SUPREME COURT OF APPEALS
OF VIRGINIA

Richmond 10
May 28, 1959

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

Dear Mr. Switzer:

The case of Kirby Strawderman v. Commonwealth of Virginia, Record No. 4928, having been disposed of in this court, I am returning herewith the record. The style of this case in your court is Commonwealth of Virginia v. Kirby Strawderman.

Please acknowledge receipt on copy of letter enclosed.

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

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Dear Mr. Switzer:

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Encls.

J P. Bell Co.—No. B-500

Commonwealth of Virginia

In the CIRCUIT Court of the COUNTY of ROCKINGHAM

COMMONWEALTH OF VIRGINIA

vs.

KIRBY STRAWDERMAN

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

Commonwealth of Virginia

In the CIRCUIT Court of the COUNTY of ROCKINGHAM

COMMONWEALTH OF VIRGINIA

vs.

KIRBY STRAVERMAN

TABLE OF CONTENTS

I, J. Robert Butler, 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:

Clerk

Comp. Form 18

STATE OF VIRGINIA
~~COUNTY~~ City OF Harrisonburg } To-Wit: No.

TO ANY SHERIFF OR POLICE OFFICER:

Whereas, Charles E. Earman, Jr., Commonwealths Attorney

has this day made complaint and information on oath before me, John G. Leake (Name)

Justice of The Peace (Title) of the said ~~County~~ City, that Kirby B. Strawderman Rockingham in the ~~said~~ County

did on the 25th day of December, 1957: Unlawfully and feloniously, ravish and carnally know one Mary Elizabeth Miller, a minor female child, to-wit: the age of five years, against the peace and dignity of the Commonwealth of Virginia

These are, therefore, to command you, in the name of the Commonwealth, to apprehend and bring before the Rockingham County 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:

Clifton Miller	color	Address	Fulks Run ☐
Ressie Miller	color	Address	Fulks Run ☐
Dr.Charles W. Hertzler	color	Address	Bergton ☐
Eula Showalter	color	Address	Bergton ☐
Nancy King	color	Address	Bergton ☐

as witnesses.

Given under my hand and seal, this 26th day of December, 19 57

John G. Leake (Seal)
(Title of Issuing Officer)
JUSTICE OF THE PEACE

STATE OF VIRGINIA—COUNTY OF _____, to-wit:

I, _____ a Judge of the County Court / Justice of the Peace in and for the County aforesaid, State of Virginia, do certify that _____

and _____, as his suret_____, have this day each acknowledged themselves indebted to the Commonwealth of Virginia in the sum of _____ Dollars ($_____), 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 _____, shall appear before the Circuit / County Court of _____ County, on the _____ day of _____, 19____, at _____ M., at _____, 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. Nonappearance shall be deemed to constitute a waiver of trial by jury.

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

_____ Judge. J. P.

DOCKET NO. 25706 A

COMMONWEALTH

vs.

WARRANT OF ARREST

Kirby B. Strawderman

Executed this, the 27 day of Dec, 1957

W. G. Stuart Sgt. for
E. L. Strawderman SDC

Upon the examination of the within charge, I find the accused guilty as within charged and order that he be fined $30 and costs.

Given under my hand this 30 day of December 1957.

Chas. R. Spencer
Justice of Peace

The following witnesses were recognized to appear before the _____ Circuit / County 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	1.00
Mileage	0
Clerk	1.25
Jail Fee and Board	1.00
Witness Attendance	
Summoning Witnesses	
Commonwealth Attorney	5.00
Total Costs	$ 10.75
Fine	
Total	$

Fine $ _____

Costs _____

Total $ _____

Rec'd N.G. 12-30-57 P.R.G. Judge.

COMMONWEALTH OF VIRGINIA

COUNTY OF ROCKINGHAM, to-wit:

In the Circuit Court of Rockingham County, December Term, 1957.

The Grand Jurors of the Commonwealth of Virginia, in and for the body of the County of Rockingham, now attending the Circuit Court of the said County, upon their oath present that Kirby Strawderman, on the 25th day of December, 1957, in the County aforesaid, feloniously did make an assault upon the body of one Mary Elizabeth Miller, a female child under the age of sixteen years, to-wit, the age of five years, and her, the said Mary Elizabeth Miller, then and there unlawfully and feloniously did abuse, ravish and carnally know, against the peace and dignity of the Commonwealth of Virginia.

Upon the evidence of Dr. Hertzler and Clifford Miller, witnesses sworn in open Court and sent to the Grand Jury to give evidence.

over

#3353

COMMONWEALTH

V. INDICTMENT

KIRBY STRAWDERMAN

A TRUE BILL

P. H. Mason

Foreman

Charles E. Earman, Jr.
Commonwealth's Attorney

VIRGINIA: IN THE CIRCUIT COURT OF ROCKINGHAM COUNTY, January 6, 1958.

Roy H. Mason, C. V. Grimes, Harry R. Kaylor, Clymer C. Heatwole, J. Wilson Lee, B. T. Denton, and J. L. Deter, this day came as a special grand jury, summoned to this term of the court, and with Roy H. Mason 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 v. Kirby Strawderman; Commonwealth v. Grattan Dove; Commonwealth v. Roscoe Norman Cook; Commonwealth v. Russell Good; Commonwealth v. George Sampson; and as to Crawford Raynes and James W. Lineweaver, not a true bill as to each; and having completed the business before them at this time, the grand jury is excused until and unless recalled at this term.

A COPY.

ATTESTE: Margie Bowers, Deputy Clerk.

