

IN THE
Supreme Court of Virginia
AT RICHMOND

RECORD NO. 830336

DORSEY LEE CAMPBELL,

Appellant,

v.

COMMONWEALTH OF VIRGINIA,

Appellee.

WASHINGTON & LEE
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MAY 23 1984

JOINT APPENDIX

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VIRGINIA: IN THE CIRCUIT COURT OF ROCKINGHAM COUNTY,
October 18, 1982

INDICTMENT

The Grand Jury charges that:

On or about the 9th day of July, 1982, in the City of Harrisonburg, Virginia, Dorsey Lee Campbell, over the age of eighteen, did knowingly, intentionally, feloniously and with lascivious intent expose his sexual or genital parts to a female child under the age of fourteen to whom he was not legally married.

Virginia Code Section 18.2-370(1).

A True Bill.


Foreman

David I. Walsh
Commonwealth's Attorney

Bruce C. Morris
Assistant Commonwealth's Attorney

Witness:

✓ G.A. McDorman

VIRGINIA: IN THE CIRCUIT COURT OF ROCKINGHAM COUNTY, October 18, 1982

On an indictment charging felony -
taking indecent liberties with a
child (docket #7879)

This 18th day of October, 1982, came the Commonwealth's Attorney, and the accused, Dorsey Lee Campbell, came pursuant to his recognizance, and by his retained counsel, Cabell F. Cobbs. Thereupon, the accused was arraigned on the indictment, and after consulting with his counsel, tendered a plea of not guilty thereto and the Court set the 30th day of November, 1982, subject to Commonwealth vs Holly Gay George, for trial before a felony venire. The defendant's bail is continued to the aforesaid time.

A TRUE COPY

ATTESTE:

 Deputy Clerk

On an indictment charging felony -
taking indecent liberties with a
child (docket #7879)

This 30th day of November, 1982, came the Commonwealth's Attorney, and the accused, Dorsey Lee Campbell, came pursuant to his recognizance, and by his retained counsel, cabell F. Cobbs. And from persons summoned by the Sheriff under a writ of venire facias, twenty persons were examined by the Court and found duly qualified and free from exception; whereupon, a list 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: Robert Airey, Marie Burner, Frances Crutchfield, Cheryl Hinkle, Larry Holloway, Nancy Meadows, Betty Saufley, Carl Wassum, Floella Wolfe, Barnes Yelverton, Harold Souers, and Lyniel Kite, selected as aforesaid to constitute the jury, were sworn to well and truly try and true deliverance make between the Commonwealth and the accused and a true verdict render according to the law and the evidence. Having completed the hearing of the evidence of the Commonwealth, the accused, by counsel, moved the Court to strike said evidence, and the Court having considered said motion overruled said motion, to which action of the Court the accused, by counsel, excepted. Having completed the hearing of the evidence of the accused,

received the instructions of the Court and heard the arguments of counsel, the jurors retired to their room to consider their verdict, and after some time they came into Court and returned the following verdict "We the jury find the defendant, Dorsey Lee Campbell guilty of indecent exposure to a child with lascivious intent, as charged in the indictment, and fix his punishment at: confinement in jail for 3 months, date: November 30, 1982, /s/: G. C. Wassum, Foreman". Thereupon, the accused, by counsel, moved the Court to set aside the verdict of the jury on the ground that said verdict is contrary to the law and the evidence, which motion the Court overruled, to which action of the Court, the accused, by counsel, excepted. In accordance with the verdict of the jury, it is the judgment of the Court that Dorsey Lee Campbell is guilty of indecent exposure to a child with lascivious intent and that the Commonwealth recover of him the costs incident to this prosecution and that he be confined in jail for a period of three months. The defendant's motion to remain on bail until Notice of Appeal to the Supreme court is filed is sustained. and set in the penalty of \$5,000.00 with good and sufficient surety to be approved by the Clerk of this Court. In addition to the usual conditions of his bail he is not to contact directly or indirectly or be in the area of anyone who testified for the Commonwealth in this case and that he not be on the north side of Route 33 in the subdivision in which the victim resides. If the defendant satisfies the Clerk as to the adequacy of his being surety on the bail this afternoon, then he will be sufficient surety alone until 5:00 p.m. December 1, 1982, at which time additional surety will have to be posted. If additional surety is not posted

11/24/83
by the aforesaid time, the defendant will have to turn himself into the Sheriff. The Clerk is directed to certify a copy of this order to the Chief Probation and Parole Officer in the District of the Circuit Court of Augusta County. The defendant is committed to the Sheriff until the bond is executed, and then he will be released in the custody of his bail.

A TRUE COPY

ATTESTE: Donna Funchouser, Deputy Clerk

NOTICE OF APPEAL

Notice is hereby given that the final judgment in the above styled criminal case, finding the Defendant guilty upon an indictment for violation of Section 18.2-370(1) of the Code of Virginia, 1950, as amended, and sentencing him to 90 days in jail, said final judgment being entered by the Court upon the verdict of the jury on November 30, 1982, will, and hereby is, appealed to the Virginia Supreme Court by the accused.

The transcript of the hearing herein will hereinafter be filed with the Clerk of this honorable Court.

Respectfully Submitted,

Dorsey Lee Campbell

By

Cabell F. Cobbs

Cabell F. Cobbs, Esquire
Counsel for the Defendant

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

DEC 13 1982

[Signature]

Deputy Clerk

C E R T I F I C A T E

I hereby certify that a true copy of this Notice of Appeal was mailed, postage paid, to the office of David I. Walsh, Esquire, Commonwealth's Attorney for Rockingham County, Virginia, on this 10th day of December, 1982.

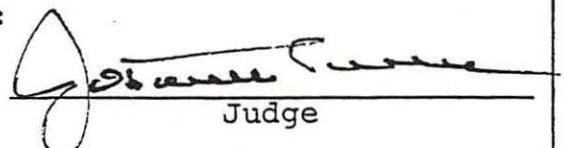
Cabell F. Cobbs

This day came the Commonwealth by its attorney, David I. Walsh, and the Defendant by his individually retained counsel, Cabell F. Cobbs, Esquire, and the Defendant moves the Court, pursuant to Rule 5:9, of the Rules of the Supreme Court of Virginia, that the transcript of the hearing in the above styled case be made a part of the record.

And it appearing to the Court that final judgment was entered in this cause on November 30, 1982, and that the motion of the Defendant is made within 21 days after entry of such judgment, there being no objection by any party to the fact that the transcript of record has not yet been prepared;

It is hereby ADJUDGED, ORDERED and DECREED that the transcript of the hearing in this case held on November 30, 1982, in the Circuit Court of Rockingham County, be, and the same hereby is, directed to be made a part of the record herein.

Enter:


Judge

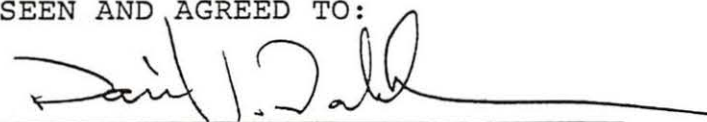
Date:

12/14/82

I ASK FOR THIS:


Cabell F. Cobbs

SEEN AND AGREED TO:


David I. Walsh

ASSIGNMENT OF ERROR

The petitioner states the following as his assignment of error:

1. That the evidence is not sufficient in law to support the verdict of guilty of felonious indecent exposure, in violation of Section 18.2-370(1), Code of Virginia, 1950, as amended, in that it does not establish the necessary lascivious intent nor that the indecent exposure involved was intentional.

1. is crowded.

2. MR. COBBS: Right.

3. COURT: But as far as I'm concerned, I just
4. thought I'd mention that so that there is no confusing that
5. Mrs. Brown is the official reporter. But if you wish to have
6. your own reporter for your own purposes, I have no objection to
7. that. I just want to point out her unofficial capacity.

8. MR. COBBS: Right.

9. COURT: Is there anything else we can take up at
10. this time, gentlemen? All right, we'll take a ten minute
11. recess.

12. (Recess)

13. COURT: The Commonwealth may call its first
14. witness.

15. MR. WALSH: Detective McDorman.

16.
17. AL McDORMAN,
18. having been called as a witness, was duly sworn, and
19. testified as follows:

20.
21. Direct Examination by Mr. Walsh:

22. Q. State your name, please.

23. A. Al McDorman.

24. Q. And your occupation?

25. A. I'm a detective for the Harrisonburg Police

1. Department.

2. Q. How long have you been employed by the Harrisonburg
3. Police Department?

4. A. Approximately five years.

5. Q. And how long have you been an investigator or a
6. detective?

7. A. Approximately two years.

8. Q. Al, did you have occasion to participate in the
9. investigation of the case being tried today against Dorsey Lee
10. Campbell?

11. A. Yes sir, I did.

12. Q. When did you become involved in the investigation?

13. A. I became aware of the incident on July the 19th of
14. this year.

15. Q. All right, now, during the course of your
16. investigation did you have occasion to--well, let me ask you
17. this. Where did your investigation reveal that the facts of
18. the situation took place?

19. A. The incident occurred at Country Club Court. This is
20. an apartment/townhouse complex.

21. Q. All right, and where is that located?

22. A. That's located just off of Country Club Road which is
23. in the northeast section of Harrisonburg.

24. Q. Now, let me show you a diagram or a copy of a drawing,
25. which I have marked as Commonwealth's Exhibit #1, and ask you

1. whether or not you can identify what that shows.

2. A. Yes sir.

3. COURT: Do you wish to be heard? May that be
4. received in evidence?

5. MR. COBBS: It may, Your Honor.

6. COURT: Received in evidence as Commonwealth's
7. Exhibit #1.

8. Q. Do you want to step up in front of the jury box for a
9. moment, if you would, Al, please.

10. A. (Witness stands in front of jury box)

11. Q. I'm going to hold this up so that members of the jury
12. can see it and ask you to--well, let me ask you this. Is this
13. sort of an aerial diagram of the Country Club Court
14. development?

15. A. Yes sir, it is.

16. Q. So that we can orient the jurors, where is Country
17. Club Road, or is that shown on here?

18. A. Okay, Country Club Road would be this here. This is a
19. road leading or a lane leading in the complex. Country Club
20. Road is here. This is I-81 interchange next to Route 33.

21. Q. All right, there is sort of an arch of lines along the
22. top of this diagram. What is that?

23. A. That is the railroad tracks that run around the
24. complex.

25. Q. All right, and then under the highway?

1. A. Yes, it goes underneath the interstate road.

2. Q. Okay, and then goes on and continues out beyond
3. Country Club Road, north of Country Club Road?

4. A. Yes sir, towards Kawneer.

5. Q. Okay, now, there are some measurements, or what appear
6. to be measurements, distances shown on the diagram, three
7. figures here. Could you explain what each one of those three
8. figures indicate?

9. A. Okay, the first figure which shows thirty-five foot is
10. a measurement from the building complex to the curb line. The
11. next measurement, which is thirty-six feet, is the width of the
12. road, which is thirty-six foot. The measurement from the other
13. side of the road to the tracks is the eighty-seven feet, which
14. is the approximate distance between the victim and the
15. defendant.

16. Q. All right, now, does this eighty-seven feet, is that a
17. measurement all the way to the tracks?

18. A. It's a measurement to the edge of the tracks.

19. Q. To the edge of the tracks, all right. From the edge
20. of the tracks to the edge of the . . .

21. A. Curb line.

22. Q. Curb line of the street.

23. A. Yes sir.

24. Q. Okay. Now, this is a cul-de-sac here, a dead end, is
25. that . . .

1. A. Yes sir.

2. Q. What this is here. Okay. All right, go ahead, return
3. to your seat.

4. A. (Witness resumes stand)

5. Q. Now, did you also take some photographs of that area
6. where you measured?

7. A. Yes sir, I did.

8. MR. WALSH: Your Honor, I have four photographs,
9. Commonwealth's #2, #3, #4 and #5, that I would offer into
10. evidence. I don't believe . . .

11. MR. COBBS: No objection, Your Honor.

12. COURT: Very well. There being no objection,
13. Commonwealth Exhibits #2, #3, #4 and #5 are received in
14. evidence. Is there any problem with the writing on the back?

15. MR. COBBS: Frankly I had forgotten that. Not
16. really, Judge. I don't think there's any problem at all. Mr.
17. Walsh has assured me that it would be in accordance with the
18. testimony of the young lady there . . .

19. MR. WALSH: This officer and two eyewitnesses.

20. COURT: Commonwealth Exhibits #2, #3, #4 and #5
21. are received in evidence.

22. Q. Al, do you want to again come back up to the jury box.
23. I should have had you stay up there.

24. A. (Witness stands in front of jury box)

25. Q. I'm going to hold up Commonwealth's Exhibit #2 to the

1. jury and ask you to tell us what this photograph shows and in
2. relation to Commonwealth's Exhibit #1 where the photograph was
3. taken from and in what direction it is.

4. A. This photograph was taken from the railroad tracks. I
5. was standing at the railroad tracks where the eighty-seven foot
6. was measured to. I took a picture from that direction going
7. south, taking a picture towards the apartment complex.

8. Q. Does this correspond with the--near the eighty-seven
9. there is a #1 that is shown on the diagram?

10. A. Yes sir.

11. Q. And that corresponds to the point from where this
12. photograph was taken?

13. A. Yes sir.

14. Q. Now, I want to show you the other three photographs
15. and ask you, which is Commonwealth Exhibits #3, #4 and #5, and
16. show those all at one time, and ask you, first of all, whether
17. there is a relation between these three photographs, first of
18. all?

19. A. Yes sir. The relation is that they all are in
20. sequence in frame as close as I could get them taken, the
21. pictures.

22. Q. Okay, now, let me then use just for this moment
23. Commonwealth's Exhibit #3 and #4 and ask you whether or not
24. these two photographs are in sequence?

25. A. Yes sir. This photograph would be like so. It shows

1. the contour of the terrain there.

2. Q. All right, and then adding to that Commonwealth's
3. Exhibit #5 and ask whether that is connected to either
4. Commonwealth's Exhibit #3 or #4.

5. A. Yes sir. This picture would be approximately in that
6. position showing the terrain.

7. Q. And that would be connected to Commonwealth's Exhibit
8. #4 then. Now, from where were these three photographs taken?

9. A. Those photographs were taken from--the indication on
10. this chart would be from the edge of the street, which is
11. marked #2 on the chart, going north. The picture was taken
12. north towards the railroad tracks.

13. Q. Toward the railroad tracks.

14. A. Yes sir.

15. Q. All right. Now, is there any particular reason that
16. you chose or took the photograph, Commonwealth's Exhibit #2,
17. from the point at the north end of your measurement?

18. A. The photograph #2, or mark #2 here, okay, this one
19. would be #1. This photograph was taken from the approximate
20. location of where the defendant, Mr. Campbell, was seen.

21. Q. According to whom?

22. A. The victim.

23. Q. That's Nikki . . .

24. A. Eherenman.

25. Q. And what was the reason that you took Commonwealth's

1. Exhibits #3, #4 and #5 from the location at the edge of the
2. street?

3. A. From what the victim, Nikki, told me, and Daniel
4. Brown, this is the point that they were standing and this is
5. what they saw, or what direction they were looking in.

6. Q. Okay, all right. Okay, go back to your seat.

7. A. (Witness resumes stand)

8. MR. WALSH: Answer any questions Mr. Cobbs may
9. have.

10.

11. Cross Examination by Mr. Cobbs:

12. Q. Mr. McDorman, basically when were these photographs
13. taken?

14. A. There were several different series. The photographs,
15. several of those were taken on July the 20th, the day after the
16. incident was reported. Then another group was taken on
17. September the 26th or 28th, I believe it is. It's marked on
18. the pictures. That was taken after a preliminary hearing.

19. Q. These pictures were taken then according to the date
20. that you've got marked on here?

21. A. Yes sir.

22. Q. All right. And, as I understand it, the information
23. from the point that you took these pictures, you took one from
24. down in Country Club Court looking up toward the railroad
25. tracks, that information was taken from Nikki and Danny Brown,

1. is that right?
2. A. Yes sir, they pointed it out to me.
3. Q. They pointed it out to you.
4. A. Yes sir.
5. Q. Did they point out the exact spot or that it was the
6. approximate spot?
7. A. Approximate.
8. Q. Right, it could have shifted a few feet either way.
9. A. Yes sir.
10. Q. And that would have been true if they said that Mr.
11. Campbell was standing up on the railroad tracks, then his
12. position could have been shifted a few feet either way too, is
13. that correct?
14. A. Possibly, yes sir.
15. Q. Then you made the measurements also which appear on
16. the sketch that was presented to the jury, is that correct?
17. A. Yes sir.
18. Q. And you made those measurements again according to the
19. information which this little girl and Danny gave you, is that
20. correct?
21. A. Yes sir.
22. Q. And again if you shifted over a few feet, the
23. measurement might be increased; if you shifted back a few feet,
24. it might be decreased. Is that correct?
25. A. Possibly a short distance of inches or a foot or so.

1. Q. Right, okay. Now, would you come down again, please,
2. sir?

3. A. (Witness stands in front of jury box)

4. Q. And referring to Commonwealth Exhibit #1 again. This
5. is Country Club Court, is that right?

6. A. Yes sir.

7. Q. Now, could you point out on here, and I'm not sure you
8. can, but if you can, would you point out to the jury where
9. Nikki lives.

10. A. Nikki lives here, 1302.

11. Q. All right. And where does Danny Brown live?

12. A. Right here, 1239.

13. Q. And I believe they may have been at a babysitter's
14. that afternoon or in someone else's custody on the day it
15. happened?

16. A. Yes sir; they were at 1302, Nikki's house.

17. Q. Okay.

18. A. With the babysitter.

19. Q. With the babysitter, all right. And, this is Country
20. Club Court, as I understand it. This is Route 33 and the
21. interchange over onto 81.

22. A. Yes sir.

23. Q. And this is the railroad up here.

24. A. The curved line is the railroad, right.

25. Q. The curved line is the railroad right here. If you go

1. back down this curved line you go through a tunnel under 33.
2. A. Right.
3. Q. And Dutch Mill Court is down here, isn't that correct?
4. A. Yes sir.
5. Q. And that's where the defendant, Dorsey Lee Campbell,
6. lives, isn't it?
7. A. Yes sir.
8. Q. In Apartment M?
9. A. 90M
10. Q. 90M down here. And the railroad track extends on by
11. Dutch Mill Court also, is that correct?
12. A. Yes sir.
13. Q. And it essentially runs on south to Staunton on one
14. end and down through the City of Harrisonburg and then runs
15. north past Country Club Court on north up toward Keezletown.
16. A. Yes sir.
17. Q. I'm saying north, I mean in the same direction as 81.
18. A. Yes sir.
19. Q. Okay. Go ahead and take your seat.
20. A. (Witness resumes stand)
21. Q. I believe you have testified that you measured these
22. distances after obtaining this information from Nikki and from
23. Danny, you measured this distance across there. And the
24. distance from the point at which Danny and Nikki said they were
25. on their bicycles to the point where they first saw the

1. defendant, or believe that they saw the defendant, was
2. eighty-seven feet.

3. A. Yes sir, approximately eighty-seven.

4. Q. And that is down across some rough terrain and a
5. little pond or watercourse or something like that in there?

6. A. There is a ditch and a stream that runs between the
7. railroad track and the road, but the level of the railroad
8. track and the road are level to each other, eye level.

9. Q. Right, but it's a ditch or watercourse type thing, a
10. gully.

11. A. Yes sir.

12. Q. In my language between them, is that right?

13. A. Yes sir.

14. Q. And it's eighty-seven feet between those two points.

15. A. A straight line.

16. Q. Now, the point at the edge of the road at which Nikki
17. and Danny said that they were with their bicycles when they saw
18. the defendant, was that near or at some mailboxes?

19. A. No sir.

20. Q. How far was it from those mailboxes?

21. A. I would only have to speculate on that. I would not
22. know the exact measurements.

23. Q. Could you give us an estimate, sir?

24. A. The mailboxes would probably be a hundred feet from
25. that point, at least.

1. Q. Which way, down toward the cul-de-sac on the sketch?
2. A. Yes, it would be west, I guess, of that.
3. Q. Is this the big set of mailboxes or . . .
4. A. Yes, there's a large row of mailboxes.
5. Q. Okay. Now, Mr. McDorman, after this did you--you said
6. that you conducted this investigation of the accused. I take
7. it that you went down and talked to the defendant?
8. A. Yes sir, I did. I actually discovered the defendant
9. on the railroad tracks.
10. Q. And you talked to him?
11. A. Yes sir.
12. Q. And you asked him voluntarily, did you not, to come
13. down to the police station?
14. A. Yes sir.
15. Q. And he came voluntarily?
16. A. Yes sir, he did.
17. Q. And he voluntarily let you photograph him?
18. A. Yes sir.
19. Q. And he voluntarily let you fingerprint him?
20. A. Yes sir.
21. Q. And he made a statement to you?
22. A. Yes sir, he give me a statement.
23. Q. And he told you he had been up on the railroad tracks
24. picking . . .
25. MR. WALSH: I object, Your Honor. It's

1. self-serving hearsay at this point.

2. COURT: Is there any reason I would not have to
3. sustain the objection, Mr. Cobbs?

4. MR. COBBS: Your Honor, I just want to find out
5. what statements he made to this officer who testified that he
6. was investigating him for this crime.

7. COURT: Is there any theory under which it would
8. be admissible in evidence?

9. MR. COBBS: Well, at the present time, no sir. I
10. will put the defendant on the stand and perhaps recall Mr.
11. McDorman.

12. COURT: Thank you, Mr. Cobbs. The objection is
13. sustained.

14. MR. COBBS: All right.

15. Q. And thereafter you carried out the rest of your
16. investigation, after you talked to the defendant.

17. A. Yes sir.

18. MR. COBBS: I have no further questions.

19. COURT: Re-direct.

20. MR. WALSH: No sir, not at this point.

21. COURT: Call your next witness.

22. MR. WALSH: Daniel Brown.

23. COURT: Can this witness be excused, gentlemen?

24. MR. WALSH: I don't believe so.

25. COURT: All right, you'll have to remain until

1. you're excused.

2.

3.

DANIEL BROWN,

4. having been called as a witness, was duly sworn, and

5. testified as follows:

6.

7. Direct Examination by Mr. Walsh:

8. Q. State your name, please.

9. A. Daniel Brown.

10. Q. How old are you, Daniel?

11. A. Twelve.

12. Q. Okay, do you go to school?

13. A. Yes sir.

14. Q. Where do you go to school?

15. A. Thomas Harrison Junior High.

16. Q. What grade are you in?

17. A. Seventh.

18. Q. Daniel, do you know what you just did over there with,
19. the Clerk, the gentleman over there?

20. A. Yeah, I told to tell the truth.

21. Q. Do you know what it means to tell the truth?

22. A. Yes sir.

23. Q. What happens when you don't tell the truth?

24. A. You get in a lot of trouble.

25. Q. You understand you get punished?

1. A. Yeah.
2. Q. If you don't tell the truth. Now, Daniel, let me take
3. you back to earlier this year in the summertime. First of all,
4. where do you live?
5. A. 1239 Country Club Court.
6. Q. Okay, could you take your hand down from your mouth.
7. A. Okay.
8. Q. So that members of the jury can hear you. And speak
9. up a little bit.
10. A. Okay.
11. Q. Who do you live with?
12. A. My mother.
13. Q. Is that Kitty Coakley?
14. A. Yes.
15. Q. All right. Now, Daniel, back on July the 9th, were
16. you at home that day?
17. A. Yes.
18. Q. Were you playing outside?
19. A. Yes.
20. Q. Who were you playing with?
21. A. Nikki.
22. Q. Nikki who?
23. A. Eherenman.
24. Q. Where does she live?
25. A. I forget the number, but she lives down the street.

1. Well, across the street.
2. Q. Were you at your house or at her house?
3. A. Well, she was spending the day with us.
4. Q. Why was she spending the day with you?
5. A. I don't know, I forget.
6. Q. But your mother was taking care of both of you?
7. A. Yes.
8. Q. Now, did you go outside and ride your bicycle that
9. day?
10. A. Yes.
11. Q. Where were you riding your bicycle?
12. A. Down at the circle on the one road.
13. Q. Okay, let me show you a drawing here which is for the
14. record marked Commonwealth's Exhibit #1.
15. A. Yes.
16. Q. And ask you if you can recognize that, what that
17. shows?
18. A. Yes. We were right around--we were right down here
19. and we were riding up to here.
20. Q. Okay, that's along this street there?
21. A. Yes.
22. Q. Do you want to point to it again so Mr. Cobbs can see
23. where you were showing?
24. A. Right here.
25. Q. Along this part?

1. A. Yes, we ride down through here like that.

2. Q. Okay, and that was the two of you?

3. A. Yes.

4. Q. Now, Daniel, while you were doing that--was this in
5. the afternoon or in the morning or when?

6. A. I forget when it was, I'm not for sure. It was
7. somewhere in the daytime.

8. Q. Okay.

9. A. I can't remember exactly when.

10. Q. Did you see anybody else outside in that area when the
11. two of you were riding your bicycles?

12. A. Yes sir, there was a man on the railroad tracks.

13. Q. Have you seen that man since that day?

14. A. Yes.

15. Q. Is he here today?

16. A. Yes.

17. Q. Could you point him out, please.

18. A. Here (pointing to the defendant).

19. COURT: The record may show the witness indicated
20. the accused.

21. Q. Now, what brought your attention to the man on the
22. railroad tracks?

23. A. Well, Nikki stopped and she was looking at the
24. railroad tracks. And I looked back and I seen a man there.

25. Q. And that was the defendant?

1. A. Yes (witness nods affirmatively).

2. COURT: The record may show an affirmative
3. response.

4. Q. Let me show you three photographs here which are
5. marked as Commonwealth's #3, #4 and #5 and ask you where he was
6. standing is shown on any of these photographs?

7. A. He would be standing right in here.

8. COURT: How many photographs did he point to?

9. MR. WALSH: It was this last, this last one.

10. COURT: All right, would you put a red "x" at the
11. point you pointed to?

12. A. It was right in here somewhere (witness marks on
13. photograph).

14. Q. All right, now, before we show this to the jury, or
15. let the jury have it, to see exactly where you put your mark
16. there, where is the townhouse units in relation to this
17. photograph?

18. A. They're right here, they're right across the street.

19. Q. That would be at this side?

20. A. Yes.

21. Q. Now, the "x", the red "x" is right above the railroad
22. tracks. Which side of the railroad tracks was he on from where
23. the townhouses are?

24. A. I think he was on this side.

25. Q. On the townhouse side?

1. A. Yeah.

2. Q. Now, when you turned back, Daniel, what was the
3. defendant doing, what did you see him doing?

4. A. Well, I just glanced back and I seen he had his pants
5. down.

6. Q. Okay. Did he have a shirt on?

7. A. Yes.

8. Q. How far down were his pants?

9. A. Down to about his knees, down to his knees.

10. Q. At the time that you saw him was he bent over or
11. standing straight up?

12. A. He was standing up.

13. Q. Did you see where his hands were?

14. A. No, I just glanced over real quick--well, not real
15. quick, you know, I looked over.

16. Q. Okay, now, did you notice whether he had anything on
17. below his waist, from his waist to his knees?

18. A. No.

19. COURT: Your answer is not clear. Would you
20. restate the question, Mr. Walsh.

21. MR. WALSH: Okay.

22. Q. Did the defendant have anything on from below his
23. waist and above his knees?

24. A. I don't think so.

25. Q. Do you recall whether he was wearing undershorts?

1. A. No, I don't think he was.

2. Q. After you saw the defendant and you turned around, did
3. you say anything at that point?

4. A. Yeah, I told Nikki to come on because she was, you
5. know, she was standing on the bike looking out and I told her
6. to come on.

7. COURT: Did the jury hear the last answer? Would
8. you repeat the last answer?

9. Q. Repeat that, Daniel, please.

10. A. Well, I told Nikki to come on because she was sitting
11. on her bike looking over towards him.

12. COURT: Looking over toward you?

13. A. No, looking over towards the railroad tracks.

14. COURT: Looking over toward the railroad track.

15. A. Yes sir.

16. COURT: All right, you see the man sitting up in
17. the corner there?

18. A. Yes.

19. COURT: Would you talk to him, please.

20. Q. Face over that way when you talk so that they can . .

21. A. Oh, okay. I told her to come on because, you know,
22. she was looking over towards the railroad tracks.

23. Q. Any particular place towards the railroad tracks that
24. she was looking?

25. A. Yes, she was looking almost straight across at the

1. man.
2. Q. At the man?
3. A. Yes.
4. Q. Okay, now, which direction were you and Nikki headed
5. on your bicycles when this incident, when you saw the man by
6. the railroad tracks? Could you . . .
7. A. We were going this way, we were going out towards this
8. way, from the circle.
9. Q. From the circle.
10. A. Yeah.
11. Q. Leaving the circle and going back out, all right.
12. Where do you live, Daniel?
13. A. Right here.
14. Q. Right near where it says--where the "C" is on the
15. diagram?
16. A. Yes.
17. Q. Okay. Where did you go after you saw the defendant?
18. A. Well, I just kept on riding, you know, we just, you
19. know, we rode up, and Nikki, she kept talking about it all day.
20. Q. Did you continue to play outside?
21. A. Yes.
22. Q. Okay, did you see the defendant that day at all?
23. A. Yes, he was walking.
24. Q. Pardon?
25. A. He was walking on the railroad tracks.

1. MR. WALSH: Answer any questions Mr. Cobbs has.

2.

3. Cross Examination by Mr. Cobbs:

4. Q. Danny, I'm going to be like the Judge and ask you to
5. speak up so we can hear everything you say.

6. A. All right.

7. Q. You and Nikki you said were riding out there and you
8. looked up.

9. A. Yes.

10. Q. When did you first see . . .

11. A. Well, when Nikki stopped me I looked up and seen a
12. man.

13. Q. And he had his pants down at his knees.

14. A. I seen him with his pants down.

15. Q. And his hands were down beside him or what?

16. A. I just glanced over at him and seen that his pants
17. were down and I told Nikki to come on.

18. Q. And he was standing up there you say about where you
19. put the red "x", is that right?

20. A. Yeah.

21. Q. And is that close to the bushes there that grow along
22. the track?

23. A. Yeah.

24. Q. And you told Nikki to come on.

25. A. Yeah.

1. Q. When you looked back you saw her and she was looking
2. toward the man.

3. A. Yeah.

4. Q. Was he gesturing or beckoning or anything toward her
5. and you?

6. A. No, I seen him, then I looked back and told Nikki to
7. come on. I didn't look at him again.

8. Q. You didn't see him doing anything?

9. A. No.

10. Q. And then you said later on you all went on . . .

11. A. Yeah. We didn't go back down towards there, you know,
12. we just rode up the circle.

13. Q. And you saw him later on walking up the tracks again?

14. A. Yes sir.

15. Q. Was he walking up the tracks or back down towards 33?

16. A. He was--I seen him a couple times. You know, he would
17. walk up and back.

18. Q. Did he appear to be looking for something along the
19. tracks at that time or what?

20. A. I don't know, I just seen him walking.

21. Q. And have you seen him before then, I mean before that
22. day?

23. A. No.

24. Q. Have you seen him since that day?

25. A. Yes.

1. Q. You saw him in Court, you know, when we were in Court
2. down here at the preliminary hearing.

3. A. Yes.

4. Q. The other trial. Now, have you seen him on the
5. railroad tracks after that?

6. A. After the last hearing?

7. Q. No, after this particular day.

8. A. Yes, I've seen him.

9. Q. Walking up the tracks?

10. A. Yeah.

11. Q. Were his clothing okay then?

12. A. Yeah, he had a white three-quarter sleeve shirt on.

13. Q. This is the only time you've ever seen him with his
14. pants pulled down?

15. A. Yes.

16. Q. Do you know whether he was going to the bathroom up
17. there or not?

18. A. I don't know what he was doing.

19. Q. But, as far as you know, he just had his pants down.

20. A. Yes.

21. MR. COBBS: That's all I have.

22. COURT: Re-direct.

23. MR. WALSH: Yes sir.

24.

25.

1. Re-Direct Examination by Mr. Walsh:

2. Q. Daniel, these other times that you saw the defendant
3. along the railroad tracks, was he in this particular or general
4. area that you saw him on the 9th or . . .

5. A. Yeah, he was on the side like the road, he stayed on
6. this side. I seen him walking.

7. Q. I'm not . . .

8. MR. COBBS: I'm not . . .

9. A. You're not . . .

10. MR. COBBS: I didn't hear you.

11. A. Oh, you didn't?

12. MR. COBBS: No.

13. A. Well, he stays, he walks, you know, he'll walk up and
14. down the tracks in that area.

15. MR. COBBS: Okay.

16. Q. When you mean walking up and down the tracks, do you
17. mean . . .

18. A. Back and forth.

19. Q. Just in that area?

20. A. You know, on this side of the road where I pointed
21. out, where I showed you on the picture, he stayed along that
22. area. Not in that specific area, but on that side of the road.

23. Q. Okay, now, again let me--is this the photograph that
24. you were referring to?

25. A. Yes. He'll go all the way up and then he'll . . .

1. COURT: Let the record show the exhibit number.

2. MR. WALSH: Excuse me, it's #3, #4 and #5
3. together.

4. A. He walks up, you know, he'll walk all the way. I
5. don't think I've ever seen him on that side of the road before.
6. I just seen him . . .

7. Q. You mean on the entrance to the . . .

8. A. Yeah.

9. Q. Okay. This is the area that you've seen him before.

10. A. Yeah, he walks up and stays on this side of the road.

11. Q. Okay.

12. COURT: Re-cross.

13. MR. COBBS: Yes sir.

14.

15. Re-Cross Examination by Mr. Cobbs:

16. Q. When you go down the railroad tracks there you go
17. through some bushes and the track curves around and goes under
18. the highway?

19. A. Yes.

20. Q. And you've seen him walk from that area and go on
21. north and then turn around and come back, is that right?

22. A. Well, he didn't go down past the--I've seen him before
23. keep on walking, you know, I've seen him come back and I've
24. seen him keep on walking.

25. Q. Yeah, that's what I mean.

1. A. Yeah.

2. Q. Sometimes you've seen him walk up and back and
3. sometimes you've seen him keep on walking. Is that right?

4. A. Yeah. Well, I've never seen him walk down there and
5. walk straight back up.

6. Q. Okay, that's what I mean. He just wasn't walking down
7. and walking right back up.

8. A. Well, in the bush area.

9. Q. Yeah.

10. A. Where the bushes is he was.

11. MR. COBBS: Thank you.

12. COURT: Re-direct.

13. MR. WALSH: Yes sir.

14.

15. Re-Direct Examination by Mr. Walsh:

16. Q. When you say walking back and forth in the bush area.

17. A. Yes.

18. Q. Are you talking about the bushes that are between the
19. railroad track and the Country Club Court townhouse units?

20. A. I'm not sure what you mean.

21. Q. All right.

22. A. Like he'd just walk up and down the track this way.

23. Q. When you say up and down or back and forth, are you
24. talking about walking back and forth . . .

25. A. On the railroad . . .

1. Q. On the railroad tracks in the area of the townhouse or
2. townhouse units.

3. A. I'm not for sure what you mean. You mean--oh, okay, I
4. know what you mean. Just right there where we seen him.

5. Q. Yes.

6. A. He goes up and down through there.

7. Q. In the area of the townhouse, Country Club Court.

8. A. Yes.

9. Q. All right.

10. COURT: Re-cross.

11.

12. Re-Cross Examination by Mr. Cobbs:

13. Q. Do a lot of people walk up and down the tracks?

14. A. I've seen a few people, yes.

15. MR. COBBS: Thank you, Danny.

16. COURT: Re-direct.

17. MR. WALSH: No sir.

18. COURT: Call the next witness.

19. MR. WALSH: Nikki Eherenman. You can step down,
20. Daniel.

21. COURT: Can this witness be excused to go back to
22. school, gentlemen?

23. MR. WALSH: I think he can.

24. MR. COBBS: Yes sir. No objection to it.

25. COURT: Do you have somebody to take you to

1. school?

2. MR. COBBS: He might have an objection, Your
3. Honor.

4. MR. WALSH: No, I think he wants to go back.

5. COURT: All right, you're excused to go back to
6. school.

7.

8. NIKKI EHERENMAN,

9. having been called as a witness, was duly sworn, and
10. testified as follows:

11.

12. Direct Examination by Mr. Walsh:

13. Q. Would you state your name, please.

14. A. Nikki Eherenman, Nicolette Eherenman.

15. MR. WALSH: Can you all hear?

16. JURORS: (Affirmative responses)

17. Q. Do you want to sit up a little bit, Nikki, and speak a
18. little bit louder. Would you state your name again.

19. A. Nicolette Eherenman.

20. Q. You go by the name Nikki?

21. A. Yes sir.

22. MR. COBBS: Your Honor, would you mind if I moved
23. a little closer to the witness?

24. COURT: No, you may do that.

25. Q. Where do you live, Nikki?

1. A. At Country Club Court.
2. Q. In Harrisonburg?
3. A. Yes sir.
4. Q. Now, who do you live with?
5. A. My father and my mother and my sister.
6. Q. How old are you?
7. A. Seven--no, nine.
8. Q. Okay, when was your birthday?
9. A. August the 9th.
10. Q. Your ninth birthday was August the 9th of this year?
11. A. (Witness nods affirmatively)
12. COURT: The record may show an affirmative
13. response.
14. Q. All right. Now, Nikki, do you know what you did when
15. you were over--standing over there by the gentleman in the
16. brown coat?
17. A. Yes.
18. Q. What did you do?
19. A. I lifted up my right hand.
20. Q. Okay, and what was the reason you did that?
21. A. To tell the truth.
22. Q. Do you know what it means to tell the truth?
23. A. Tell everything what you see.
24. Q. Pardon?
25. A. Everything that you saw.

1. Q. Okay, but you don't add anything that you didn't see,
2. is that right?

3. A. (Witness nods negatively)

4. COURT: A negative response.

5. Q. Okay. Do you know what happens when you don't tell
6. the truth?

7. A. To me?

8. Q. Yes.

9. A. I get a spanking.

10. Q. Okay, you get punished for not telling the truth?

11. A. Yes.

12. Q. Are you going to tell the truth today?

13. A. Yes.

14. COURT: What grade are you in?

15. A. Fourth.

16. COURT: Do counsel desire to voir dire with
17. respect to the competency of the witness?

18. MR. COBBS: No, Your Honor.

19. COURT: Very well. You may proceed, Mr. Walsh.

20. MR. WALSH: Thank you.

21. Q. Nikki, I want to take you back to this summer before
22. you became nine years old, when you were still eight, and ask
23. you about an incident that happened near where you live. Do
24. you remember on July the 9th of this year riding your bicycle
25. with Daniel Brown?

1. A. Yes.

2. Q. Okay, where were you and he riding your bicycles?

3. A. I was down in the circle.

4. Q. All right, now, so we make sure that we all know what
5. area you're talking about, let me show you what is for the
6. record marked as Commonwealth's Exhibit #1 and ask you, first
7. of all, whether you've seen this diagram before and whether you
8. can recognize what it is.

9. A. These are the houses and this is the road where the
10. circle is right there.

11. Q. Okay.

12. COURT: May counsel repeat her answer if it does
13. not appear to be audible to the jury, Mr. Cobbs?

14. MR. COBBS: This is the houses and this is the
15. road and circle right there. That's approximate, Judge.

16. COURT: I think that will save time. On crucial
17. matters, of course, we will not do that.

18. MR. COBBS: Yes sir.

19. Q. Now, Nikki, do you remember about what time of day it
20. was that you and Daniel were over near the circle?

21. A. In the afternoon.

22. Q. In the afternoon?

23. A. Yes sir.

24. Q. Okay. And, did you see somebody over there when you
25. and Daniel were riding your bicycles?

1. A. Yes sir.
2. Q. Okay, where did you see that person?
3. A. On the railroad tracks.
4. Q. And since that day have you seen that same person
5. again?
6. A. Since today?
7. Q. Since the day you saw him on the railroad tracks?
8. A. No sir, I don't think so.
9. Q. I mean anywhere. Have you seen him here today?
10. A. Yes sir.
11. Q. Did you remember being in Court once before?
12. A. Yes sir.
13. Q. And did you see him in that other Court too?
14. A. Yes sir.
15. Q. Can you point him out today, is he here?
16. A. Right there (witness points to accused).
17. COURT: The record may show the witness indicated
18. the accused.
19. Q. Now, Nikki, let me show you a series of three
20. photographs that I'm going to put together in part, this is
21. Commonwealth's Exhibit #3, #4 and #5, and ask you whether or
22. not you can recognize the area that that photograph shows, or
23. those three photographs show together.
24. A. Well, it's close to--he was hiding behind the bush.
25. Q. Okay, is this the area that you saw the defendant in

1. then?

2. A. I don't think so.

3. Q. All right, okay. Let me ask you this question. Do
4. these three photographs show--do you know if the townhouse
5. units, the townhouses of Country Club Court are near this area
6. that's shown in the photograph?

7. A. Not quite.

8. Q. Okay, do you know where the townhouses would be in
9. relation to where these photographs show?

10. A. They would be over there, I think they would be over
11. there.

12. Q. They would be over in front of the photographs, over
13. here, or behind the photographs?

14. A. Behind them.

15. Q. Okay. Now, all right, did you go out to the area
16. later, about a month or two months later, with Detective Al
17. McDorman?

18. A. Yes sir.

19. Q. What was the purpose or why did you go out to the same
20. area with Detective McDorman?

21. A. To see where he was standing at.

22. Q. To point out to Detective McDorman where you saw him?

23. A. Yes sir.

24. Q. And do you know whether Detective McDorman took some
25. photographs?

1. A. Yes sir.

2. COURT: An affirmative response.

3. Q. Let me show you Commonwealth's Exhibit #2 and ask you
4. whether or not you recognize what's in that picture.

5. A. The houses.

6. Q. At Country Club Court?

7. A. Yes sir.

8. Q. And were you there when this picture was taken, do you
9. know?

10. A. No sir.

11. Q. Were you present when Detective McDorman took the
12. pictures, were you there with him?

13. A. No sir.

14. Q. Does this photograph, Commonwealth's Exhibit #2,
15. show--or in relation to this photograph, can you point out
16. where you saw the defendant standing the day you and Daniel
17. were riding your bicycles?

18. A. Right over there where that road is.

19. COURT: Is the place you pointed to on the
20. picture?

21. A. No sir.

22. Q. There is a bush here.

23. A. Yes sir.

24. Q. Okay, is it on the other side of that bush?

25. A. Yes sir.

1. Q. What is over on the other side of that bush?

2. A. Like a little hole where he was standing. I don't
3. know if his foot was put into it.

4. Q. It was an opening on the other side of that bush?

5. A. Yes sir.

6. Q. Now, from where you were could you see all of the
7. defendant from his head to his feet?

8. A. All's I could see was right to his knees. That's all
9. I could see (indicating).

10. COURT: You could not see that, ladies and
11. gentlemen, because it was hidden by the table she's sitting
12. behind. But may the record show she indicated an area just
13. above her knees.

14. MR. COBBS: Right.

15. Q. Now, when you said that you mean you could see from
16. just above his knees?

17. A. Yes sir.

18. Q. To the top of his head?

19. A. Yes sir.

20. Q. Okay, but you couldn't see below his knees to his
21. feet?

22. A. No sir.

23. Q. All right, now, did anything in particular draw your
24. attention to the defendant by the railroad tracks?

25. A. When he was coming like this (indicating).

1. COURT: The record may show she wiggled her right
2. forefinger.

3. MR. WALSH: Toward . . .

4. COURT: Toward herself.

5. MR. WALSH: Toward herself.

6. Q. Okay, now, did you hear--did he say anything or did
7. you hear any noise or was it . . .

8. A. No sir.

9. Q. It was just the motion?

10. A. Yes sir.

11. Q. What happened or what did you do after or when you saw
12. the defendant making the motion that you indicated?

13. A. I just started looking. I was real scared to tell
14. anybody.

15. Q. Okay, did the defendant do anything after you started
16. looking in his direction?

17. A. Yes sir.

18. Q. What did he do?

19. A. He started taking his pants off to his knees.

20. Q. Now, did he have a shirt on at that time?

21. A. Yes sir.

22. Q. When you say that he started to take his pants off,
23. could you describe to us exactly what he did or tell us exactly
24. what he did?

25. A. Well, first, he went like this (indicating) and I said

1. no (nodding head from side to side). And he took his pants off
2. to right here (indicating), and then Daniel called me and I
3. said okay, so I left.

4. Q. Now, when you say he took his pants off to right here,
5. where were you pointing to?

6. A. Right here to his knees.

7. Q. Down to his knees.

8. A. Yes.

9. COURT: The record may indicate she indicated her
10. knees or an area just above her knees that was hidden from the
11. jury by the desk.

12. Q. Now, do you know whether or could you see whether he
13. had any undershorts on, underpants on?

14. A. No sir.

15. Q. All right, . . .

16. COURT: Again, Mr. Walsh, I will ask you to
17. repeat the question.

18. MR. WALSH: Yes sir.

19. Q. Did he have any underpants or undershorts on after he
20. took his pants down?

21. A. No sir.

22. Q. He did not have any on?

23. A. (Witness indicates negatively)

24. Q. Did he have any clothing on between his waist and his
25. knees?

1. A. Except for his blue jeans and his shirt.
2. Q. Okay, but between his waist . . .
3. A. No sir.
4. Q. . . . and his knees did he have any clothes on at all?
5. A. No sir.
6. Q. All right. When was it that--or did you say anything
7. to Daniel while this was going on?
8. A. I just told him I saw a person on the railroad tracks
9. and he said, "Well, let's go," so I went.
10. Q. Okay, when was that that you told Daniel that?
11. A. In the afternoon.
12. Q. While you were out there?
13. A. Yes sir.
14. Q. And the man was there too?
15. A. Yes sir.
16. Q. Was it before or after or at the same time that he was
17. making the motion that you had indicated, or was it before or
18. after or at the same time he had pulled his pants down?
19. A. Well, when he pulled his pants down I called no.
20. Daniel came and then he was standing there, and then we left.
21. Q. Okay, when did Daniel tell you to come on, was it . .
22. A. When he saw me, when I told him about--well, . . .
23. Q. When you told who, when you told Daniel?
24. A. When I told Daniel that there was a man on the
25. railroad tracks.

1. Q. And you told him that while you were still there and
2. was looking at the man?

3. A. Well, see, I told him that and then he told me to come
4. on, and then I left.

5. Q. All right. And where did you go?

6. A. I went with Daniel to my house.

7. Q. To where?

8. A. Up at Daniel's mother's house and then when my mom got
9. there I went to my house.

10. Q. You were staying with Daniel and his mother that day
11. while your mother was at work?

12. A. Yes sir.

13. MR. WALSH: Okay, answer any questions that Mr.
14. Cobbs may have.

15.

16. Cross Examination by Mr. Cobbs:

17. Q. Nikki, what you're saying is that there are some
18. bushes up on the railroad tracks and there's a gap and some
19. more bushes?

20. A. Yes sir.

21. Q. And you saw the man in between--in the gap between the
22. bushes, is that right?

23. A. Yes.

24. Q. And you saw him when he pulled his pants down?

25. A. Yes sir.

1. Q. And you didn't see whether he had undershorts on or
2. not?

3. A. Well, all I saw is his pants down. Well, a little
4. bit.

5. ~~Q. You saw a little bit of his shorts?~~

6. A. Yes.

7. ~~Q. So he probably was wearing underwear.~~

8. A. Probably.

9. Q. And you say that he beckoned to you. When you first
10. saw him did he have his pants up or were they already down?

11. A. They were all the way up.

12. Q. Did he have a belt on or what?

13. A. I can't remember.

14. Q. And, how far is it across there from where you were to
15. where he was? I mean, you know, the best guess that you've
16. got.

17. A. Let's see. I don't know really. I'm not that good
18. about measuring.

19. COURT: If you can and you want to, you can point
20. out something in the room about the same distance away.

21. A. Probably to that door to all the way out there.

22. Q. Where were you standing down in Country Club?

23. A. I was standing--no, I was riding my bike and I sat on
24. my bike.

25. Q. Right. You were on your bike, right?

1. A. Yes.

2. Q. And where were you down there, by the mailboxes or
3. where?

4. A. I was on the side of the road.

5. Q. You've seen this--this is Prosecution Exhibit #1 for
6. the record. You've seen this exhibit, you recognize this as
7. the houses and this is down where you ride your bike, you know,
8. and you ride back up here.

9. A. (Witness indicates affirmatively)

10. Q. All right, and this is Danny's house where you were
11. staying up here on the corner, is that right?

12. A. No, this is my house.

13. Q. Okay, this is your house up here.

14. A. Yes.

15. Q. And this is Danny's house down here at the end?

16. A. Daniel's house is right over there at the corner.

17. Q. That's where you were staying, right?

18. A. Yes sir.

19. Q. Okay, now, where were you standing or with the bike
20. now, where were you when you saw the man, can you tell us
21. about?

22. A. About right here.

23. COURT: Would you just make a black "x" where you
24. pointed to?

25. A. Right there (witness marks on photograph).

1. MR. COBBS: I'll return the pen to the Court.

2. COURT: If anybody is looking for it, from here
3. it looks like a very small "x", so I'm just going to ask you to
4. draw a circle around the "x" that you made.

5. Q. Did you show the policeman, Mr. McDorman, where you
6. were standing about?

7. A. Yes sir.

8. Q. As close as you could.

9. A. Yes sir.

10. Q. And you tried to show him as close as you could where
11. the man, the defendant, was at, is that right?

12. A. Yes sir.

13. Q. And that was to the best of your knowledge when you
14. told the policeman that, right?

15. A. Yes sir.

16. Q. And it might be a little bit different, is that . . .

17. A. Maybe. I just remember I was standing there.

18. Q. Okay. Now, did the man beckon to you like--I'd like
19. for you to think about it for just a minute. How many times
20. did he beckon?

21. A. For me to come?

22. Q. Yes.

23. A. Probably four times.

24. Q. Just like that (indicating)?

25. A. Like this (indicating)?

1. Q. Yes.

2. A. ~~He~~ He just did this twice to me.

3. Q. ~~Just once?~~

4. A. Yes sir.

5. Q. And are you . . .

6. COURT: The record may show that counsel and the
7. witness were making the same beckoning . . .

8. MR. COBBS: Beckoning motion.

9. COURT: Motion that we described before.

10. MR. COBBS: Thank you.

11. Q. Was this--are you sure of when he did this? I mean,
12. was it after--were his pants already down or not, or can you
13. really remember?

14. A. Yes, his pants were down.

15. Q. His pants were already down when he did that.

16. A. Yes sir.

17. Q. And you said that you couldn't see all the way down to
18. his feet, right?

19. A. Right, yes sir.

20. Q. How far down could you see? I mean, just down to a
21. little bit below his knees?

22. A. Yes sir.

23. Q. And then his pants were down and he beckoned towards
24. you once, is that right?

25. A. Yes sir.

1. Q. Now, this was summertime, wasn't it, Nikki?
2. A. Yes sir.
3. Q. And you all were out of school?
4. A. Yes sir.
5. Q. And were the bushes, lots of green on the bushes then
6. and all?
7. A. Yes.
8. Q. Do you see people walking up and down the tracks a
9. lot?
10. A. Not really because I don't go near that circle no
11. more.
12. Q. You don't?
13. A. I'm not allowed to.
14. Q. Well, before then did you see a lot of people walking
15. up and down?
16. A. Mostly except for him and people walking to school, to
17. J.M.U.
18. Q. You mean walking down to J.M.U.?
19. A. Yes.
20. Q. There are a lot of students that walk up and down
21. there too?
22. A. Sometimes.
23. Q. And how many times have you seen this man walk up and
24. down the tracks?
25. A. About four times.

1. Q. About four times going up and down. Is he looking
2. down along the tracks or . . .

3. A. He was looking at the houses and then he looked at me.

4. Q. That day, I know that.

5. A. Yes sir.

6. Q. But on other times that you've seen him, has he gone
7. on up the tracks and come back?

8. A. Once he went up and down the tracks and then he just
9. stays at this track.

10. MR. COBBS: Okay, thank you, Nikki.

11. COURT: Re-direct.

12. MR. WALSH: Yes sir. Wait a minute, I've just
13. got a couple more questions for you, okay?

14.
15. Re-Direct Examination by Mr. Walsh:

16. Q. When you say that he--or in response to Mr. Cobbs'
17. question about how many times he made the beckoning motion, you
18. said it was one time. Did he move his finger just one time?

19. A. Well, I thought he meant one time did he do this
20. (indicating). He just went like this (indicating) three times
21. probably.

22. Q. Okay, but it was one time that his hand was up there
23. making that motion.

24. A. Yes sir.

25. Q. Okay.

1. COURT: Does that complete the re-direct
2. examination?

3. MR. WALSH: Yes sir.

4. COURT: Further cross?

5. MR. COBBS: No.

6. COURT: Call your next witness.

7. MR. WALSH: If I could have just a moment to ask
8. Mr. Cobbs a question.

9. COURT: I just want to know whether the witness
10. may be excused.

11. MR. WALSH: I think she probably can.

12. COURT: Do you have any objection?

13. MR. COBBS: I have no objection.

14. COURT: She's excused from further attendance.
15. You're free to leave, young lady.

16. MR. WALSH: Your Honor, Mr. Cobbs has been
17. gracious enough to stipulate that the defendant at the time of
18. this incident was over the age of eighteen.

19. MR. COBBS: Yes sir.

20. MR. WALSH: Without having to call the witness to
21. prove that fact. And that would be the Commonwealth's case in
22. chief, Your Honor.

23. COURT: Ladies and gentlemen, at this time I will
24. excuse the jury for a five minute recess. The jury is excused
25. for a five minute recess.

(Jury Leaves Courtroom)

1. COURT: The record may show these proceedings are
2. outside of the presence of the jury. Do you wish to be heard,
3. Mr. Cobbs?
4.

5. MR. COBBS: Yes, Your Honor. I move to strike
6. the Commonwealth's evidence in this case with respect to the
7. violation charged in 18.2-370, and will argue to the Court that
8. the evidence as a matter of law does not sustain the felony
9. charged. And I will cite as authority for that McKeon v.
10. Commonwealth, 211 Va. 24. And if the Court will bear with
11. me . . .

12. COURT: Is that the case in which the defendant
13. was seated in an automobile?

14. MR. COBBS: No sir.

15. MR. WALSH: That was the Breeding case, I think.

16. MR. COBBS: I'm going to cite that other one to
17. you too.

18. COURT: All right.

19. MR. COBBS: Breeding v. Commonwealth was the
20. automobile case, if the Court is familiar with that.

21. In McKeon v. Commonwealth the prosecution witness
22. who was age ten, which is about this child's age, testified
23. that the defendant came out on the back porch, asked her to go
24. in the house with him and she wouldn't do it. She turned
25. around and walked across the lot leaving him, and at a distance

1. of about thirty-five feet, the defendant, who was clothed in a
2. bathrobe, said, "Turn around." And she turned around and his
3. bathrobe was open and he was exposed. In this case there is no
4. evidence he was sexually aroused, as in this case there is no
5. evidence of sexual arousalment. The distance in this case, by
6. the Commonwealth's own case, is eighty-some feet, Judge, across
7. a gully and up on a railroad track.

8. And the Court in this case held that there was
9. absolutely no evidence at all from which a lascivious intent
10. could be inferred and on its own motion took the case up, even
11. though it wasn't appealed on that, in the interests of justice
12. and on its own motion said that the evidence was insufficient
13. to prove the case. I would tender this copy, Your Honor.

14. COURT: Does that conclude your argument?

15. MR. COBBS: Yes sir, these two cases.

16. COURT: Mr. Walsh.

17. MR. WALSH: Your Honor, I think both the Breeding
18. case, and particularly in the Breeding case, but also the
19. McKeon case, can easily be distinguished from this.

20. In this particular instance we have the defendant
21. making an affirmative gesture, beckoning toward the complaining
22. witness. And, secondly, after that point making an intentional
23. act of dropping his trousers. Whereas in the McKeon case, the
24. defendant had a bathrobe on that I think the Court indicated,
25. the Supreme Court indicated, perhaps not directly but

1. inferentially, that it could slip open accidentally. And I
2. submit that on those two bases, that particular case is
3. distinguishable and the case here is sufficient to go to the
4. jury.

5. COURT: If you'll give me that case so that I
6. don't have to look it up.

7. MR. WALSH: Yes sir.

8. COURT: I'll take a brief recess and review the
9. case.

10. (Recess)

11. COURT: It may be inappropriate for the Court at
12. this time to emphasize particular evidence that distinguishes
13. this case from McKeon and Breeding, but I've reviewed the cases
14. and in my view this case should be distinguished from those
15. cases. So the motion is overruled and exception is duly noted.

16. MR. COBBS: Thank you, Your Honor.

17. COURT: Are you ready to proceed?

18. MR. COBBS: Yes, Your Honor.

19. COURT: While the Sheriff is calling the jury, so
20. we can estimate what time to recess for lunch, could you
21. estimate the time of your evidence, Mr. Cobbs?

22. MR. COBBS: Judge, it should probably, depending
23. on Mr. Walsh's cross examination, my evidence should be through
24. by between twelve thirty and one o'clock. I'm going to call
25. the defendant. I don't know how long it will take.

1. COURT: All right.

2. (Jury Enters Courtroom)

3. COURT: The defendant may call his first witness.

4. MR. COBBS: I call Dorsey Campbell to the stand.

5.

6. DORSEY LEE CAMPBELL,

7. having been called as a witness, was duly sworn, and

8. testified as follows:

9.

10. Direct Examination by Mr. Cobbs:

11. Q. Mr. