judge.

R. S. Bowers, John M. Funkhouser, W. C. Long, George E. Warren, T. L. Yancey, Jr., and T. M. Harrison this day came as a special grand jury, summoned to this term of the court, and with R. S. Bowers as foreman, were examined, impanelled and sworn according to law a special grand jury in and for the County of Rockingham, and after having received the charge of the Court, retired to their room to consider their presentments, and after some time returned into court and presented the following indictments for felonies as true bills: Commonwealth vs. Charles Carper; Commonwealth vs. Albert Lee Carr; Commonwealth vs. George Kyger; Commonwealth vs. Noah Thomas Lear; Commonwealth vs. Bennie Merica; Commonwealth vs. Mutt Riggleman; Commonwealth vs. Joseph Edward Roach and Prentice Melvin Rankin; Commonwealth vs. Elliott McCraw; Commonwealth vs. Welton D. Waller; Commonwealth vs. Russell Claude Shepherd; and having completed the business before them at this time, said special grand jury is excused until and unless recalled at this term of court.

Commonwealth

vs. On an indictment for a felony (statutory rape)

Noah Thomas Lear

This day came the attorney for the commonwealth, and the accused, Noah Thomas Lear, came pursuant to his recognizance and by his own attorney, Harry Blatt. And being arraigned on the indictment, said accused entered a plea of not guilty thereto; whereupon, the court fixed the 18th day of August next for his trial.

X

Circuit Court of the County of Rockingham on Monday, the 30th day of June, in the year of our Lord, nineteen hundred and fifty-two.

Present: Hon. Hamilton Hess, Judge.

R. S. Bowers, John M. Funkhouser, W. C. Long, George E. Metzen, J. L. Avscey, Jr., and T. M. Harrison this day came as a special grand jury, summoned to this term of the court, and with R. S. Bowers as foreman, were examined, impanelled and sworn according to law a special grand jury in and for the County of Rockingham, and after hearing received the charge of the court, retired to their room to consider their presentments, and after some time returned into court and presented the following indictments for felonies as follows: Commonwealth vs. Charles Carper; Commonwealth vs. Alpert Lee Cary; Commonwealth vs. George Kyger; Commonwealth vs. Roman Thomas Leal; Commonwealth vs. Benjie Mertice; Commonwealth vs. Luff Bingleman; Commonwealth vs. Joseph Edward Rosen and Prentice Melvin Franklin; Commonwealth vs. Elliott Nocham; Commonwealth vs. Melton D. Mallet; Commonwealth vs. Russell Grange Gwen-neth; and having completed the business before them at this time, said special grand jury is excused until and unless recalled at this term of court.

Roman Thomas Leal

vs. On an indictment for a felony (assault by rape)

Commonwealth

This day came the attorney for the Commonwealth, and the accused, Roman Thomas Leal, came personal rights recognizance and by his own attorney, Harry Black. And being arraigned on the indictment, said accused entered a plea of not guilty thereto; whereupon, the court fixed the 18th day of August next for his trial.

At a Circuit Court of the County of Rockingham, at the Courthouse of said Court, in said County, on Monday, the 18th day of August, in the year of our Lord, one thousand and nine hundred and fifty-two, and in the one hundred seventy-seventh year of the Commonwealth.

Present: Hon. Hamilton Haas, Judge.

Commonwealth

vs. On an indictment for a felony (statutory rape)

Noah Thomas Lear

This day came the attorney for the commonwealth, and the accused, Noah Thomas Lear, came pursuant to his recognizance and by his own attorney, Harry Blatt. And from persons summoned by the sheriff under a writ of venire facias, twenty persons were examined by the court and found duly qualified and free from exception; whereupon, a list containing the names of said twenty persons was handed to the attorney for the commonwealth and the accused who each alternately struck therefrom the names of four persons, the remaining twelve, namely: Woodrow Lowry, S. J. Flook, Ernest F. Myers, Jr., J. H. Miller, H. R. Coffelt, S. R. Mathias, G. Ralph Smith, Glen H. Emswiler, W. H. Heatwole, John J. Nicholas, Elmer O. Rodes, and G. R. Baylor, selected as aforesaid to constitute the jury, were sworn to well and truly try and true deliverance make between the commonwealth and the prisoner at the bar and a true verdict render according to the law and the evidence. And it appearing to the Court that the charge read to the jury is not a correct one, thereupon, on motion of the attorney for the commonwealth, it was ordered that said charge be vacated and annulled; and the attorney for the commonwealth thereupon submitted a corrected charge. Whereupon the court advised the jury that the first charge as read did not correctly state the punishment to be imposed should said accused be found guilty and directed the jury

At a circuit court of the county of Rockingham, at the Courthouse of said court, in said county, on Monday, the 15th day of August, in the year of our Lord, one thousand and nine hundred and fifty-two, and in the one hundred seventy-seventh year of the Commonwealth.

Present: Hon. Hamilton Hass, Judge.

Commonwealth

vs. On an indictment for a felony (burglarly large)

Noah Thomas Leat

This day came the attorney for the Commonwealth, and the accused, Noah Thomas Leat, came personal to his recognizance and by his own attorney, Hatty Black. And from persons summoned by the sheriff under a writ of venire facias, twenty persons were examined by the court and found duly qualified and the from excep-tion: Whereupon, a list containing the names of said twenty persons was handed to the attorney for the Commonwealth and the accused each attorney a strike therefrom the names of four persons, namely: Woodrow Conly, S. J. Alook, Ernest R. Waters, Jr., J. R. Miller, H. H. Corlett, S. R. Marshall, Ralph Smith, Glen H. Emswiler, W. H. Hostmote, John J. Nichols, Elmer O. Rodes, and C. H. Taylor, selected as aforesaid to constitute the jury, were sworn to well and truly try and true deliver-ance make between the Commonwealth and the prisoner at the bar and a true verdict render according to the law and the evidence. And it appearing to the court that the charge read to the jury is not a correct one, whereupon, on motion of the attorney for the common-wealth, it was ordered that said charge be accepted and amended; and the attorney for the Commonwealth thereupon amended a correct charge. Whereupon the court advised the jury that the charge as read did not correctly state the indictment so be filed accused be found guilty and affected the jury imposed should said accused be found guilty and affected the jury

to disregard the same, and the clerk thereupon read to the jury said corrected charge; to which action of the court in allowing the withdrawal of the first charge and the giving of the corrected charge the accused, by counsel, objected and excepted. Thereupon, on motion of the attorney for the commonwealth, in which motion the accused, by counsel, concurred, it was ordered that all witnesses and spectators be excluded from the court room during this trial. And having completed the hearing of the evidence herein, this case was continued until tomorrow morning at nine o'clock.

7

IN THE CIRCUIT COURT OF ROCKINGHAM COUNTY, VIRGINIA:

COMMONWEALTH

V. CHARGE TO JURY

NOAH THOMAS LEAR

If you find the accused, Noah Thomas Lear, guilty of statutory rape, as charged in the indictment, you will say so and fix his punishment at confinement in the penitentiary for a period of not less than one nor more than twenty years.

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

This charge first read, then annulled and substituted corrected charge read —

8/18/52

H.H.

1st charge -
Accumulated
8/18/02

IN THE CIRCUIT COURT OF ROCKINGHAM COUNTY, VIRGINIA:

COMMONWEALTH

V. CHARGE TO JURY

NOAH THOMAS LEAR

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

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

We the jurors find Noah Thomas Lear - guilty of the charge as charged in the indictment, and set his punishment at 7 years in the penitentiary

John J. Nicholas. Foreman

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IN THE CIRCUIT COURT OF ROCKINGHAM COUNTY, VIRGINIA:

COMMONWEALTH

v. CHARGE TO JURY

NOAH THOMAS LEAR

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

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

COMMONWEALTH

v.

