

Charles H. Leitch  
I. B. Leach  
Roy A. Wright  
Wesley H. Hankins  
Merwin Miller  
Samuel Lantz  
Leon Arthur  
Willard E. Leach  
Justin Miller  
H. R. Alexander  
Charles E. Simmons  
Wm. A. Brock

22-200

Docket No. 3353

FEB 1958

COMMONWEALTH of VIRGINIA

VS. ) Felony (rape)

KIRBY STRAWDERMAN *jailed*

Donald D. Litten p. d.  
Own ( ) Appointed (x)

1958 Return of Grand Jury, 9/498  
January 6. Accused arraigned and plea  
of not guilty entered; case set for  
trial ~~January 15~~ Feb. 24 9/500.

Feb. 24. Jury imp. ov; verdict of  
guilty returned & 40 yrs. in Pen.  
Motion to set aside cont. to Feb. 26.  
Feb. 26. Motion to set aside <sup>10</sup>/<sub>6</sub>  
verdict overruled & exception;  
execution susp. 60 da. to allow  
appeal & accused remanded to jail.  
May 27. Order of Sup. Ct. <sup>10</sup>/<sub>8</sub>  
reversing judgment & <sup>10</sup>/<sub>197</sub>  
27. Order will pass. 10/197  
Dec 27 - Dec 5 da  
Jan 31  
Feb 26  
62



Keystone Envelope Co., Phila., Pa.



Present: All the Justices.

KIRBY STRAWDERMAN

-v-

Record No. 4928

OPINION BY JUSTICE KENNON C. WHITTLE

Richmond, Virginia, May 4, 1959

COMMONWEALTH OF VIRGINIA

FROM THE CIRCUIT COURT OF ROCKINGHAM COUNTY  
Hamilton Haas, Judge

Strawderman was convicted of the rape of Mary Elizabeth Miller, a female child under the age of sixteen years. Code, § 18-54. The jury fixed his punishment at forty years in the penitentiary. A motion to set aside the verdict was overruled, judgment entered, and the accused sentenced in conformity with the verdict. We granted him a writ of error.

The narrative statement of the testimony of the witnesses for the Commonwealth (no evidence being introduced on behalf of the accused) discloses that on Christmas Day, 1957, Strawderman, a nephew of Clifton Miller, visited the Miller home, arriving there about twelve o'clock noon; he asked permission of the parents to take Mary Elizabeth, the five-year-old daughter "to get some candy" as he had done on previous occasions, and when permission was granted he took the child with him; they drove to Dove's store in Rockingham county, and finding it closed, drove to Benny Carr's



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nephew of Giffon Miller, visited the Miller home, arriving there

about twelve o'clock noon; he asked permission of the parents to

take Mary Elizabeth, the five-year-old daughter "to get some candy"

as he had done on previous occasions, and when permission was

granted he took the child with him; they drove to Dave's store in

Rockingham county, and finding it closed, drove to Benny Carr's



store where he purchased two or three bottles of Coca-Cola and a candy bar. According to Deputy Sheriff Spitzer, Strawderman stated that Mary Elizabeth did not get out of the car, was never out of his sight during the trip, and they never left State Highway No. 259. Returning to the Miller residence at approximately 1:30 p.m., Strawderman let the child out of his car but did not go in with her.

When Strawderman and Mary Elizabeth left the home Clifton Miller, father of the child, went to sleep and was awakened about 1:30 p.m. by the entrance of Mary Elizabeth into his room. She stood inside the door for a period of time which Miller estimated to be between 15 and 30 minutes, and did not say anything. When Mrs. Miller came in she examined the child and found some blood on her panties and legs.

Over the objection of the accused Mrs. Miller testified that the child stated to her that "Kirby [Strawderman] hurt her." On cross-examination Mrs. Miller said "it was only after she interrogated Mary as to whether Kirby had harmed her that the child made an affirmative answer." The father also was permitted to testify that the child told her mother in his presence that "Kirby



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testify that the child told her mother in his presence that "Kirby



hurt her." The jury was later instructed to disregard both statements.

The family having no means of transportation immediately available the child was not subjected to a physical examination by a medical doctor until the next day when she was taken to the office of Dr. Charles W. Hertzler in Bergton. Dr. Hertzler's examination of the child's genitals revealed a somewhat bloody "spread apart" vagina within which the hymen and surrounding tissues were torn. He testified that in his professional opinion the injury was caused by a male penis, adding that any other possibility was so remote that "he did not give it a second consideration", there being no visible bruises, scratches or cuts in or about the area.

Over the objection of the accused, Dr. Hertzler testified that he knew the Millers and that the father was a day laborer who always paid his bills, and that the mother was a "high moron".

Strawderman's white shorts, grey shirt, and the handkerchief (found in his car), together with the panties worn by Mary Elizabeth were forwarded to the Federal Bureau of Investigation, and counsel for Strawderman and the Commonwealth's Attorney



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entered into a stipulation that the laboratory report disclosed: The presence of two small stains of human blood on the handkerchief, and the presence of stains of human blood in the crotch area of the child's panties; that there were no stains of blood on the shirt or white shorts; that the blood was not susceptible of grouping; the presence of a seminal stain containing spermatozoa on the fly of the man's white shorts; an absence of semen on said pair of child's panties, on said man's grey shirt, and on said white handkerchief; that if an expert from the FBI laboratory were present he would testify that he was unable to state the length of time said seminal fluid found on said white shorts had been present.

There are four questions involved on this appeal. The first is: Did the court err in permitting Dr. Hertzler to testify that the father of the child was a day laborer and always paid his bills, and that the mother was a "high moron"? The Attorney General says in his brief, "The Commonwealth cannot argue seriously that the testimony objected to was material to the issue, but it does state emphatically that no injury to Strawderman could have resulted from its admission."

In view of the ultimate disposal of the case, the alleged



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In view of the ultimate disposal of the case, the alleged



error, whether harmless or not, will not likely recur.

The same applies to the second question: Did the court err in permitting Mr. and Mrs. Miller to testify as to what Mary Elizabeth stated, which testimony the court ultimately instructed the jury to disregard.

The third question is: "Did the court err in granting Instruction No. 5?" This instruction, offered by the Commonwealth, dealt with the burden of proof, and it is argued by the accused that the concluding paragraph which read, "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," should have read, "If \* \* \* you have an abiding conviction to a moral certainty of the guilt of the accused, you are then satisfied beyond all reasonable doubt."

Suffice it to say, as conceded by the accused, the instruction as given has been approved by this court. Anthony v. Commonwealth, 142 Va. 577, 579 (Headnote 13), 128 S. E. 633. Hence, it was not error to give the instruction. It should be remembered, however, that on numerous occasions we have stated that instructions attempting to define reasonable doubt should be discouraged



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The same applies to the second question: Did the court err

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as it is highly probable that any definition devised would be less illuminating than the expression itself. McCoy v. Commonwealth, 133 Va. 731, 112 S. E. 704; Smith v. Commonwealth, 155 Va. 1111, 156 S. E. 577.

The fourth and last question presented is: Was the evidence sufficient to support the verdict that the accused was guilty of rape?

It must be conceded that, absent the testimony of Dr. Hertzler that the injury to the child was caused by a male penis, the evidence is insufficient to convict the accused of rape. McCall v. Commonwealth, 192 Va. 422, 65 S. E. 2d 540.

Code of Virginia, § 18-54, provides in part:

"If any person carnally know a female of sixteen years of age or more against her will, by force, or carnally know a female child under that age \* \* \*, he shall, in the discretion of the court or jury be punished with death, or confinement in the penitentiary for life, or for any term not less than five years. \* \*\*".

The words "carnally know" as here used, mean sexual intercourse. King v. Commonwealth, 165 Va. 843, 846, 183 S. E. 187, 189. Consequently, it is universally held that under an indictment charging statutory rape of a child under sixteen years of age, as well



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as one charging the common law rape of an adult woman, the prosecution must prove that there has been an actual penetration to some extent of the male sexual organ into the female sexual organ. Bailey v. Commonwealth, 82 Va. 107, 113, 3 Am. St. Rep. 87; Wharton's Criminal Law, 12th Ed., Vol. 1, § 697, p. 935; McCall v. Commonwealth, supra, 192 Va., at p. 426, 65 S. E. 2d, at p. 542. This essential element must be proved beyond a reasonable doubt. Wharton's Criminal Law, supra, 12th Ed., Vol. 1, § 697, p. 935; Id., § 698, pp. 936, 937.

While the necessary element of sexual intercourse may be proved by circumstantial evidence (44 Am. Jur., Rape, § 100, p. 965) the proof must go beyond the mere showing of injury to the genital organs of the female and an opportunity on the part of the accused to have committed the offense.

Although Dr. Hertzler was introduced as an expert witness, his statement in this instance that the injury to the child was caused by a male penis is not sufficient to prove the act of sexual intercourse beyond a reasonable doubt. In the case of McCall v. Commonwealth, supra, 192 Va., at p. 426, 65 S. E. 2d, at p. 542, where similar injuries were inflicted upon a nine-



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McCall v. Commonwealth, supra, 192 Va., at p. 436, 62 S. E. 2d,

at p. 242, where similar injuries were inflicted upon a nine-



year-old female, the doctor frankly said he could not state the cause of the injuries.

The competency of expert testimony depends upon the question as to whether or not any peculiar knowledge, science, skill, or art, not possessed by ordinary persons, is necessary to the determination of the matter at issue. In other words, expert testimony is not admissible as to matters within the experience or knowledge of persons of ordinary information as to which the jurors are competent to draw their own inferences from the evidence before them without extraneous aid other than the instructions of the court upon the questions of law involved.

Southern R. Co. v. Mauzy, 98 Va. 692, 694, 37 S. E. 285; Newton v. City of Richmond, 198 Va. 869, 875, 96 S. E. 2d 775, 780; Ramsey v. Commonwealth, 200 Va. 245, 249, 250, 251, 105 S. E. 2d 155, 158, 159; 20 Am. Jur., Evidence, § 781, p. 651.

In 20 Am. Jur., Evidence, § 782, pp. 653, 654, the following is said:

"In many cases it is asserted as a broad general rule, often assumed to be an inflexible rule of law, that while an expert may be permitted to express his opinion, or even his belief, he cannot give his opinion upon the precise or ultimate fact in issue before the jury, which must be determined by them. In



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Ramsay v. Commonwealth, 200 Va. 245, 249, 250, 251, 105 S. E. 2d

152, 158, 159; 20 Am. Jur., Evidence, § 781, p. 621.

In 20 Am. Jur., Evidence, § 782, pp. 623, 624, the following

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other words, while a jury is entitled to the aid of experts in determining the existence or non-existence of facts not within common knowledge, an expert witness must not take the place of the jury and declare his belief as to an ultimate fact."

Here the crucial issue which the jury had to decide was whether or not the accused had carnally known this female child, and it is a matter of common knowledge, notwithstanding the doctor's statement, that the injuries described could have been caused by means other than the one related. Dr. Hertzler's statement as to the cause of the injury to the child was, of necessity, pure speculation and guess. It is not sufficient that facts and circumstances proved be consistent with the guilt of the accused. To sustain a conviction they must be inconsistent with every reasonable hypothesis of his innocence.

Spratley v. Commonwealth, 154 Va. 854, 861, 152 S. E. 362.

As shocking as the evidence is, it does not (in our opinion) prove beyond a reasonable doubt that the accused "carnally knew" or had sexual intercourse with this child. At most, it shows that he was guilty of molesting the child and tampering with her sexual organs in some perverted but undisclosed manner.



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Spireley v. Commonwealth, 154 Va. 824, 861, 152 S. E. 362.

As speaking as the evidence is, it does not (in our opinion)

prove beyond a reasonable doubt that the accused "carnally knew"

or had sexual intercourse with this child. At most, it shows

that he was guilty of molesting the child and departing with

her sexual organs in some perverted but undisciplined manner.



This is not the offense of which he was convicted. McCall v. Commonwealth, supra, 192 Va., at pp. 426, 427, 65 S. E. 2d, at p. 542.

The judgment is reversed and the case remanded for a new trial if the Commonwealth be so advised.

Reversed and remanded.



This is not the offense of which he was convicted. McCain v. Commonwealth, supra, 192 Va., at pp. 436, 437, 62 S. E. 2d, at

p. 543.

The judgment is reversed and the case remanded for a new trial if the Commonwealth be so advised.

Reversed and remanded.



Monday, February 24.

Commonwealth

v. On an indictment charging a felony (rape)

Kirby Strawderman

This day came the attorney for the commonwealth, and the accused, Kirby Strawderman, came in the custody of the sheriff of this county and by his attorney heretofore appointed, Donald D. Litten. And from persons summoned by the sheriff under ~~x~~ writs 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, and the remaining twelve, namely: Charles D. Click, L. B. Carr, Roy S. Wright, Westbrook Hawkins, Mervin Biller, Dwight Lantz, Leon Awkard, Willard E. Caricofe, Justus Biller, K. R. Alexander, Charles E. Simmons, and William A. Brock, <sup>who were</sup> selected as aforesaid to constitute the jury, and who 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. On motion of the accused it was ordered that all witnesses in this case be excluded from the court room during the trial. And having heard a portion of the evidence on behalf of the commonwealth, the accused, by counsel, moved the court to strike the evidence of the witness<sup>s</sup> Mary Elizabeth Miller, <sup>and Clifford Miller,</sup> because ~~their~~ testimony was hearsay, which motion the court sustained; ~~and xxxxxxxx~~ and having completed the hearing of the evidence on behalf of the commonwealth, the accused, by counsel, moved the court to strike the same, which motion the court overruled and the defendant, by counsel, excepted thereto. And the accused having offered no evidence in his behalf, thereupon, the jurors received the <sup>written and oral</sup> instructions of the court, and having 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 jury, find the accused guilty of rape, as charged in the indictment, and fix his punishment at confinement in the penitentiary for a term of forty (40) years. Westbrook Hawkins, foreman." Thereupon, the accused, by counsel, moved



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the court to set aside the verdict of the jury on the following grounds: 1. Because the said verdict is contrary to the law and the evidence and is without evidence to support it; 2. Because the court erred in failing to strike the evidence submitted on behalf of the commonwealth; 3. Because of error in instructions of the court given the jury; 4. Because the accused was not given a public trial as guaranteed under the constitution; and, on such other grounds as may later be assigned in writing; <sup>Whereupon,</sup> ~~which motion~~ the court <sup>took</sup> ~~takes~~ time to consider <sup>said motion</sup> and further proceedings <sup>were</sup> ~~thereon are~~ continued until Wednesday, February 26 next; and the accused was remanded to jail.

Wednesday  
2/26/58

Commonwealth

v. On an indictment charging a felony (rape)

Kirby Strawderman

This day came again the attorney for the commonwealth, and the accused, Kirby Strawderman, came in the custody of the sheriff of this county and by his attorney heretofore appointed, Donald D. Litten. And the court having considered the motion of the accused made at a former day of the term to set aside the verdict of the jury, overruled the same, to which action of the court the accused, by counsel, excepted. And it being inquired of said Kirby Strawderman if anything he had or knew to say why the court should not pronounce sentence on him and nothing being offered or alleged in delay thereof, it is therefore considered by the court that the commonwealth recover of the said Kirby Strawderman the costs incident to this prosecution, and that he be confined in the penitentiary of this state for the term of forty (40) years at hard labor in accordance with the verdict of the jury. ~~And he is 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, said term to be subject, however, to a credit of \_\_\_ days, time he was held in jail~~



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awaiting trial.) However, ~~execution~~ on motion of said accused, execution of said sentence is hereby suspended for a period of sixty (60) days in order to allow the said Kirby Strawderman opportunity to apply to the Supreme Court of Appeals of Virginia for a writ of error to the judgment of this court. And the said <sup>KIRBY</sup> Strawderman was remanded to jail.



awaiting trial. However, ~~execution of said sentence~~ on motion of said accused,  
execution of said sentence is hereby suspended for a period of  
sixty (60) days in order to allow the said Kirby Strawgerman oppor-  
tunity to apply to the Supreme Court of Appeals of Virginia for a  
writ of error to the judgment of this court. And the said Strawgerman  
was remanded to jail.



COUNTY COURT

Criminal  
Docket

N<sup>o</sup> 25406

A

Com'th

v.

Kirby B. Strawdman  
Defendant

a.w. Appearance Date 12-30-57

Trial Date

Grand Jury.







COMMONWEALTH VS. Kirby Halterman

DESCRIPTION OF PRISONER

Last known address Frankville

Color W Height 6-2 Eyes B Hair B Weight 170

Marks cc. 14

Age 24 Occupation Frank Halterman

Date of Trial 2-24-58

Result 40 gm



COMMONWEALTH VS *Wm. J. Harrison*

DESCRIPTION OF PRISONER

Last known address \_\_\_\_\_  
 Color \_\_\_\_\_ Height *5-8* Eyes *brn* Hair *brn* Weight *150*  
 Marks *Q. 11*  
 Age *24* Occupation *Teamster*  
 Date of Trial *12-1-22*  
 Result *W.P.*



Com  
✓  
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June

4 .20  
3 .50  
4 .20  
6 .58  
6 .72  
4 .76  
3 .50  
4 .90  
6 .72  
3 .50  
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3 .50  
6 .02  
3 .50  
5 .18  
4 .62  
4 .48  
4 .34  
5 .88  
5 .60  
6 .72  
3 .92  
3 .71  
4 .76

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*Handwritten signature*

*Handwritten signature*

ALL INFORMATION CONTAINED  
HEREIN IS UNCLASSIFIED  
DATE 08/15/01 BY 60322 UCBAW/STP

111 T



1st try	26	crack
2nd try	31	de

F-Amer



Wm  
Wm

10/1

10/1

J. Wm



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**In the Name of the Commonwealth of Virginia:**

To the Sheriff of Rockingham County, Greeting:

You are hereby commanded to summon .....

..... **W. A. SPITZER**, Deputy Sheriff for the County of

..... **Rockingham, Virginia (c/o Office of**

..... **the Sheriff of Rockingham County,**

..... **Virginia, First Floor, Court House,**

..... **Harrisonburg, 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 **6th** day of **January**....., 19**58**, to testify and the truth to say in behalf of the  
Commonwealth before the Grand Jury, against..... **KIRBY STRAWDERMAN**

.....  
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, CHARLES E. EARMAN, JR., Commonwealth's Attorney for Rockingham County and the City of

Harrisonburg, Virginia, at the Court House, the **2nd** of **January**....., 19**58** and in the **182nd** year  
of the Commonwealth.

*Charles E. Earman, Jr.*  
Commonwealth's Attorney

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EXECUTED 1-2-58 IN THE COUNTY OF  
ROCKINGHAM BY DELIVERING A TRUE  
COPY OF THE WITHIN WRIT  
TO W.A. Spitzer  
IN PERSON

In the Name of the Commonwealth of Virginia:

To the Sheriff of Rockingham County, Greeting:

You are hereby commanded to summon

W. A. SPITZER, Deputy Sheriff

*W. A. Spitzer*  
*Deputy Sheriff*

Rockingham, Virginia,  
the Sheriff of Rockingham County,  
Virginia, First Floor, Court House,  
Harrisonburg, 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 5th day of January, 1958, to testify and the truth to say in behalf of the  
Commonwealth before the Grand Jury, against KIRBY STRAWBERRY

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, CHARLES E. FARMAN, JR., Commonwealth's Attorney for Rockingham County and the City of

Harrisonburg, Virginia, at the Court House, the 2nd of January, 1958 and in the 182nd year  
of the Commonwealth.

*Charles E. Farman, Jr.*  
Commonwealth's Attorney





EXECUTED 1-3-58 IN THE COUNTY OF  
ROCKINGHAM BY DELIVERING A TRUE

in the Name of the Commonwealth of Virginia:

TO Dr. Hubler  
IN PERSON.

Not finding Clifton Miller at his usual  
place of abode, Executed 1-3-58 by delivering a

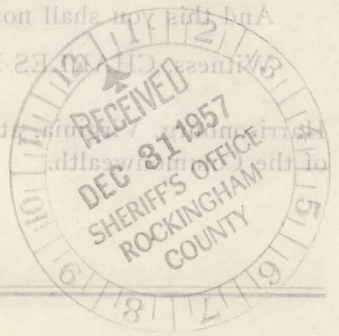
W. A. Strawderman  
Deputy Sheriff

true copy of this summons to Clifton Miller  
in person, at said Clifton Miller

**A. L. STRAWDERMAN**  
**SHERIFF**  
**ROCKINGHAM COUNTY**

usual place of abode Clifton Miller, being a member of  
his family above the age of 16 years, and explaining the purport thereof  
to her.

A. L. Strawderman S. R. C.  
Deputy Sheriff W. A. Strawderman



Shuff Fee  
.80



**In the Name of the Commonwealth of Virginia:**

To the Sheriff of Rockingham County, Greeting:

You are hereby commanded to summon .....

2-19

W

CLIFFORD MILLER

1

P

MARY ELIZABETH MILLER

W. A. SPITZER

P

DR. CHARLES W. HERTZLER

Bayton R.F.D.

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 24th day of February, 1958, to testify and the truth to say in behalf of the Commonwealth before the Grand Jury, against KIRBY STRAWDERMAN

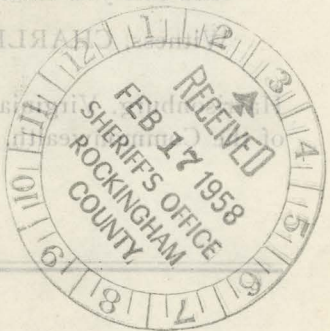
who stands charged with and indicted for a felony ~~misdemeanor~~

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

Witness, CHARLES E. EARMAN, JR., Commonwealth's Attorney for Rockingham County and the City of Harrisonburg, Virginia, at the Court House, the 17th of February, 1958, and in the 182nd year of the Commonwealth.

*Charles E. Earmann Jr.*  
Commonwealth's Attorney





EXECUTED 2-19-58 IN THE COUNTY OF  
ROCKINGHAM BY DELIVERING A TRUE  
COPY OF THE WITHIN  
TO *Miss Stella Parker*  
IN PERSON.

A. L. STRAWDERMAN

SHERIFF  
ROCKINGHAM COUNTY

EXECUTED 2-21-58 IN THE COUNTY OF  
ROCKINGHAM BY DELIVERING A TRUE  
COPY OF THE WITHIN  
TO *W. A. Strawn*  
IN PERSON.

*Deputy Sheriff  
for A. L. Strawderman*

EXECUTED 2-19-58 IN THE COUNTY OF  
ROCKINGHAM BY DELIVERING A TRUE  
COPY OF THE WITHIN  
TO *Dr. Charles W. Hurlbater*  
IN PERSON.

*Miss Stella Parker  
A. L. Strawderman soc*

No property found to satisfy  
this execution  
for A. L. Strawderman, S.R. C.

*A. L. Strawderman*  
S.R.C.

usual place of abode *Miss Parker*, being a member of  
his family above the age of 16 years, and explaining the purport thereof  
to her.

who stands charged with a felony in this case said  
*Miss Parker*

And this you shall find true copy of this *Summons*

place of abode, Executed, 2-19-58 by delivering a

Not finding *Charles W. Hurlbater* at his usual

*Deputy Sheriff*

160



SUPREME COURT OF APPEALS OF VIRGINIA

Richmond

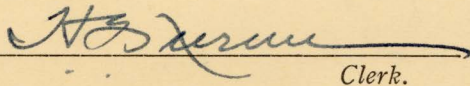
June 20, 1958

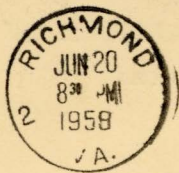
DEAR SIR:

I am in receipt of manuscript record (6-19-58)  
in the case of—

Commonwealth of vs. Kirby Strawderman  
Virginia

*which will have proper attention.*

  
Clerk.



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



June 18, 1958

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

Re: Commonwealth of Virginia  
v  
Kirby Strawderman

Dear Sir:

I am enclosing herewith, by certified mail, the original record in the above entitled case, at the request of counsel for the defendant, appellant, pursuant to the requirements of Rule 5:1, Section 7, of the Rules of Court.

Yours very truly,

J. Robert Switzer, Clerk

JRS:mb

June 18, 1958

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

Re: Commonwealth of Virginia  
v  
Kirby Strawbman

Dear Sir:

I am enclosing herewith, by certified mail, the original  
record in the above entitled case, at the request of  
counsel for the defendant, appellant, pursuant to the  
requirements of Rule 5:1, Section 7, of the Rules of

Court.

Yours very truly,

J. Robert Switzer, Clerk

JRS:mb



VIRGINIA: IN THE CIRCUIT COURT OF ROCKINGHAM COUNTY

KIRBY STRAWDERMAN

v.

COMMONWEALTH OF VIRGINIA

TO: J. Robert Switzer, Clerk

Circuit Court of Rockingham County, Virginia.

Pursuant to Rule 5:1, Section 7 of the Rules of the Supreme Court of Appeals of Virginia, you are hereby requested to forthwith transmit to the Clerk of the Supreme Court of Appeals, Richmond, Virginia, the record in the above-styled case.

Respectfully,



Donald D. Litten

Counsel for  
Kirby Strawderman

*Filed June 18, 1958  
McBarnes, D.C.*

VIRGINIA: IN THE CIRCUIT COURT OF ROCKINGHAM COUNTY

KIRBY STRAWBERMAN

COMMONWEALTH OF VIRGINIA

TO: J. Robert Switzer, Clerk  
Circuit Court of Rockingham County, Virginia.

Pursuant to Rule 5:1, Section 7 of the Rules of the  
Supreme Court of Appeals of Virginia, you are hereby requested  
to forthwith transmit to the Clerk of the Supreme Court of  
Appeals, Richmond, Virginia, the record in the above-captioned

case.

Respectfully,



Counsel for  
Kirby Strawberman

*Handwritten note:* Kirby Strawberman, Esq.  
June 11, 1958

LAW OFFICE  
GEORGE D. CONRAD  
DONALD B. LITTEY  
KINCROSS



VIRGINIA:

Clerk's Office of the  
*In the Supreme Court of Appeals ~~text~~ at the Supreme Court of Appeals Building*  
in the City of Richmond on Thursday the 11th day of September, 1958.

Kirby Strawderman,

Plaintiff in error,

against

Commonwealth of Virginia,

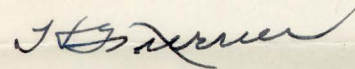
Defendant in error.

From the Circuit Court of Rockingham County

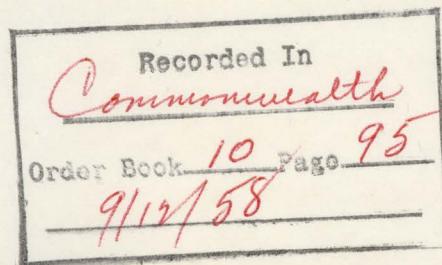
Upon the petition of Kirby Strawderman a writ of error and supersedeas is awarded him by one of the justices of the Supreme Court of Appeals on September 11, 1958, to a judgment rendered by the Circuit Court of Rockingham County on the 26th day of February, 1958, in a prosecution by the Commonwealth against the said petitioner for a felony, but said supersedeas, however, is not to operate to discharge the petitioner from custody, if in custody, or to release his bond if out on bail.

A Copy,

Teste:



Clerk



VIRGINIA:

Clerk's Office of the  
In the Supreme Court of Appeals at the Supreme Court of Appeals Building

in the City of Richmond on Thursday the 11th day of September, 1958.

Kirby Strawderman, Plaintiff in error,

against

Commonwealth of Virginia, Defendant in error.

From the Circuit Court of Rockingham County

Upon the petition of Kirby Strawderman a writ of error and  
superseas is awarded him by one of the justices of the Supreme  
Court of Appeals on September 11, 1958, to a judgment rendered by  
the Circuit Court of Rockingham County on the 26th day of February,  
1958, in a prosecution by the Commonwealth against the said  
petitioner for a felony, but said superseas, however, 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

Recorded In	Commonwealth
Order Book	10 Page 95
	11/1/58



VIRGINIA:

*In the Supreme Court of Appeals held at the Supreme Court of Appeals Building  
in the City of Richmond on Monday the 4th day of May, 1959.*

Kirby Strawderman, Plaintiff in error,  
against Record No. 4928  
Commonwealth of Virginia, Defendant in error.

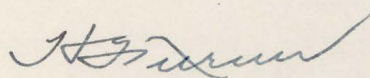
Upon a writ of error and supersedeas to a judgment rendered by the Circuit Court of Rockingham County on the 26th day of February, 1958.

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 error in the judgment complained of. It is therefore adjudged and ordered that the said judgment be, and the same is hereby reversed and annulled, the verdict of the jury set aside, and the case is remanded to the said circuit court for a new trial, if the Commonwealth shall be so advised.

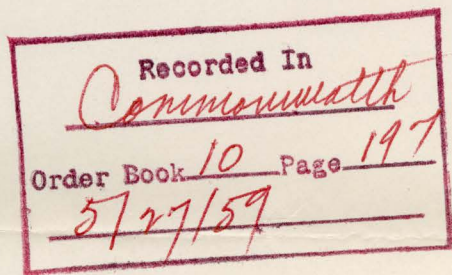
Which is ordered to be forthwith certified to the said circuit court.

A Copy,

Teste:



Clerk





VIRGINIA

In the Supreme Court of Appeals held at the Supreme Court of Appeals Building  
in the City of Richmond on Monday the 12th day of May, 1929.

Kirby Strawderman, Plaintiff in error,  
Record No. 4928  
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 20th day of February, 1928.

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 error in the judgment complained of. It is therefore adjudged and ordered that the said judgment be, and the same is hereby reversed and annulled, the verdict of the jury set aside, and the case is remanded to the said circuit court for a new trial. If the Commonwealth shall be so advised.

Which is ordered to be forthwith certified to the said circuit

court.

A Copy,  
Teste:

*[Handwritten signature]*

Clerk

Recorded in  
Circuit Court  
10 May 1929  
1929