VIRGINIA: IN THE CIRCUIT COURT OF ROCKINGHAM COUNTY, January 6, 1958.

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A COPY.

ATTEST: _____ Clerk.

VIRGINIA: IN THE CIRCUIT COURT OF ROCKINGHAM COUNTY, January 6, 1958.

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 said accused being without counsel and having requested the court to appoint an attorney in his behalf, thereupon, Donald D. Litten was appointed as counsel for said accused. Thereupon, the said Strawderman was arraigned on the indictment and, on advice of his said counsel, entered a plea of not guilty. The court then fixed the 24th day of February next for his trial, and the said accused was remanded to jail.

A COPY.

ATTESTE: Margie Bowers, Deputy Clerk.

ATTESTE: _____ CLERK.

A COPY.

VIRGINIA: IN THE CIRCUIT COURT OF ROCKINGHAM COUNTY, January 6, 1958.

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 said accused being arraigned without counsel and having requested the court to appoint an attorney in his behalf, thereupon, Donald D. Lipsen was appointed as counsel for said accused. Thereupon, the said Strawderman was arraigned on the indictment and, on advice of his said counsel, entered a plea of not guilty.

The court then fixed the April day of February next for his trial.

And the said accused was remanded to jail.

A COPY.

ATTESTE: _____ CLERK.

COMMONWEALTH

VS. STIPULATION OF FACTS

KIRBY STRAWDERMAN

It is stipulated between counsel that if an expert from the FBI Laboratory were called as a witness in this case he would testify as follows:

(1) That there was submitted to said laboratory by the Commonwealth's Attorney of Rockingham County, a pair of child's panties, man's gray shirt, a pair of men's white shorts, and a white handkerchief, exhibited in evidence before the jury on the 24th of February, 1958.

H.H. 2-24-58

(2) That a chemical analysis of said articles of clothing disclosed the following:

(a) The presence of two small stains of human blood on said handkerchief. No grouping of said blood was possible.

(b) The presence of stains of human blood in the crotch area of said pair of child's panties. Such blood was not grouped.

(c) The absence of stains of blood on said grey shirt and on said pair of men's white shorts.

(d) The presence of a seminal stain containing spermatozoa on the fly of said pair of men's white shorts.

(e) The absence of semen on said pair of child's panties, on said men's grey shirt, and on said white handkerchief.

COMMONWEALTH

-vs-

KIRBY STRAADENMAN

STIPULATION OF FACTS

It is stipulated between counsel that if an expert from the CSIRO Laboratory were called as a witness in this case he would testify as follows:

(1) That there was submitted to said laboratory by the Commonwealth's Afforney of Rockingham County, a bag of children's hankies, man's grey shirt, a bag of man's white shorts, and a white handkerchief. Exhibited in evidence herein.

(2) That a chemical analysis of said articles of clothing disclosed the following:

(a) The presence of two small stains of human blood on said handkerchief. No

(b) The presence of stains of human blood on said bag of children's hankies. Such blood was not Group.

(c) The presence of stains of blood on said bag of man's grey shirt and on said bag of man's white shorts.

(d) The presence of a seminal stain consistent with a human spermatozoa on the crotch area of said bag of man's white shorts.

(e) The presence of human blood on said bag of children's hankies, man's grey shirt, and on said man's white handkerchief.

(3) If said expert witness were present he would testify that he was unable to state the length of time said seminal stain found on said white shorts had been present.

Charles E. Earman, Jr.
Charles E. Earman, Jr.,
Commonwealth Attorney

Donald D. Litten
Donald D. Litten
Counsel for defendant

COMMONWEALTH

V.

KIRBY STRAWDERMAN

CHARGE TO JURY

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

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

If you do not find him guilty of either of the felonies aforesaid, but find him guilty of assault and battery, then you will say so and fix his punishment by confinement in jail for a period not exceeding twelve months, or by a fine not exceeding Five Hundred Dollars, or by both such fine and imprisonment.

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

CHARGE TO JURY

KIERA STEVMDERNVA

V.

COMMONWEALTH

If you find the accused guilty of rape, as charged in the indictment, you will see so much of his punishment at death or in your discretion by imprisonment in the penitentiary for life or for any term not less than three years.

If you do not find him guilty of offense to the lesser offense, but find him guilty of assault and battery, then you MAY see fit to impose as punishment of confinement in jail for a period not exceeding twelve months, or if a fine not exceeding five hundred dollars, or if both such fine and imprisonment.

If you find him not guilty, you will see so and so note.

COMMONWEALTH

V.

KIRBY STRAWDERMAN

INSTRUCTION 1

The Court instructs the jury that if you believe from the evidence beyond a reasonable doubt that the prisoner, Kirby Strawderman, had carnal knowledge of Mary Elizabeth Miller, then you shall find him guilty as charged in the indictment.

The Court further instructs the jury that the slightest penetration of the female organ by the male organ is sufficient to constitute carnal knowledge.

2-24-58

H. H.

COMMONWEALTH

V.

KIRBY STRAWBERMAN

INSTRUCTION

The Court instructs the jury that if you believe from the evidence beyond a reasonable doubt that the prisoner, Kirby Strawberman, had carnal knowledge of Mary Elizabeth Miller, then you shall find him guilty as charged in the indictment.

The Court further instructs the jury that the slightest penetration of the female organ by the male organ is sufficient to constitute carnal knowledge.

8-24-78

COMMONWEALTH

VS.

KIRBY STRAWDERMAN

INSTRUCTION NO. 2

The Court instructs the jury that before the defendant can be convicted of rape as ~~the~~ charged in the indictment, the Commonwealth must prove beyond a reasonable doubt that there was an actual penetration to some extent of the prosecutrix's sexual organ by the defendant's sexual organ.

2-24-58
H. H.

87-4-18

COMMONWEALTH

VS.

STRAWDERMAN

INSTRUCTION NO. 3

The Court instructs the jury that in law the accused is presumed to be innocent of the crime with which he is charged and that presumption follows him throughout every stage of the trial. Moreover the plea of "not guilty" denies every essential allegation of the indictment and puts upon the Commonwealth the burden of proving every element of the crime charged and the accused's guilt beyond reasonable doubt.

There is no shifting of this burden, as it remains upon the Commonwealth throughout the whole trial. The accused is not required to prove his innocence and if, after considering the evidence for the Commonwealth and the defense, from the whole trial it is your duty to, and you must acquit him.

You are instructed that the presumption of innocence is not a mere form to be disregarded by the jury at pleasure but it is an essential and substantial part of the law of the land, and binding on the jury in this case; and it is the duty of the jury to give the defendant the full benefit of the presumption.

The Court further instructs the jury that mere suspicion or probability of his guilt, however strong, is not sufficient to convict, nor is it sufficient for the greater weight

The court instructed that the jury must find the accused not guilty if it is satisfied that the prosecution has proved that the accused is guilty of the crime charged and the accused fulfill beyond reasonable doubt.

Where there is no evidence of a defence, the court should instruct the jury that it is not required to prove the innocence and it, after considering the evidence for the commonwealth and the defence, is satisfied that the evidence for the commonwealth and the defence, taken together, is such that it leaves no reasonable doubt in its mind, and finding on the jury in this case: and if it is the duty of the jury to give the defendant the full benefit of the presumption.

The court instructed that the presumption of innocence is not a mere form to be disregarded by the jury in presence but is an essential and substantial part of the law of the land, and finding on the jury in this case: and if it is the duty of the jury to give the defendant the full benefit of the presumption.

The court instructed that the presumption of innocence is presumed to be innocent of the crime\ he is charged and is entitled to an acquittal unless the jury find the accused guilty of every ingredient of the crime charged and the accused fulfill beyond reasonable doubt.

Where there is no evidence of a defence, as it remains also the commonwealth onus of proof of the whole crime. The accused is not required to prove his innocence and it, after considering the evidence for the commonwealth and the defence, is satisfied that evidence for the commonwealth and the defence, taken together, is such that it leaves no reasonable doubt in its mind, and finding on the jury in this case: and if it is the duty of the jury to give the defendant the full benefit of the presumption.

The court instructed that the presumption of innocence is not a mere form to be disregarded by the jury in presence but is an essential and substantial part of the law of the land, and finding on the jury in this case: and if it is the duty of the jury to give the defendant the full benefit of the presumption.

The court instructed that the presumption of innocence

COMMONWEALTH

v.

SIMMONDS

INSTRUCTION NO. 3

or preponderance of the evidence supporting the charge in the indictment, but to warrant his conviction his guilt must be proved so clearly that there is no reasonable theory consistent with the evidence upon which he can be innocent.

You are further instructed that the defendant is not to be prejudiced by the inability of the Commonwealth to point out any other guilty agent, nor is he called upon to vindicate his own innocence by naming the guilty party. He rests secure in the presumption of innocence until proof is adduced by the Commonwealth which establishes his guilt beyond all reasonable doubt.

2-24-58

H. H.

COMMONWEALTH

VS.

KIRBY STRAWDERMAN

INSTRUCTION NO. 4

The Court instructs the jury that the burden is on the Commonwealth to prove that the offense charged in the indictment was committed within Rockingham County; that it is not necessary however for the Commonwealth to prove such fact beyond reasonable doubt but only necessary that the evidence raise a ~~violent~~ strong and convincing presumption that the offense was committed in said County.

2-24-58
H. H.

COMMONWEALTH

-vs-

KIRBY STRAMDEBMAN

INSTRUCTION NO. 7

The court instructs the jury that the burden is on the commonwealth to prove that the offense charged in the indictment was committed within Rockingham county; that it is not necessary however for the commonwealth to prove such fact beyond reasonable doubt but only necessary that the evidence raise a presumption that the offense was committed in said county.

COMMONWEALTH

V.

KIRBY STRAWDERMAN

INSTRUCTION ✓

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, 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 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.

2-24-88 H.H. 2.

INSTRUCTION

In considering whether or not the commonwealth has met its proof of proving the guilt of the accused beyond reasonable doubt, the jury must not overlook the word "reasonable" not its meaning. A reasonable doubt is a doubt which is founded on reason, and is not to be confused with imaginary or possible doubt, for the law does not ask that a man must be proved guilty beyond every imaginable, conceivable or possible doubt.

In assessing upon the sufficiency of the proof of the charge, the jury must limit its consideration of the evidence presented to the fitness of the charge. You are then entitled beyond reasonable doubt.

It is on the ultimate point, after an impartial and reasonable consideration of all the evidence in the case, you must be satisfied beyond reasonable doubt as to the truth of the charge. You are then entitled to make your verdict.

It, after a reasonable and honest consideration of all of the evidence, your minds are left in such a state of doubt as to raise a reasonable doubt concerning material and necessarily ultimate facts essential to the proof of the guilt of the accused and material fact essential to the proof of the guilt of the accused and upon a mere doubt concerning immaterial and unnecessary circumstances.

Furthermore, the jury should bear in mind that a doubt stating from lack of evidence, from conflicting testimony, or from insufficient proof of any material fact, should be a doubt of a reasonable proof of any material fact essential to the proof of the guilt of the accused and upon a mere doubt concerning immaterial and unnecessary circumstances.

It, after a reasonable and honest consideration of all of the evidence, your minds are left in such a state of doubt as to raise a reasonable doubt concerning a material fact essential to the proof of the guilt of the accused, then you must find the accused not guilty.

In assessing upon the sufficiency of the proof of the charge, ladies and gentlemen of the jury, the jury must not overlook the word "reasonable" not its meaning. A reasonable doubt is a doubt which is founded on reason, and is not to be confused with imaginary or possible doubt, for the law does not ask that a man must be proved guilty beyond every imaginable, conceivable or possible doubt.

In assessing upon the sufficiency of the proof of the charge, the jury must limit its consideration of the evidence presented to the fitness of the charge. You are then entitled beyond reasonable doubt.

It, on the other hand, after an impartial and reasonable consideration of all the evidence in the case, you must be satisfied beyond reasonable doubt as to the truth of the charge, you are then entitled to make your verdict.

KIRBY SLAMMENMAN

A.

COMMONWEALTH

COMMONWEALTH

V.

KIRBY STRAWDERMAN

INSTRUCTION 6

The Court further instructs the jury that circumstantial evidence is just as legal and may be just as effective as direct evidence, provided that the attending circumstances proven are of such character and force as to satisfy the minds of the jury of the defendant's guilt beyond reasonable doubt.

2-24-88

H. H.

COMMONWEALTH

V.

KIRBY STRAWDERMAN

INSTRUCTION 7

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 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.

2-24-78

H. H.

COMMONWEALTH

V.

KIRBY STRAWDERMAN

INSTRUCTION 7

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 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.

-18-

Commonwealth

v.

Strawderman

INSTRUCTION 8

The Court instructs the jury that upon the trial of a criminal case by a jury the law contemplates the concurrance of twelve minds in the conclusion of guilt before a conviction can be had. Each individual juror must be satisfied beyond a reasonable doubt of the defendant's guilt before he can, under his oath, consent to a verdict of guilty. Each juror should feel the responsibility resting upon him as a member of the jury, and should realize that his own mind should be convinced beyond a reasonable doubt of the defendant's guilt before he can consent to a verdict of guilty. Therefore, if any individual member of the jury, after having duly considered all the evidence in this case, and after consultation with his fellow jurors, should entertain such reasonable doubt of defendant's guilt as is set forth in certain court instructions in this case, it is his duty not to surrender his own convictions simply because the balance of the jury entertain different convictions.

2-24-58

H. H.

COMMONWEALTH

v.

DEFENDANT

INSTRUCTIONS

The court instructs the jury that upon the trial of a criminal case by a jury the law contemplates the convictions of twelve minds in the conclusion of guilt before a conviction can be had. Each individual juror must be satisfied beyond a reasonable doubt of the defendant's guilt before he can consent to a verdict of guilty. Each juror must take his own judgment and reasonableness upon him as a member should feel the responsibility resting upon him and be bound to the jury, and should realize that his own mind should be convinced before he can consent to a verdict of guilty. Therefore, if any individual member of the jury, after careful consideration with his fellow jurors, should entertain such reasonable doubt of the defendant's guilt as is sufficient to create in a reasonable mind in this case, it is his duty not to entertain his own conviction, although perhaps the reason for the different conviction.

We the Jury find the accused guilty of rape, as charged in the indictment, fix his punishment at and confinement in the penitentiary for a term of forty (40) years.

Neilbrook Hawkins
Foreman

VIRGINIA: IN THE CIRCUIT COURT OF ROCKINGHAM COUNTY, February 24, 1958.

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 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, who were 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 witnesses, Mary Elizabeth Miller and Clifford Miller, because their testimony was hearsay, which motion the court sustained; 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 written and oral 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 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. Whereupon, the court took time to consider said motion, and further proceedings thereon were continued until Wednesday, February 26, next; and the accused was remanded to jail.

A COPY.

ATTESTE: Margie Bowers, Deputy Clerk.

the jurors received the written and oral 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 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. Whereupon, the court took time to consider said motion, and further proceedings thereon were continued until Wednesday, February 26, next; and the accused was remanded to jail.

A COPY.

ATTEST: _____ Clerk.

VIRGINIA: IN THE CIRCUIT COURT OF ROCKINGHAM COUNTY, February 26, 1958.

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, said term to be subject, however, to a credit of 62 days, time he was held in jail awaiting trial.

However, 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 Kirby Strawderman was remanded to jail.

A COPY.

ATTESTE: Margie Bowers, Deputy Clerk.

VIRGINIA: IN THE CIRCUIT COURT OF ROCKINGHAM COUNTY, February 25, 1958.

COMMONWEALTH

v. On an indictment charging a felony (rape)

Kirby Stevenson

This was a motion for the appointment of the commonwealth's attorney and the accused, Kirby Stevenson, came in the custody of the sheriff of this county and by his attorney heretofore appointed, Donald D. Lafferty. 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 intimated by the court that the commonwealth recover of the said Kirby Stevenson 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, said term so be suspended, however, to a credit of 25 days, time he has held in jail awaiting trial.

However, on motion of said accused, execution of said sentence is hereby suspended for a period of sixty (60) days in order to allow the Kirby Stevenson opportunity to apply to the Supreme Court of Appeals of Virginia for a writ of error to the judgment of this court.

The said Kirby Stevenson was remanded to jail.

A COPY.

ATTEST: _____ CLERK.

VIRGINIA: IN THE CIRCUIT COURT OF ROCKINGHAM COUNTY

COMMONWEALTH OF VIRGINIA

VS.

KIRBY STRAWDERMAN

Filed In the Clerk's Office
Rockingham County, Va.
APR. 17 1958
J. Robert Smith Clerk

NOTICE OF APPEAL AND ASSIGNMENTS OF ERROR

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

Counsel for Kirby Strawderman, 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 February 26, 1958, and set forth the following assignment of errors.

(1) That the Court erred in allowing the witness, Dr. Hertzler, to testify as to the character and mentality of Clifton Miller and Ressie Miller over the objection and exception of the defendant.

(2) That the Court erred in allowing the witnesses, Ressie Miller and Clifton Miller, to testify as to statements made by the alleged victim, Mary Elizabeth Miller, over the objection and exception of the defendant, which error was not cured by the subsequent instructions of the Court to the jury to disregard such evidence.

(3) That the Court erred in failing and refusing to strike the Commonwealth's evidence after it rested its case and likewise erred in failing and refusing to set aside the verdict of the jury as contrary to the law and to the evidence, to all of which actions of the Court the defendant objected and excepted.

LAW OFFICES
GEORGE D. CONRAD
DONALD D. LITTEN
ASSOCIATE

VIRGINIA: IN THE CIRCUIT COURT OF ROCKINGHAM COUNTY

COMMONWEALTH OF VIRGINIA

Vs.

KIRBY STEAMBERGMAN

Filed in the Clerk's Office
Rockingham County, Va.
APR 17 1958
Clerk

NOTICE OF APPEAL AND ASSIGNMENTS OF ERROR

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

Counsel for Kirby Steamberman, 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 February 26, 1958, and set forth the following assignment of errors.

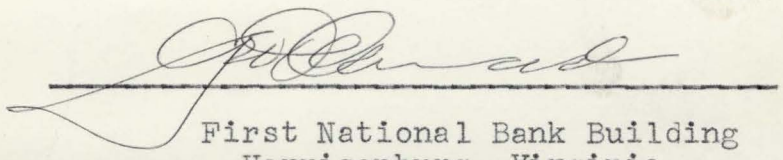
(1) That the Court erred in allowing the witness, Mr. Hartsider, to testify as to the character and reputation of Clifton Miller and Rosale Miller over the objection and exception of the defendant.

(2) That the Court erred in allowing the witnesses, Rosale Miller and Clifton Miller, to testify as to statements made by the alleged victim, Mary Elizabeth Miller, over the objection and exception of the defendant, which error was not cured by the subsequent instructions of the Court to the jury to disregard such evidence.

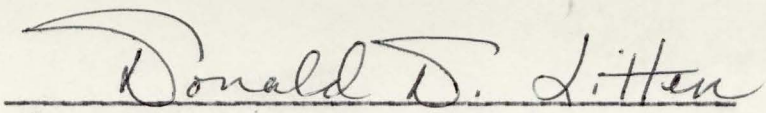
(3) That the Court erred in failing and refusing to strike the Commonwealth's evidence after it rested its case and likewise erred in failing and refusing to set aside the verdict of the jury as contrary to the law and to the evidence, to all of which actions of the Court the defendant objected and excepted.

LAW OFFICES
GEORGE G. GRAHAM
AND
DONALD B. LUTTRELL
HARRISONBURG

(4) That the Court erred in granting Instruction No. 5 over the objection and exception of the accused.



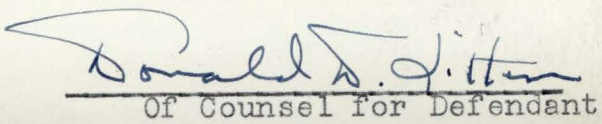
First National Bank Building
Harrisonburg, Virginia



First National Bank Building
Harrisonburg, Virginia

Counsel for Defendant.

This is to certify that a true copy of the within Assignments of Error was served upon Charles E. Earman, Jr., Attorney for the Commonwealth, by delivering the same to him on April 17th, 1958.



Of Counsel for Defendant

LAW OFFICES
GEORGE D. CONRAD

DONALD D. LITTEN
ASSOCIATE

WRITTEN STATEMENT, IN NARRATIVE FORM OF TESTIMONY ADDUCED AT
THE TRIAL OF THE CASE OF
COMMONWEALTH OF VIRGINIA vs. KIRBY STRAWDERMAN
February 24, 1958

(The narrative shows the grounds of objections made by accused)

WITNESSES CALLED BY THE COMMONWEALTH

CHARLES W. HERTZLER

(This witness's qualifications as a competent practicing medical doctor were stipulated by counsel for accused)

Being first duly sworn, the witness testified that he had examined Mary Elizabeth Miller on December 26, 1957, in his office at Bergton, Virginia. That the child appeared to be about five years old and was somewhat frightened. That her underpants were bloody. That her vagina was spread apart and somewhat bloody but that there was no serious hemorrhage. That the hymen was torn and the surrounding tissue was torn. Over objection and exception of the accused on the grounds that such testimony was immaterial and unduly prejudicial to the defendant the witness was permitted to testify that he knew the Miller family, that Mr. Miller was a day laborer and always paid his bills; that Mrs. Miller was a high moron.

The witness testified that in his professional medical opinion the injury to the child was done by a male penis and "a big one at that." That it couldn't have been done by a finger beeause the fingernails would have scratched or cut the vagina. That there was an outside possibility that the injury might have been caused by something other than a penis but such possibility was so remote, in his opinion, that he did not give it a second consideration. That he based this opinion on the fact of the complete absence of bruises. That a penis would not cause bruises whereas a "hard" object would bruise.

RESSIE MILLER

Having been sworn, testified that she is the mother of Mary Elizabeth Miller. That the child is five years old; that on Christmas Day, 1957, the accused came to their home about 12:00

CHARLES W. HERSTEIN

(Life witness's qualifications as a competent prescriptive
medical doctor were established by counsel for accused)

Mrs Witness testified that she knew Elizabeth Miller on December 25, 1951, in her office
when Elizabeth Miller came to her office. That she told her she was pregnant. Witness
stated that she had been this obtained on the last to the complete absence of
menstruation. That a pelvic examination was then made and the uterus was found to be
enlarged to about three months pregnant. That the witness then made a bimanual examination
and found that the uterus was soft and enlarged. That there was no tenderness
or fever. That it could not be felt that the witness was not sure of the date of the
last menstruation. That the witness then made a pelvic examination and found that the
uterus was enlarged to about three months pregnant. That the witness then made a
bimanual examination and found that the uterus was enlarged to about three months
pregnant. That a pelvic examination was then made and the uterus was found to be
enlarged to about three months pregnant. That the witness then made a bimanual
examination and found that the uterus was enlarged to about three months pregnant.

WITNESSES CALLED BY THE COMMONWEALTH

(The Commonwealth rests subject to objections made by accused)

COMMONWEALTH OF AUSTRALIA, ex. REX v. ELIZABETH MILLER
THE TRIAL OF THE CASE OF
WRITTEN STATEMENT IN NARRATIVE FORM OF TESTIMONY ADDUCED IN

Noon; that he asked permission to take the child to get her some candy and that permission was granted; that she did not like the accused and "had something against him"; that the accused and the child were gone from one to two hours; that she saw the accused let the child out of his car and that the accused did not come back in the house.

The witness was then asked whether Mary had made any statement as to what had occurred and counsel for the accused objected on the grounds that such statement would constitute hearsay and did not come within any exception to the hearsay rule. The matter was taken up in chambers, and the objection was overruled, and counsel for the defendant asked that the ~~child~~ witness be examined in chambers so that if it developed on cross-examination that said statement was, in fact, hearsay the jury would not be prejudiced by its admission. The Court refused to grant this motion and defendant excepted. Direct examination of the witness then continued and the witness testified that the child had made a statement that Kirby had hurt her, that she found blood on the child's panties and on her legs. That the child was taken to Dr. Hertzler the next day. That the reason she wasn't taken sooner was because there was no means of transportation.

On cross-examination the witness testified that it was only after she interrogated Mary as to whether Kirby had harmed her that the child made an affirmative answer. Upon motion of counsel for the accused the Court then struck all of said statements made by the child recited by the witness and instructed the jury to disregard such statements.

CLIFTON MILLER

Having been first sworn, testified that he is the father of Mary Elizabeth Miller. That he lives at Fulks Run, Virginia.

That on Christmas Day, 1957, about 12:00 Noon the defendant came to his home to visit. That the defendant was a nephew of the witness and that defendant often came to the home and took the child to get candy etc., and that nothing out of the way had ever occurred. That on this occassion the accused, with his permission, took the child and that the child came back about 1:30 p.m. That the witness had been sleeping and was awakened by the child coming into the room. Over the objection and exception of the accused on the grounds that such testimony constituted hearsay and did not come within any exception to the hearsay rule the witness was permitted to testify that the child told her mother that "Kirby hurt me." That he could not say that the child was crying.

On cross examination the witness testified that he did not see anything wrong with the child; that she stood just inside the doorway for 15 minutes to half an hour without saying anything; that his wife then examined the child and found blood on her legs; that he did not know whether the girl was questioned or not before she made such statement, and, the Court, upon motion of the accused, then struck the testimony of the witness as to the statement of the child and instructed the jury to disregard it.

W. A. SPITZER

Having been duly sworn, testified that he is a Deputy Sheriff of Rockingham County. That he arrested Kirby Strawderman on December 27, 1957, at 10:30 o'clock a.m. That he interrogated Strawderman and the accused stated that he had been at the Miller home on Christmas Day around 12:15 and had taken the child to get some candy. That the accused stated they went to Dove's store in Timberville and found the store closed and then went to a store operated by Benny Carr (generally known to be in Rockingham County) and got two or three bottles of coca cola and one candy bar and that the girl had been in his sight all

That on Christmas Day, 1957, about 15:00 noon the defendant came to his home to visit. That the defendant saw a neighbor of the mitness and that defendant often came to the home and took the child to beg candy etc.", and that nothing out of the ordinary had ever occurred. That on this occasion the accused, with his permission, took the child and that the child came back about 1:30 p.m. That the mitness had been sleeping and was awakened by the child coming into the room. Over the objection and exception of the accused counsel stated that such testimony constituted hearsay and did not on the grounds that such testimony constituted hearsay and did not come within any exception to the hearsay rule the witness was permitted to testify that the child told her mother that "Kitty hurt me." That he could not see that the child was crying.

On cross examination the witness testified that he did not see anything about with the child; that she spoke just twice see anything; that he could not say that the child had been in his sight all the good day 1st March 15 minutes to ten on that afternoon; that he could not tell that he saw the child and knew blood on her legs; that his mife then examined the child and found blood on her legs; that the girl had been in his sight all the good day; and that the girl had been in his sight all

having been only some, testified that he is a deputy Sheriff of Rockingham County. That he attended Kitty Christmas on December 25, 1957, at 10:30 o'clock a.m. That he interrogated Christmas and the accused stated that he had been at the Miller home on Christmas Day around 15:15 and had taken the child to beg some candy. That the accused stated that he went to Dove's store in Limpertville and going into the store closed and then went to a store operated by Benny Smith and got two or three bottles of coca cola and one candy bar and that the girl had been in his sight all

that time and hadn't gotten out of the car or out of his sight and that they never left State Highway 259. That he took the accused's underpants and the accused stated that they were the same underpants he had worn on Christmas Day. That he removed a handkerchief from the accused's automobile. That Route 259 goes into the State of West Virginia. That the accused denied molesting or having intercourse with the child.

STIPULATION

A written stipulation, a copy of which is attached hereto, was entered into between counsel whereby it was stipulated that if an expert from the F. B. I. Laboratory were called as a witness he would testify to the facts therein conceded.

WITNESSES FOR THE DEFENDANT

The accused offered no evidence.

Charles E. Earman Jr.
Attorney for the Commonwealth

p.d.

Donald W. Fitton
p.d.

The foregoing written statement, in narrative form, of testimony adduced at the trial of the case of Commonwealth of Virginia vs. Kirby Strawderman, was tendered to me on April 22nd, 1958, and is signed this 24th day of April, 1958.

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 vs. Kirby Strawderman was delivered to and filed in my office on April 25, 1958.

J. Robert Switzer

J. Robert Switzer, 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 vs. Kirby Strawderman was delivered to and filed in my office on April 7th, 1958.

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

COMMONWEALTH

VS. **STIPULATION OF FACTS**

KIRBY STRAWDERMAN

It is stipulated between counsel that if an expert from the FBI Laboratory were called as a witness in this case he would testify as follows:

(1) That there was submitted to said laboratory by the Commonwealth's Attorney of Rockingham County, a pair of child's panties, man's gray shirt, a pair of men's white shorts, and a white handkerchief, exhibited in evidence before the jury on the 24th of February, 1958.

(2) That a chemical analysis of said articles of clothing disclosed the following:

(a) The presence of two small stains of human blood on said handkerchief. No grouping of said blood was possible.

(b) The presence of stains of human blood in the crotch area of said pair of child's panties. Such blood was not grouped.

(c) The absence of stains of blood on said grey shirt and on said pair of men's white shorts.

(d) The presence of a seminal stain containing spermatozoa on the fly of said pair of men's white shorts.

(e) The absence of semen on said pair of child's panties, on said men's grey shirt, and on said white handkerchief.

COMMONWEALTH

v.

KIRBY STRAMDERMAN

STIPULATION OF FACTS

It is stipulated between counsel that if an expert from the RTI Laboratory were called as a witness in this case he would testify as follows:

(1) That there was submitted to the Laboratory by the Commonwealth's Attorney of Rockingham County, a pair of childe's pants, men's grey shirt, a pair of men's white shorts, and a white handkerchief, exhibited in evidence before the jury on the 5th of February, 1928.

(2) That a chemical analysis of said articles of clothing disclosed the following:

(a) The presence of two small stains of human blood on said handkerchief. No human blood was found to be present in the other clothing.

(b) The presence of a human blood group to said pair of childe's pants.

(c) The absence of stains of blood on said pants to indicate that no blood was found.

(d) The presence of stains of human blood on said handkerchief.

(e) The absence of semen on said pair of childe's pants and on the men's grey shirt, and on said white handkerchief.

(3) If said expert witness were present he would testify that he was unable to state the length of time said seminal stain found on said white shorts had been present.

/s/ Charles E. Earman, Jr.
Charles E. Earman, Jr.,
Commonwealth Attorney

/s/ Donald D. Litten
Donald D. Litten
Counsel for defendant

(3) It also exports minerals now present on world
testify that on new ones or areas the length of time
also seemed safe that bond no also multiple spots had been
present.

/s/ Charles E. Freeman, Jr.
CHARLES E. FREEMAN, JR.,
Commonwealth Attorney

/s/ Donald D. Clifton
DONALD D. CLIFTON
Counsel for defendant

COMMONWEALTH OF VIRGINIA

VS.

KIRBY STRAWDERMAN

Be it remembered, that at the trial of the above case on February 24, 1958, ~~the following~~ instruction #5 was given on behalf of the Commonwealth over the objection and exception of the accused, the grounds of the objection being that the instruction tended to reduce the burden on the Commonwealth of establishing the guilt of the accused below the degree required by law.

Attest, this 22nd day of April, 1958, to the above certificate, the same having been tendered to the undersigned within 60 days of final judgment.

Harvey Sheet

Judge of the Circuit Court
of Rockingham County, Virginia

VIRGINIA: IN THE CIRCUIT COURT OF ROCKINGHAM COUNTY

COMMONWEALTH OF VIRGINIA	)	
	)	
vs.	)	Designation of Parts of Record to be Printed
	)	
KIRBY STRAWDERMAN	)	

Pursuant to the provisions of Rule 5:1 Section 6 (b), (c) and (d), the following parts of the record in the above captioned criminal case are to be printed.

P.2 1. Indictment returned by the grand jury at the December Term, 1957, together with return on reverse side, page 2. 1/2

Ps 5-6 2. The stipulation of facts entered into between counsel, omitting therefrom the caption and including "Stipulation of Facts", page 5. 1

P.13 P.30 3. Instruction No. 5 given by the Court to the jury at the trial of this case, omitting therefrom the caption and including "Instruction 5", page 13, and certificate of court as to saving of exception to such instruction, page 30. 1

P.17 4. The verdict of the jury, page 17. 1/4

Ps 18-19 5. Order of Court entered on February 24, 1958, page 18. 1/2

P.20 6. The Order entered by the Circuit Court on February 26th, 1958, page 20. 1 3/4

Ps 21-22 7. Notice of Appeal and Assignments of Error, omitting therefrom the caption and including "Notice of Appeal and Assignments of Error", page 21. 1

Ps 23-27 8. The "Statement in Narrative Form of Testimony Adduced.." excluding therefrom the carbon copy of the stipulation of facts attached thereto, pages 23 to 27, inclusive. 4

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

MAY 28 1958

J. Robert Switzer Clerk

LAW OFFICES
GEORGE D. CONRAD

DONALD D. LITTEN
ASSOCIATE

Counsel for Kirby Strawderman

VIRGINIA: IN THE CIRCUIT COURT OF ROCKINGHAM COUNTY

COMMONWEALTH OF VIRGINIA

v.

MINNA SHENANDOAH

Destruction of Perps of Record to be Printed

Pursuant to the provisions of Rule 5:1 Section C (b), (c) and (d), the following Perps of the record in the above captioned criminal case are to be printed.

1. Instruments returned by the Grand Jury at the Sept. 1978 Term on Tuesday May Perps 5.

2. Minute entry of Court entered on Perps 5, 1978, Perps 16.

3. Instruction No. 5 given by the Court to the Jury "Definition of Terms", Perps 5.

4. The definition of terms entered into between counsel, omitting the caption and including "Instruction 5", Perps 12, and certificate of Court as to status of exception to such instruction, Perps 30.

5. The verdict of the Jury, Perps 17.

6. Order of Court entered on Perps 21, 1978, Perps 18.

7. The order entered by the Circuit Court on Perps 21, Sept. 1978, Perps 20.

8. Notice of Appeal and Assignments of Error, omitting the caption and including "Notice of Appeal and Assignments of Error", Perps 21.

9. The Order of Court granting Assignments of Error "Adopted as Modified", Perps 25 to 27, inclusive.

Entered on the Clerk's Office
Rockingham County, Va.
Mar 28 1979

Consent for Partial Designation

Due and timely service of the foregoing designation of parts of record to be printed is hereby accepted.

Charles E. Cannon Jr.
Commonwealth's Attorney

LAW OFFICES
GEORGE D. CONRAD

DONALD D. LITTEN
ASSOCIATE

DONALD C. FLETCH
VISCOUNT
GEORGE D. COMBYD
FAR OFFICER

Recd
9-18-58
G.L.L.
card

VIRGINIA:

IN THE

SUPREME COURT OF APPEALS

OF

VIRGINIA

KIRBY STRAWDERMAN Plaintiff in error,

v.

COMMONWEALTH OF VIRGINIA Defendant in error.

DESIGNATION OF ADDITIONAL PARTS OF THE RECORD
WHICH DEFENDANT IN ERROR WISHES TO HAVE PRINTED

To the Clerk of the Supreme Court of Appeals of Virginia:

Pursuant to Rule 5:1, §6(b), of the Rules of Supreme Court of Appeals of Virginia, the Commonwealth, Defendant in error, by counsel, hereby designates the following parts of the record which it wishes printed:

P 10-11

Instruction No. 3.	Print All of Pages 10 and 11.

COMMONWEALTH OF VIRGINIA,
Defendant in error.

By: John W. Knowles
John W. Knowles
Assistant Attorney General
Of counsel for Defendant in error.

September 17, 1958
Supreme Court - State Library Building
Richmond 19, Virginia

I hereby certify that I have this 18th day of September, 1958, mailed a copy of the above designation of additional parts of the record to be printed to George D. Conrad, Esquire, Attorney at law, First National Bank Building, Harrisonburg, Virginia, Counsel of record for plaintiff in error.

John W. Knowles
John W. Knowles
Assistant Attorney General

To the Clerk of the Supreme Court of Appeals of Virginia:

Pursuant to Rule 5:1, §6(b), of the Rules of Supreme Court of Appeals of Virginia, the Commonwealth, Defendant in Error, by counsel, hereby designates the following parts of the record which it wishes printed:

DESIGNATION OF ADDITIONAL PARTS OF THE RECORD
WHICH DEFENDANT IN ERROR WISHES TO HAVE PRINTED

COMMONWEALTH OF VIRGINIA	Defendant in error,
v.	
KIRBY STRAMBERMAN	Plaintiff in error.

VIRGINIA

IN THE

SUPREME COURT OF APPEALS

OF

VIRGINIA:

PRINT

All of pages 10 and 11.

Instruction No. 3.

COMMONWEALTH OF VIRGINIA,
Defendant in error.

By: John W. Knowles
Assistant Attorney General
Of Counsel for Defendant in Error.

September 17, 1958
Supreme Court - State Library Building
Richmond 19, Virginia

I hereby certify that I have filed this day of September, 1958, mailed a copy of the above designation of additional parts of the record to be printed to George D. Conley, Esquire, Attorney at Law, First National Bank Building, Harrisonburg, Virginia, counsel of record for plaintiff in error.

John W. Knowles
Assistant Attorney General