NOAH THOMAS LEAR

INSTRUCTION 1

The Court instructs the jury that the indictment in this case is of itself a mere accusation or charge against the defendant, and is not of itself, any evidence of the defendant's guilt; and no juror should permit himself to be influenced against the defendant, because or on account of the indictment in this case.

8/19/52
H.H.

0

COMMONWEALTH

v.

NOAH THOMAS LEAR

INSTRUCTION 1

The Court instructs the jury that the indictment in this case is of itself a mere accusation or charge against the defendant, and is not of itself, any evidence of the defendant's guilt; and no juror should permit himself to be influenced against the defendant, because of on account of the indictment in this case.

COMMONWEALTH

v.

NOAH THOMAS LEAR

INSTRUCTION 2

The Court instructs the jury that the law presumes the defendant to be innocent until he is proved guilty as charged in the indictment by the Commonwealth, by evidence beyond all reasonable doubt, and to the exclusion of every reasonable hypothesis consistent with his innocence. This presumption of innocence goes with the defendant throughout the entire case, and applies at every stage thereof, and if, after having heard all of the evidence in the case, the jury have a reasonable doubt of the guilt of the accused upon the whole case, or as to any fact essential to prove the charge made against him in the indictment, it is their duty to give the defendant the benefit of the doubt and find him not guilty. Mere suspicion or the probability of the guilt of the defendant, however strong, is not sufficient to convict, nor is it sufficient if the greater weight or preponderance of the evidence supports the charge in the indictment, but to warrant his conviction, his guilt must be proved by the evidence beyond all reasonable doubt.

8/19/52
HH.

0

COMMONWEALTH

v.

NOAH THOMAS LEAR

INSTRUCTION

The Court instructs the jury that the law presumes the defendant to be innocent until he is proved guilty as charged in the indictment by the Commonwealth, by evidence beyond all reasonable doubt, and to the exclusion of every reasonable hypothesis consistent with his innocence. This presumption of innocence goes with the defendant throughout the entire case, and applies at every stage thereof, and if, after having heard all of the evidence in the case, the jury have a reasonable doubt of the guilt of the accused upon the whole case, or as to any fact essential to prove the charge made against him in the indictment, it is their duty to give the defendant the benefit of the doubt and find him not guilty. Mere suspicion or the probability of the guilt of the defendant, however strong, is not sufficient to convict, nor is it sufficient if the greater weight or preponderance of the evidence supports the charge in the indictment, but to warrant his conviction, his guilt must be proved by the evidence beyond all reasonable doubt.

COMMONWEALTH
V.
NOAH THOMAS DEAR

INSTRUCTION 3

In considering whether or not the Commonwealth has met its burden of proving the guilt of the accused beyond reasonable doubt, the Court instructs the jury that you should not overlook the word "reasonable" nor its meaning. A reasonable doubt is a doubt which is founded on reason, that is to say, such a doubt as may be honestly and reasonably entertained as to any substantial and material fact essential to prove the offense charged, and is not to be confused with imaginable or possible doubt, for the law does not say that a man must be proved guilty beyond every imaginable, conceivable, or possible doubt.

In passing upon the sufficiency of the proof of the charge, the jury must limit its consideration to the evidence presented at the trial of this case, including the natural and reasonable inferences to be drawn therefrom. The jury cannot go beyond such evidence to create doubt, nor can you go beyond such evidence to find inferences of guilt.

Furthermore, the jury should bear in mind that any such doubt arising from lack of evidence, from conflicting testimony, or from questionable proof of any particular fact, should be a doubt of a material fact essential to the proof of the guilt of the accused and not a mere doubt concerning immaterial and nonessential circumstances.

If, after a reasonable and honest consideration of all of the evidence, your minds are left in such a state of doubt as to prevent you from reaching a convinced belief of the guilt of the accused, then the commonwealth has failed to meet its burden.

If, on the other hand, after an impartial and reasonable consideration of all the evidence in the case, you have an abiding conviction of the truth of the charge, you are then satisfied beyond all reasonable doubt.

8/19/52
H.H.

X

7

In considering whether to act on the COMMONWEALTH's motion
the Court must be satisfied that the evidence proved beyond reasonable doubt
the guilt of the accused to the guilt of the crime charged. You may not find
that the evidence, if any, be such as to cause you to doubt as to the guilt of the accused
beyond reasonable doubt. You must be satisfied that the evidence proved beyond reasonable doubt
that the accused committed the crime charged. If you are satisfied that the evidence
proves the guilt of the accused beyond reasonable doubt, you must find the accused
guilty. If, after a reasonable and honest consideration of all of the
evidence, you are left in doubt as to whether or not the accused committed the crime
charged, you must find the accused not guilty.

In assessing the sufficiency of the proof to the criminal standard
of proof, the Crown must establish that the evidence presented by the accused
is to be a doubt of which you are satisfied beyond reasonable doubt.
The Crown must establish that the evidence presented by the accused
is to be a doubt of which you are satisfied beyond reasonable doubt.
The Crown must establish that the evidence presented by the accused
is to be a doubt of which you are satisfied beyond reasonable doubt.
The Crown must establish that the evidence presented by the accused
is to be a doubt of which you are satisfied beyond reasonable doubt.

COMMONWEALTH

V

LEAR

INSTRUCTION 4

The Court instructs the jury that if you believe from the evidence beyond a reasonable doubt that the defendant, Noah Thomas Lear, had sexual intercourse with Ogretta Jane Dove at any time before she became 14 years of age, you shall find the defendant guilty regardless of whether or not force was used by him in the accomplishment of such act and regardless of whether or not such act was done with or without her consent, and shall fix his punishment in accordance with the charge to the jury.

8/19/5

HH.

Z.

7

INSTRUCTION 7

The court instructs the jury that it now believes from the evidence beyond a reasonable doubt that the defendant, Noah Thomas Lest, had sexual intercourse with Geneva Jane Dove at any time before she became 14 years of age, you shall find the defendant guilty regardless of whether or not force was used by him in the accomplishment of such act and regardless of whether or not such act was done with or without her consent, and shall fix his punishment in accordance with the charge of the jury.

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COMMONWEALTH
V.
NOAH THOMAS LEAR

INSTRUCTION 5

The Court instructs the jury that you may convict the defendant on the evidence of the prosecuting witness, Ogretta Jane Dove, alone, although such evidence may be uncorroborated in whole or may be corroborated only in part, if the jury believe from such evidence that the defendant is guilty beyond all reasonable doubt.

8/19/52

X

COMMONWEALTH
V.
NOAH THOMAS LEAR

INSTRUCTION 6

The Court instructs the jury that the credibility of witnesses is a question exclusively for the jury; and the jury have the right to determine from the appearance of the witnesses on the stand, their manner of testifying, the reasonableness and consistency of their testimony, their apparent candor and fairness, their apparent intelligence or lack of intelligence, the relationship of the witness to the parties, if any, the interest of the witness in the result of the trial, if any appear, and from all other surrounding circumstances appearing on the trial, determine which witnesses are more worthy of credit and what is the relative weight of any such testimony, and to give credit accordingly.

8/19/5
H.H.

INSTRUCTION 2

The court instructs the jury that the credibility of witnesses is a question exclusively for the jury; and the jury have the right to determine from the appearance of the witnesses on the stand, their manner of testifying, the reasonableness and consistency of their testimony, their apparent candor and fairness, their apparent intelligence or lack of intelligence, the relationship of the witnesses to the parties, if any, the interest of the witness in the result of the trial, if any appear, and from all other circumstances appearing on the trial, determine which witnesses are more worthy of credit and how far it and the relative weight to give to their testimony, and to give credit accordingly.

COMMONWEALTH

v.

NOAH THOMAS LEAR

INSTRUCTION 7

The Court instructs the jury that the charge of rape is one easy to make and hard to disprove by one, be he ever so innocent, and the law expects the one making such charge to complain thereof at the earliest possible moment and that a failure to make such complaint at the earliest possible moment, and absence of any adequate explanation or excuse therefor is a circumstance tending to discredit her testimony and tending likewise to establish that if a sexual intercourse was had it was with her consent.

Refused
8/19/52
H.H.

0*

COMMONWEALTH

v.

NOAH THOMAS LEAR

INSTRUCTION

The Court instructs the jury that the charge of rape is one easy to make and hard to disprove by one, be he ever so innocent, and the law expects the one making such charge to complain thereof at the earliest possible moment and that a failure to make such complaint at the earliest possible moment, and absence of any adequate explanation or excuse therefor is a circumstance tending to discredit her testimony and tending likewise to establish that if a sexual intercourse was had it was with her consent.

COMMONWEALTH

v.

NOAH THOMAS LEAR

INSTRUCTION 8

The Court instructs the jury that if they believe from the evidence that the prosecutrix delayed for about eight months to make known the alleged offense committed against her and she has not satisfactorily explained the cause of such delay, such delay may be taken into consideration by the jury, in favor of the accused.

Refused to Ex
8/19/5
H.H.

O*

COMMONWEALTH

v.

NOAH THOMAS LEAH

INSTRUCTION 8

The Court instructs the jury that if they believe from the evidence that the prosecutrix delayed for about eight months to make known the alleged offence committed against her and she has not satisfactorily explained the cause of such delay, such delay may be taken into consideration by the jury, in favor of the accused.

Refused v R
8/15/15

COMMONWEALTH

v.

NOAH THOMAS LEAR

INSTRUCTION 9

The Court instructs the jury that before the defendant can be convicted of the offense charged in the indictment, they must be satisfied from all the evidence beyond a reasonable doubt that Ogretta Jane Dove was on the 17th day of ~~July,~~ June 1951, under the age of 14 years, that on said date the defendant had sexual intercourse with her, and the Court further instructs the jury that unless they believe that the offense charged took place on or about said date, then they should find the defendant not guilty.

Refused + Ex.
8/15/52
H.H.

0

COMMONWEALTH

v.

NOAH THOMAS LEAR

INSTRUCTION 2

The Court instructs the jury that before the defendant can be convicted of the offense charged in the indictment, they must be satisfied from all the evidence beyond a reasonable doubt that Ovretta Jane Dove was on the 17th day of June, 1951, under the age of 14 years, that on said date the defendant had sexual intercourse with her, and the Court further instructs the jury that unless they believe that the offense charged took place on or about said date, then they should find the defendant not guilty.

Refused + Ex

RAA

COMMONWEALTH

v.

NOAH THOMAS LEAR

INSTRUCTION 10

The Court instructs the jury that if it believes from the evidence that the crime charged against the defandant in the indictment in this case rests alone on the evidence of the prosecuting witness, Ogretta Jane Dove, then they should scrutinize her testimony with great care and caution

Refused & Ex.
8/19/52
H.H.

0

COMMONWEALTH

v.

NOAH THOMAS LEAR

INSTRUCTION 10

The Court instructs the jury that if it believes from the evidence that the crime charged against the defendant in the indictment in this case rests alone on the evidence of the prosecuting witness, Ogretta Jane Dove, then they should scrutinize her testimony with great care and caution

Refused 6th
Bill

Circuit Court of the County of Rockingham on Tuesday, the 19th day of August, in the year of our Lord, nineteen hundred and fifty-two.

Present: Hon. Hamilton Haas, Judge,

Commonwealth
vs. On an indictment for a felony (statutory rape)
Noah Thomas Lear

This day came again the attorney for the commonwealth, and the accused, Noah Thomas Lear, came pursuant to his recognizance and by his attorney, Harry Blatt; and the jury impanelled and sworn for the trial of this case came pursuant to adjournment. And having received the instructions of the court and heard the argument of counsel, the jurors retired to their room to consider their verdict, and after some time they came again into court and returned the following verdict: "We, the jurors, find Noah Thomas Lear guilty of the charge as charged in the indictment, and set his punishment at 7 years in the penitentiary. (signed) John H. Nicholas, foreman." And thereupon, on motion of counsel for the accused, the jurors were separately polled as to whether said verdict is the verdict of each of them, to which poll each juror replied in the affirmative. Thereupon, the accused, by counsel, moved the court to set aside said verdict and grant a new trial on the following grounds: 1. That the verdict of the jury is contrary to the law. 2. That the verdict of the jury is contrary to the evidence and is without evidence to support it. 3. That the verdict of the jury is contrary to the law and to the evidence. 4. That the punishment fixed is so excessive as to shock the mind of the Court. 5. That the Court erred in granting Instruction 4 tendered by the Commonwealth over the objection and exception of the defendant. 6. That the Court erred in refusing Instruction 8

Circuit Court of the County of Rockingham on Tuesday, the 19th day of August, in the year of our Lord, nineteen hundred and fifty-two.

Present: Hon. Hamilton Hess, Judge.

The Jurors

Commonwealth

vs.

On an indictment for a felony (aforethought rape)

Noah Thomas Lest

This day came again the attorney for the Commonwealth, and the accused, Noah Thomas Lest, came personal to his recognizance and by his attorney, Harry Blatt; and the Jury impanelled and sworn for the trial of this case came personal to deliverance.

And having received the instructions of the court and heard the argument of counsel, the jurors retired to their room to consider their verdict, and after some time they came again into court and returned the following verdict: "We, the jurors, find Noah Thomas Lest guilty of the crime as charged in the indictment, and set his punishment at 7 years in the penitentiary." (signed) John H. Nicholas, foreman." And thereupon, on motion of counsel for the accused, the jurors were separately polled as to whether said verdict is the verdict of each of them, to which both each juror replied in the affirmative. Thereupon, the accused, by counsel, moved the court to set aside said verdict and grant a new trial on the following grounds: 1. That the verdict of the jury is contrary to the law. 2. That the verdict of the jury is contrary to the evidence and is without evidence to support it. 3. That the verdict of the jury is contrary to the law and to the evidence. 4. That the punishment fixed is so excessive as to shock the mind of the court. 5. That the court erred in giving instruction 4 referred to the commonwealth over the objection and exception of the defendant. 6. That the court erred in refusing instruction 8

tendered by the defendant to which action of the Court the defendant objected and excepted. 7. That the Court erred in refusing Instruction 9 tendered by the defendant to which action of the Court the defendant objected and excepted. 8. That the Court erred in refusing Instruction 10 tendered by the defendant to which action of the Court the defendant objected and excepted. 9. That the Court erred in vacating the original charge to the jury after the jury was impanelled and sworn and the original charge had been read to the jury and substituting therefor a corrected charge which was thereafter read to the jury, to which action of the Court the defendant objected and excepted. 10. And for such other reasons and grounds as may be assigned at the bar of the Court. Whereupon, the Court fixed the 25th day of August next for the hearing of said motion; and the accused was committed to jail.

tendered by the defendant to which action of the Court the defendant objected and excepted. 7. That the Court erred in refusing Instruction 9 tendered by the defendant to which action of the Court the defendant objected and excepted. 8. That the Court erred in refusing Instruction 10 tendered by the defendant to which action of the Court the defendant objected and excepted. 9. That the Court erred in vacating the original charge to the jury after the jury was impanelled and sworn and the original charge had been read to the jury and substituting therefor a corrected charge which was thereafter read to the jury, to which action of the Court the defendant objected and excepted. 10. And for such other reasons and grounds as may be assigned at the bar of the Court. Whereupon, the Court fixed the 25th day of August next for the hearing of said motion; and the accused was committed to jail.

Filed Aug. 19, 1952

VIRGINIA: IN THE CIRCUIT COURT OF ROCKINGHAM COUNTY

COMMONWEALTH

v.

NOAH THOMAS LEAR

This day came the defendant, Noah Thomas Lear, by his counsel, and assigned the following as grounds of his motion made on August 19, 1952, to set aside the verdict of the jury rendered that day finding the said defendant guilty of statutory rape and fixing his punishment at confinement in the penitentiary for a period of seven years:

1. That the verdict of the jury is contrary to the law.

2. That the verdict of the jury is contrary to the evidence and is without evidence to support it.

3. That the verdict of the jury is contrary to the law and to the evidence.

4. That the punishment fixed is so excessive as to shock the mind of the Court.

5. That the Court erred in granting Instruction 4 tendered by the Commonwealth over the objection and exception of the defendant.

6. That the Court erred in refusing Instruction 8 tendered by the defendant to which action of the Court the defendant objected and excepted.

7. That the Court erred in refusing Instruction 9 tendered by the defendant to which action of the Court the defendant objected and excepted.

8. That the Court erred in refusing Instruction 10 tendered by the defendant to which action of the Court the defendant objected and excepted.

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VIRGINIA: IN THE CIRCUIT COURT OF ROCKINGHAM COUNTY

COMMONWEALTH

v.

NOAH THOMAS LEAR

This day came the defendant, Noah Thomas Lear, by his counsel, and presented the following as grounds to his motion made on August 19, 1925, to set aside the verdict of the jury rendered that day finding the said defendant guilty to statutory rape and fixing his punishment at confinement in the penitentiary for a period of seven years:

1. That the verdict of the jury is contrary to the law.

2. That the verdict of the jury is contrary to the evidence

3. That the verdict of the jury is contrary to the law and is without evidence to support it.

4. That the punishment fixed is so excessive as to shock the mind of the court.

5. That the court erred in granting Instruction 4 tendered by the Commonwealth over the objection and exception of the defendant.

6. That the court erred in refusing Instruction 8 tendered by the defendant to which action of the court the defendant objected and excepted.

7. That the court erred in refusing Instruction 9 tendered by the defendant to which action of the court the defendant objected and excepted.

8. That the court erred in refusing Instruction 10 tendered by the defendant to which action of the court the defendant objected and excepted.

9. That the Court erred in vacating the original charge to the jury after the jury was impanelled and sworn and the original charge had been read to the jury and substituting therefor a corrected charge which was thereafter read to the jury, to which action of the Court the defendant objected and excepted.

10. And for such other reasons and grounds as may be assigned at the bar of the Court.

August 19, 1952.

9. That the court erred in accepting the original charge of the jury after the jury was impanelled and sworn and the original charge had been read to the jury and substituting therefor a corrected charge which was therein read to the jury, to which action of the court the defendant objected and excepted.

10. And for such other reasons and grounds as may be assigned at the bar of the court.

August 28, 1925.

Circuit Court of the County of Rockingham on Monday, the 25th day of August, in the year of our Lord, nineteen hundred and fifty-two.

Present: Hon. Hamilton Haas, Judge.

Commonwealth

vs. On an indictment for a felony (statutory rape)

Noah Thomas Lear

This day came the attorney for the commonwealth, and the accused, Noah Thomas Lear, was brought into court by the sheriff of this county and came also by his attorney, Harry Blatt. Whereupon, the court having heard and considered the motion heretofore made to set aside the verdict of the jury in this case and grant the defendant a new trial on grounds set forth in a former order entered herein, doth overrule said motion, to which action of the Court the accused, by counsel, excepted. And it is therefore considered by the Court that the commonwealth recover of the said Noah Thomas Lear the costs incident to this prosecution, and that he be confined in the Penitentiary of this State for the term of seven (7) years at hard labor, in accordance with the verdict of the jury; and said Noah Thomas Lear was remanded to jail until he can be delivered to an officer of the State Penitentiary, to be removed and conveyed to the public jail and penitentiary house of this commonwealth, therein to be held and kept imprisoned and treated in the manner directed by law for the term aforesaid, subject, however, to a credit of 7 days, time he was held in jail awaiting trial.

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Circuit Court of the County of Rockingham on Monday, the 25th day of August. In the year of our Lord, nineteen hundred and fifty-two.

Present: Hon. Hamilton Hans, Judge.

Commonwealth

vs. On an indictment for a felony (assaulting Rebe)

Rosh Thomas Pest

This day came the attorney for the Commonwealth, and the accused, Rosh Thomas Pest, was brought into court by the sheriff of this county and came also by his attorney, Nelly Blatt.

Whereupon, the court hereby heard and considered the motion made to set aside the verdict of the jury in this case and grant the defendant a new trial on grounds set forth in a former motion, which overrules said motion, to which action of the court the accused, by counsel, excepted. And it is thereupon considered by the court that the commonwealth recover of the said Rosh Thomas Pest the costs incident to this prosecution, and that he be confined in the Penitentiary of this State for the term of seven (7) years at hard labor, in accordance with the verdict of the jury; and said Rosh Thomas Pest was remanded to jail until he can be delivered to an officer of the State Penitentiary, to be removed and conveyed to the public jail and penitentiary house of the Commonwealth, thereto to be held and kept imprisoned and treated in the manner directed by law for the term sentenced, however, to a credit of 1 days, time spent held in jail awaiting trial.

VIRGINIA: IN THE CIRCUIT COURT OF ROCKINGHAM COUNTY

COMMONWEALTH OF VIRGINIA

v.

NOAH THOMAS LEAR

Notice of Appeal and Assignments of Error

To the Clerk of the Circuit Court of Rockingham County, Virginia:

Counsel for Noah Thomas Lear, the defendant in the above styled case in the Circuit Court of Rockingham County, Virginia, hereby give notice of appeal from the order entered in this case on August 25 , 1952, and set forth the following assignments of error:

1. That the Court erred in granting Instruction 4 tendered by the Commonwealth over the objection and exception of the defendant.

2. That the Court erred in refusing Instruction 8 tendered by the defendant to which action of the Court the defendant objected and excepted.

3. That the Court erred in refusing Instruction 9 tendered by the defendant to which action of the Court the defendant objected and excepted.

4. That the Court erred in refusing Instruction 10 tendered by the defendant to which action of the Court the defendant objected and excepted.

5. That the Court erred in vacating the original charge to the jury after the jury had been impanelled and sworn, and the original charge had been read to the jury and substituting therefor another charge which was thereafter read to the jury, to which action of the Court the defendant objected and excepted.

See Rule 5:1 (c) Criminal Cases

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VIRGINIA: IN THE CIRCUIT COURT OF ROCKINGHAM COUNTY

COMMONWEALTH OF VIRGINIA

v.

NOAH THOMAS LEAR

Notice of Appeal and Assignments of Error

To the Clerk of the Circuit Court of Rockingham County, Virginia:

Counsel for Noah Thomas Lear, the defendant in the above styled case in the Circuit Court of Rockingham County, Virginia, hereby give notice of appeal from the order entered in this case on August 25 , 1952, and set forth the following assignments of error:

1. That the Court erred in granting Instruction 4 tendered by the Commonwealth over the objection and exception of the defendant.

2. That the Court erred in refusing Instruction 8 tendered by the defendant to which action of the Court the defendant objected and excepted.

3. That the Court erred in refusing Instruction 9 tendered by the defendant to which action of the Court the defendant objected and excepted.

4. That the Court erred in refusing Instruction 10 tendered by the defendant to which action of the Court the defendant objected and excepted.

5. That the Court erred in vacating the original charge to the jury after the jury had been impanelled and sworn, and the original charge had been read to the jury and substituting therefor another charge which was thereafter read to the jury, to which action of the Court the defendant objected and excepted.

6. That the Court erred in refusing to set aside the verdict and grant a new trial on the ground that the verdict was contrary to the law and the evidence and for granting Instruction 4 tendered by the Commonwealth, and for refusal to give Instructions 8, 9 and 10 tendered by the defendant, and in vacating the original charge to the jury after the jury had been impanelled and sworn, and the original charge had been read to the jury, and substituting therefor another charge which was thereafter read to the jury.

Harry Blatt
410 The National Bank Building
Harrisonburg, Virginia

Arthur W. Wickman
Hotchkiss ~~Spotswood~~ Building
Harrisonburg, Virginia

September 8, 1952. COUNSEL FOR DEFENDANT

I certify that a copy of the foregoing Notice of Appeal and Assignments of Error was handed to George D. Conrad, Esquire, Attorney for the Commonwealth for Rockingham County, Virginia, on this 8th day of September, 1952.

Harry Blatt, p.d.

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_____, p.q.

I certify that a copy of the foregoing Notice of Appeal and Assignments of Error was handed to George D. Conley, Esquire, Attorney for the Commonwealth for Rockingham County, Virginia, on this 8th day of September, 1925.

_____
Clerk

_____
To the National Bank Building
Harrisonburg, Virginia

_____
Chesapeake Building
Harrisonburg, Virginia

COUNSEL FOR DEFENDANT

September 8, 1925.

6. That the court erred in refusing to see aside the verdict and grant a new trial on the ground that the verdict was contrary to the law and the evidence and for granting instruction 1 tendered by the Commonwealth, and for refusal to give instructions 8, 9 and 10 tendered by the defendant, and in accepting the original charge to the jury after the jury had been dismissed and sworn, and the original charge had been read to the jury, and substituting therefor another charge which was interpreted read to the jury.

_____
Clerk

_____
To the National Bank Building
Harrisonburg, Virginia

_____
Chesapeake Building
Harrisonburg, Virginia

COUNSEL FOR DEFENDANT

September 8, 1925.

VIRGINIA: IN THE CIRCUIT COURT OF ROCKINGHAM COUNTY

COMMONWEALTH OF VIRGINIA

V.

NOAH THOMAS LEAR

Written statement, in narrative form, of testimony adduced at the trial of the case of Commonwealth of Virginia v. Noah Thomas Lear, on Monday, August 18, 1952.

Filed in the Clerk's Office
Rockingham County, Va.
October 22, 1952
J. Paul Kniseley Clerk

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VIRGINIA: IN THE CIRCUIT COURT OF ROCKINGHAM COUNTY

COMMONWEALTH OF VIRGINIA

v.

NOAH THOMAS LEAH

Written arraignment, in narrative form, of testimony adduced at the trial of the case of COMMONWEALTH OF VIRGINIA v. Noah Thomas Leah, on Monday, August 18, 1925.

WITNESSES CALLED BY THE COMMONWEALTH

Ogretta Jane Dove

OGRETTA JANE DOVE, having been duly sworn, testified that her age was 15 years, and that her last birthday was June 30, 1952. She lives at the home of her parents about 5 miles above the village of Bergton in Rockingham County, Virginia, near the West Virginia line. She has gone to the 7th grade in school, and dropped out of school in February, 1952 because of the approaching birth of her child which was a girl born on April 11, 1952. She stated that the father of the child is Noah Thomas Lear. She lives at the home of her father, at which 10 children, including a sister named Katherine, and her parents reside. She first became acquainted with Lear in December, 1950, when he came to work for her father, but knew him better in May, 1951 when he worked for her father helping on a sawmill and with turkeys, and at that time, Lear stayed at the home of Willard and Norma Ritchie, not quite a mile from the Dove home. She testified that Lear courted her some, but this consisted of just some talk to her around her father's home while he was working there. She testified that on Sunday, June 17, 1951, Lear came to the Dove home, upon which occasion the parents and the rest of the children except her sister, Katherine, were visiting at the home of relatives in West Virginia. She stated that Lear came there with Guy Dove, and that Lear came in the house while she was in the bedroom combing her hair. That her sister went out on the porch and sat with Guy Dove, and while Lear and she remained in the house. She stated that Lear and she at that time were in the kitchen, that Lear picked her up, carried her into her mother's bedroom, and had sexual intercourse with her on the bed. She stated that she consented, made no outcry, nor any subsequent complaint, and that her sister and Dove remained on the porch the entire time. That Lear and Dove then left, and she and her sister went on to

knew him perfect in May, 1921 when he worked for her father hoeing on a sawmill and with turkeys, and at that time, Pearl stayed at the home of William and Norma Rifonte, not quite a mile from the Dove home. She testified that Pearl confined her some, but this continued to just some talk to her around her father's home until he started to leave some time in June, 1921, when Pearl came to the Dove home, upon which occasion the parents and the rest of the children except her sister, Katherine, were visiting at the home of relatives in West Virginia. She stated that Pearl came with Guy Dove, and that Pearl came in the house while she was in the bedroom combing her hair. That her sister went out on the porch and sat with Guy Dove, and while Pearl and she remained in the house. She stated that Pearl and she at that time were in the kitchen, that Pearl picked her up, carried her into her mother's bedroom, and had sexual intercourse with her on the bed. She stated that Pearl consented, made no outcry, nor gave expressions of pain, and that her sister and Dove remained on the porch the entire time.

Pearl in December, 1920, when he came to work for her father, but knew him perfect in May, 1921 when he worked for her father hoeing on a sawmill and with turkeys, and at that time, Pearl stayed at the home of William and Norma Rifonte, not quite a mile from the Dove home. She testified that Pearl confined her some, but this continued to just some talk to her around her father's home until he was working there. She testified that on August 17, 1921, Pearl came to the Dove home, upon which occasion the parents and the rest of the children except her sister, Katherine, were visiting at the home of relatives in West Virginia. She stated that Pearl came in the house while she was in the bedroom combing her hair. That her sister went out on the porch and sat with Guy Dove, and while Pearl and she remained in the house. She stated that Pearl and she at that time were in the kitchen, that Pearl picked her up, carried her into her mother's bedroom, and had sexual intercourse with her on the bed. She stated that Pearl consented, made no outcry, nor gave expressions of pain, and that her sister and Dove remained on the porch the entire time.

COMMELIA JANE DOVE, having been duly sworn, testified that her age was 15 years, and that her least birthday was June 30, 1925. She lives at the home of her parents about 2 miles above the village of Peterson in Hocktenham County, Virginia, near the West Virginia line. She has gone to the 7th grade in school, and dropped out of school in February, 1925 because of the approaching birth of her child which was a girl born on April 11, 1925. She stated that the father of the child is Roan Thomas Pearl. She lives at the home of her father, at which 10 children, including a sister named Katherine, and her parents reside. She first became acquainted with Pearl in December, 1920, when he came to work for her father, but

Cornelia Jane Dove

WITNESSES CALLED BY THE COMMONWEALTH

church. She then testified that Lear had relations with her upon occasions after that, and that on the 8th of July, 1951, he tore the screen off the window to her room where she was sleeping with Katherine and some others of her sisters. That he did not bother her, but lay across the foot of her bed, and that her sister Katherine was awakened by his snoring, and that this was the first Ogretta knew Lear was in the room. That she first knew she was in trouble on July 8, 1951, since she had missed her menstrual period that month. That on this occasion she and her sister got him out on the porch, that her sister went back in the house, and that Lear then had relations with her on the porch that night. She was not certain what day in July, 1951 she was supposed to menstruate. That she had not gone out with other boys, or men, and that Lear was the man responsible for her pregnancy. That she is positive that June 17, 1951 was the first day upon which she had relations with Lear, and she knows this since it was the day her parents went to West Virginia. She also testified that at the time of the intercourse on June 17, 1951, she bled, and that some of the blood got on her underclothing, her skirt and upon her mother's bedspread. That she did not clean the blood off her clothing. That she went to church immediately afterward, but that neither her sister nor anyone else noticed the blood. That she made no attempt to conceal the blood, but put her slip and skirt in the dirty clothes. That she had been menstruating that day, and in fact, had been menstruating steadily for 2 months, every day. That she revealed her pregnancy in February, 1952, which was the first that her family noticed her condition. She also was positive that the act of intercourse on July 8, 1951 took place that day, but that it did not happen on a Sunday. She stated that Lear left the community in August, 1951, and had nothing to do with her thereafter.

church. She then testified that Leah had relations with her upon occasions after that, and that on the 8th of July, 1951, he took the screen off the window to her room where she was sleeping with Katherine and some others of her sisters. That he did not bother her, but laid across the foot of her bed, and that her sister Katherine was awakened by his snoring, and that this was the first time Katherine had seen Leah was in the room. That she first knew she was in trouble on July 8, 1951, since she had missed her menstrual period for two months. That on this occasion she and her sister got him out of the porch, that her sister went back in the house, and that Leah then had relations with her on the porch that night. She was not certain what day in July, 1951 she was supposed to menstrate. That she had not gone out with other boys, or men, and that Leah was the man responsible for her pregnancy. That she is positive that June 17, 1951 was the first day upon which she had relations

with Leah, and she knows this since it was the day her periods went to West Virginia. She also testified that at the time of the interrogatories on June 17, 1951, she lied, and that some of the blood spot on her undergarments, her skirt and upon her mother's pedspread. That she did not clean the blood off her clothing. That she went to church immediately afterward, but that neither her sister nor anyone else noticed the blood. That she made no attempt to conceal the blood, but put her slip and skirt in the dirty clothes. That pregnancy in September, 1951, which was the first that her family noticed her condition. She also was positive that the sex of the unborn child was a girl, and that it did not come out with other boys, or men, and that Leah then had relations with her on the porch that night. She was not certain what day in July, 1951 she was supposed to menstrate. That she had not gone out with other boys, or men, and that Leah was the man responsible for her pregnancy. That she is positive that June 17, 1951 was the first day upon which she had relations

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in August, 1951, and had nothing to do with her threatening.

Mrs. Jess Dove

MRS. JESS DOVE, having been duly sworn, testified that Ogretta Jane Dove is her daughter and that she was 15 years old on June 30, 1952. That she discovered her daughter's pregnancy in March, 1952, when she detected swelling, and asked her about it. That she never knew her daughter to be with any man except Lear, that she had instructed her to leave all boys alone, and that she wasn't going with any boys during the period involved; nevertheless, she mistrusted something by Lear's being around there so much. She had noticed him talking to Ogretta a lot. She testified that she and her husband and other children went to West Virginia early in the morning of June 17, 1951, and that they returned late that evening. That she noticed nothing unusual about her own bed, and didn't bother the other beds in the house.

Katherine Dove

KATHERINE DOVE, having been duly sworn, testified that she is 17 years of age, and a sister of Ogretta Jane Dove. That Noah Thomas Lear had paid attention to her sister, and that he had courted Ogretta a little. That her sister had had no dates with other boys, and that Katherine and Ogretta were home one Sunday in June, and that Katherine on that occasion was with Guy Dove. The two sisters were getting ready for preaching, and the other children were at a picnic. They were combing their hair when Lear and Guy Dove came to the house in a car. She stated that Lear and Ogretta were in the house, and stayed in the house about one-half hour, then after Lear and Dove left, Ogretta came out and they walked to the preaching. Her sister didn't tell her that anything had happened in the house. She testified that on another occasion, when her parents were on the hill with the turkeys, that Lear came in through the window of her mother's room, that she heard him and

X

MRS. JESS DOVE, having been duly sworn, testified that Odetta Dove is her daughter and that she was 15 years old on June 30, 1925. That she discovered her daughter's pregnancy in March, 1925, when she detected swelling, and asked her about it. That she never knew her daughter to be with any man except Jess, that she had transported her to leave all work alone, and that she was having a boiling with her over quitting the boring involved; nevertheless she administered something to Jess's being around there so much. She had notified him talking to Odetta a lot. She testified that she and her husband and other children went to West Virginia early in the morning of June 14, 1921, and that they returned late that evening. That she noticed nothing unusual about her one bed, and slept in the other beds in the house.

Mrs. Jess Dove

KATHERINE DOVE, having been duly sworn, testified that she is 17 years of age, and a sister of Odetta Jane Dove. That both Thomas Jess had been attention to her sister, and that he had courted Odetta a little. That her sister had had no dates with other boys, and that Katherine and Odetta were home one Sunday in June, and that Katherine on that occasion was with Guy Dove. The two sisters were getting ready for church, and the other children were at a picnic. They were complete their visit when Jess and Guy Dove came to the house in a car. She stated that Jess and Odetta were in the house, and stayed in the house about one-half hour, then after Jess and Dove left, Odetta came out and they walked to the street. Her sister didn't tell her that anything had happened in the house. She testified that on another occasion, when Jess in the house. She testified that on another occasion, when her parents were on the hill with the turkeys, that Jess came in through the window to her bedroom, and she heard him and

Katherine Dove

woke up, that she unlocked the door and let him out, but that Ogretta didn't go out of the house on that occasion which she stated was July 8, 1951. That she suspected there was something between Ogretta and Lear on this occasion when he came in the house and went to her bed. She testified that on the first occasion, June 17, 1951, she could hear Lear and Ogretta in her mother's room talking as she sat on the porch with Guy Dove, but that she heard no struggle or outcry, and that they remained in there about one-half hour. That when Ogretta came out, her face was not flushed, but her clothihg was wrinkled. That her hair was not messed up. She saw no blood upon her sister or the bed.

Witnesses Called By Defendant

NORMA RITCHIE, having been duly sworn, testified that she lives above Bergton in Rockingham County, Virginia, about ½ mile from the Jess Dove Residence. That Lear boarded at her home from April 29th until June 16th, upon which latter date he left and said he was going to his parents home at Conicsville, Virginia. He did not stay at her home on Sunday, June 17, 1951, but left on Saturday, taking all his clothing. He returned again on July 1, 1951 at which time he stayed about 3 weeks, again working for Jess Dove, then departed and returned briefly in November. After that he did not return. On June 16, 1951, he left with Samuel Byers, Bobby Smoot, and Charles Lear, and left in Charles Lear's car, about noon. On cross ecamination she stated that Lear left her house on June 16th, but that she does not know where he was on June 17.

Samuel Byers

SAMUEL BYERS, having been duly sworn, testified that he is 21 years old and lives at Mt. Jackson, Virginia. That Lear's home is at Conicsville, in Shenandoah County, near Mt. Jackson, and that he

woke up, that she unlocked the door and let him out, but that Ogretta didn't go out of the house on that occasion which she stated was July 8, 1952. That she suspected there was something between Ogretta and Lear on this occasion when he came in the house and went to her bed. She testified that on the first occasion, June 17, 1952, she could hear Lear and Ogretta in her mother's room talking as she sat on the porch with Guy Dove, but that she heard no struggle or outcry, and that they remained in there about one-half hour. That when Ogretta came out, her face was not flushed, but her clothing was wrinkled. That her hair was not mussed up. She saw no blood upon her sister or the bed.

Witnesses Called By Defendant

NORMA RITCHIE, having been duly sworn, testified that she lives above Bergton in Rockingham County, Virginia, about ½ mile from the Jess Dove Residence. That Lear boarded at her home from April 29th until June 16th, upon which latter date he left and said he was going to his parents home at Conicaville, Virginia. He did not stay at her home on Sunday, June 17, 1952, but left on Saturday, taking all his clothing. He returned again on July 1, 1952 at which time he stayed about 3 weeks, again working for Jess Dove, then departed and returned briefly in November. After that he did not return. On June 16, 1952, he left with Samuel Byers, Bobby Smoot, and Charles Lear, and left in Charles Lear's car, about noon. On cross examination she stated that Lear left her house on June 16th, but that she does not know where he was on June 17.

Samuel Byers

SAMUEL BYERS, having been duly sworn, testified that he is 21 years old and lives at Mt. Jackson, Virginia. That Lear's home is at Conicaville, in Shenandoah County, near Mt. Jackson, and that he

was one of the group that came after Lear to take him home on June 16, 1951. They went after Lear on that Saturday, he, Bobby Smoot, and Charles Lear, and he further stated that he was with Lear at Conicsville all the next day and that Lear remained in that section about 2 weeks. He stated that he stayed at Lear's home all night on June 16th, that Bobby Smoot stayed there too and that he and Lear are good friends.

Charles Lear

CHARLES LEAR, having been duly sworn, testified that he is 24 years old, lives at Conicsville, Virginia, and that he is a brother to Noah Thomas Lear. He stated that he went to Bergton after his brother with Samuel Byers and Bobby Smoot on June 16, 1951, and that they arrived at Bergton about noon. That they remained about ½ hour, and then departed with Noah Thomas Lear. That they took Byers to his own home. That Lear remained at home all that night and that he was with him all the next day. That Lear took all his clothing with him when he left Bergton.

Bobby Smoot

BOBBY SMOOT, having been duly sworn, testified that he was along when Charles Lear and Samuel Byers went to Bergton after Lear. That this was on June 16, 1951, and that on that day he, and the others, went to Bergton, got Lear at the Ritchie home and took him back to Conicsville and that he knows that Lear remained at Conicsville all the next day.

Charles Lear, Samuel Byers, and Bobby Smoot were in great confusion as to Lear's and their own whereabouts on the following day, June 17. While they all testified that they were with him, they testified they were with him at various places. One testified that they were at Lear's home and at Conicsville, one testified that they went to Mt. Jackson, and one testified that they rode

X

was one of the group that came after Leas to take him home on June 14, 1921. They went after Leas on that Saturday, he, Boppy Smoot, and Charles Leas, and he infrmed afafed that he was with Leas at Conicsville all the next gay and that Leas remained in that section about 5 weeks. He afated that he afayed at Leas,s home all night on June 16th, that Boppy Smoot afayed there too and that he and Leas are good friends.

Charles Leas

CHARLES LEAS, having been duly sworn, testified that he is 24 years old, lives at Conicsville, Virginia, and that he is a farmer to Noah Thomas Leas. He stated that he went to Berlton after his father, Samuel Byers and Boppy Smoot on June 16, 1921, and that they arrived at Berlton about noon. That they remained about 2 o'clock. That Leas took all his clothing with him when he left Berlton.

Boppy Smoot

BOBBY SMOOT, having been duly sworn, testified that he was alone when Charles Leas and Samuel Byers went to Berlton after Leas. That this was on June 16, 1921, and that on that day he, and the others went to Berlton, got Leas at the Virginia home and took him back to Conicsville and that he knows that Leas remained at Conicsville all night.

around and went to New Market.

Guy Layman Dove

GUY LAYMAN DOVE, having been duly sworn, testified that he is 26 years old and lives at Bergton, Virginia, that he knows Lear and that he was only at the Jess Dove residence with Lear about 9:30 or 10 o'clock in the morning on May 27, 1951, that he knows May 27, 1951, was the correct date because it was the day his brother Alfred went to Pennsylvania. That Marcello Dove and Wilbert Mongold were along on that occasion but remained in the car. That Katherine and Ogretta said the rest of their family had gone across the mountain. That he and Katherine Dove were on the porch and that Lear and Ogretta Dove went in the house and stayed in the house about ½ hour. That he did not hear any talking in the house, that he and Katherine had been in the house with Lear and Ogretta but came out on the porch. That when Lear and Ogretta came out of the house Ogretta did not appear excited or messed up but he did not know what happened inside the house. But they remained ½ hour and then left.

Alfred Lee Dove

ALFRED LEE DOVE, having been duly sworn, testified that he is 20 years old and lives at Bergton. That he is a brother of Guy Dove and that on May 27, 1951, he went to Pennsylvania and that he knows this to be the correct date because he had been in West Virginia the day previous. He produced a bus ticket which was the ticket used on his trip to West Virginia, which had stamped on the reverse side the date, May 26, 1951. The bus ticket was introduced in evidence.

X

GUY LAZAMAN DOVE, having been duly sworn, testified that he is 52 years old and lives at Perkton, Virginia, that he knows Lest and that Lest on May 23, 1951, he went to Pennsylvania and stopped enroute about 8 P.M. He went to the house with Lest about 9:30 or 10 o'clock in the morning on May 23, 1951, that he knows May 23, 1951, was the correct date because it was the day this prisoner Allred went to Pennsylvania. That Marcello Dove and William Donald Gold were alone on that occasion but remained in the car. That the house operator said the rest of their family had gone across the mountain. That he and Kathertine Dove were on the porch and that Lest and Operetta Dove went in the house and stayed in the house about 8 P.M. That he did not hear any fighting in the house. That he and Kathertine had been in the house with Lest and Operetta but came out on the porch. That when Lest and Operetta came out of the house Operetta did not appear excited or messed up but he did not know what happened inside the house. But they remained 8 hour and then left.

Allred Lee Dove

ALFRED LEE DOVE, having been duly sworn, testified that he is 50 years old and lives at Perkton. That he is a brother of Guy Dove and that on May 23, 1951, he went to Pennsylvania and that he knows Lest and that he was only at the Lest Dove residence with Lest about 9:30 or 10 o'clock in the morning on May 23, 1951, that he knows May 23, 1951, was the correct date because it was the day this prisoner Allred went to Pennsylvania. That Marcello Dove and William Donald Gold were alone on that occasion but remained in the car. That Kathertine and Operetta said the rest of their family had gone across the mountain. That he and Kathertine Dove were on the porch and that Lest and Operetta Dove went in the house and stayed in the house about 8 P.M. That he did not hear any fighting in the house. That he and Kathertine had been in the house with Lest and Operetta but came out on the porch. That when Lest and Operetta came out of the house Operetta did not appear excited or messed up but he did not know what happened inside the house. But they remained 8 hour and then left.

Guy Lazaman Dove

stopped and went to New Market.

Noah Thomas Lear

NOAH THOMAS LEAR, having been duly sworn, testified that he lives at Conicsville, Virginia, and that he worked for Jess Dove until June 16, 1951, during which time he lived at the Ritchie residence, and that on June 16, 1951, he went back to Conicsville with Charles Lear, Samuel Byers and Bobby Smoot and did not return to Bergton until July 1, 1951. That he was not at Bergton any on June 17, 1951, but that on that day he went to Conicsville to New Market with Bobby Smoot and Charles Lear. He stated that he had been at the Dove home with Guy Dove on May 27, 1951, but that he was not there on July 8, 1951 and denied ever having relations with Ogretta Dove.

Upon cross examination Katherine Dove testified that the date July 8, 1951, upon which it was alledged that Lear came into the house through the window which was fixed by her and Ogretta after Ogretta's pregnancy became known and that they recalled that it was the day their father put the turkeys on the range. She testified that this day was July 8, 1951, according to her fathers book, but that it could not have been a Sunday. Jess Dove testified that he entered the day he put the turkeys on the range in his book, but that if July 8, 1951 was a Sunday, then the date must have been wrong.

Attorney for the Commonwealth

Harry Blatt p.d.

Julian W. Kirkman p.d.

Noah Thomas Lear

NOAH THOMAS LEAR, having been duly sworn, testified that he lives at Concaville, Virginia, and that he worked for Jess Dove until June 16, 1951, during which time he lived at the Ritchie residence, and that on June 16, 1951, he went back to Concaville with Charles Lear, Samuel Byers and Bobby Smoot and did not return to Bergton until July 1, 1951. That he was not at Bergton any on June 17, 1951, but that on that day he went to Concaville to New Market with Bobby Smoot and Charles Lear. He stated that he had been at the Dove home with Guy Dove on May 27, 1951, but that he was not there on July 8, 1951 and denied ever having relations with Ogretta Dove.

Upon cross examination Katherine Dove testified that the date July 8, 1951, upon which it was alleged that Lear came into the house through the window which was fixed by her and Ogretta after Ogretta's pregnancy became known and that they recalled that it was the day their father put the turkeys on the range. She testified that this day was July 8, 1951, according to her fathers book, but that it could not have been a Sunday. Jess Dove testified that he entered the day he put the turkeys on the range in his book, but that if July 8, 1951 was a Sunday, then the date must have been wrong.

Attorney for the Commonwealth

p.d. _____

p.d. _____

The foregoing written statement, in narrative form, of testimony adduced at the trial of the case of Commonwealth of Virginia v. Noah Thomas Lear, was tendered to me on October 22, 1952, within sixty days after final judgment therein.

Done this 22nd day of October, 1952.

Judge of the Circuit Court of
Rockingham County, Virginia

The foregoing written statement, in narrative form, of testimony adduced at the trial of the case of Commonwealth of Virginia v. Noah Thomas Lear was delivered to me and filed in my office on October 22, 1952.

Clerk of the Circuit Court of
Rockingham County, Virginia

The foregoing written statement, in narrative form, of testimony adduced at the trial of the case of Commonwealth of Virginia v. Noah Thomas Leer, was tendered to me on October 22, 1952, within sixty days after final judgment thereon.

Done this 24 day of October, 1952.

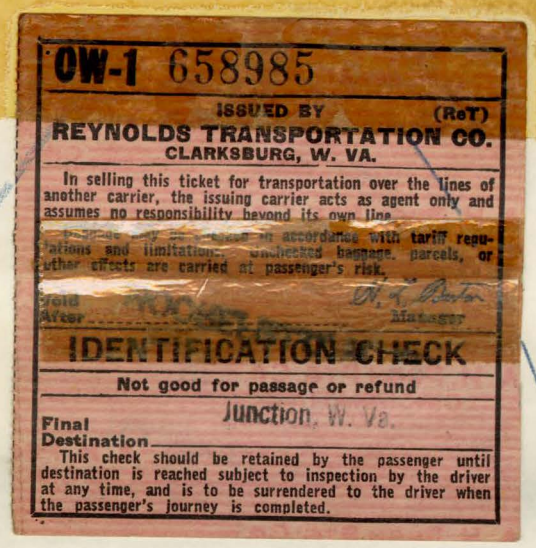
Judge of the Circuit Court of Rockingham County, Virginia

The foregoing written statement, in narrative form, of testimony adduced at the trial of the case of Commonwealth of Virginia v. Noah Thomas Leer was delivered to me, and filed in my office on October 24, 1952.

Clerk of the Circuit Court of Rockingham County, Virginia

Bus Ticket introduced in evidence

Alfred Lee Dove, page 31



OW-1 658985

ISSUED BY (RoT)

REYNOLDS TRANSPORTATION CO.

CLARKSBURG, W. VA.

In selling this ticket for transportation over the lines of another carrier, the issuing carrier acts as agent only and assumes no responsibility beyond its own line.

Baggage may be checked in accordance with tariff regulations and limitations. Unchecked baggage, parcels, or other effects are carried at passenger's risk.

Sold After [illegible] Manager

IDENTIFICATION CHECK

Not good for passage or refund

Final Destination Junction, W. Va.

This check should be retained by the passenger until destination is reached subject to inspection by the driver at any time, and is to be surrendered to the driver when the passenger's journey is completed.

Do not print

Bus Ticket introduced in evidence

Alfred Lee Dove, page 31

VIRGINIA: IN THE CIRCUIT COURT OF ROCKINGHAM COUNTY.

Commonwealth of Virginia

vs.

NOAH THOMAS LEAR

Exh

Record No. 4118

In the
Supreme Court of Appeals of Virginia
at Richmond

NOAH THOMAS LEAR
v.
COMMONWEALTH OF VIRGINIA

FROM THE CIRCUIT COURT OF ROCKINGHAM COUNTY

Witness Subpoena

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

Jesse Dove, Bergton, Va.	70	350
Ogretta Jane Dove, Bergton, Va.	70	350
		7.00

to appear before the Trial Justice Court of said County, sitting at Harrisonburg, Va.

in said County, on 2nd day of June, 1952, at the hour of 3:00 P.M.

of that day to give evidence in behalf of Com'th

in the pending case of Com'th

v. Noah Thomas Lear

Given under my hand this 20th day of May, 1952.

J. C. Swartz
Clerk.

10-51-2m-Garrison

Not finding Jane Dave at his usual place of abode, Executed 5/22/52 by delivering a true copy of this Summons to Hannah Dave His Wife in person, at said Jane Dave usual place of abode Hannah Dave, being a member of his family above the age of 16 years, and explaining the purport thereof to her.

William Spitzer Deputy
A. L. Stinchcomb SBC

Trial Justice Court

Docket No. 9643 A

Com'th

V.

Witness Subpoena

Noah Thomas Lear

To June 2, 1952 at 3 PM.

In the Name of the Commonwealth of Virginia:

To the Sheriff of ~~Rockingham~~ Shenandoah County, Greeting:

You are hereby commanded to summon Samuel Byers and Bobby Smoot (both Conicsville, Va.)

to appear before the Judge of the Circuit Court of Rockingham County, at the Court House thereof, at 10 o'clock, a. m., on the 18th *day of* August, 19 52 *and the truth to say in behalf, the Defendant in the prosecution of the Commonwealth against* Noah Thomas Bear

who stands charged with and indicted for a felony ~~[illegible]~~

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 14th *day of* August, 19 52, *and in the* 177th *year of the Commonwealth.*

J. Robert Switzer, *Clerk*

By M. Bowers D.C.

Executed on the 16 of AUG 1952
within the County of Shenandoah, by delivering a true copy of the within SUMMONS
in writing to SAMUEL BYERS in person.

G. E. Weaver
Sheriff of Shenandoah County, Va.

By L. E. Tidlow
Deputy Sheriff

Executed on the 16 of AUG 1952
within the County of Shenandoah, by delivering a true copy of the within SUMMONS
in writing to BOBBY SMOOT in person.

G. E. Weaver
Sheriff of Shenandoah County, Va.

By L. E. Tidlow
Deputy Sheriff

2046

TRIAL JUSTICE COURT

Criminal Docket № 9643 A

Com'th

V.

Noah Thomas Lear

Defendant

AW - 1

Appearance date 5-20-52 2 P.M.

Trial Date

To - 6-2-52 3:P.M.

Sufficient probable cause. 6-2-52
Sent on for action of the Grand Jury.

TJ 3 AW 1

WS-2 C

1 Woodrow Lowery
2 A J. Floyd
3 Ernest F. Myers Jr
4 J H. Miller
5 H R Leoffler
6 A R. McAllister
7 G Ralph Smith
8 Glen H. Ensweiler
9 W. H Theatrole
10 Jno. J. Nicholas
11 Elmer C Roder
12 G. R. Taylor

Keystone Envelope Co., Phila., Pa.

Docket No. 2646.

Aug. 18
AUG
1952

COMMONWEALTH of VIRGINIA

VS.) Felony (stat.rape)

NOAH THOMAS LEAR bond

AUG
1952

Harry Blatt p. d.
Own (x) Appointed ( )

1952
June 30. Return of G.J.; def. arr. & plea n.g. 8/361

8/18/52 - Jury - evidence concluded 8/377
8/19/52 Jury - Tyrs -
motion to set aside or
the record Monday next &
accused remanded to jail
8/25/52 - motion set aside 8/378
rec argued & overruled & exception
recorded - 7 days time 8/379

CIRCUIT COURT OF ROCKINGHAM COUNTY, VA.

Cal	12.50
Clerk	12.50
Sheriff	6.90
T-J	3.00
Jury	150.20
Mat	28.00
	213.10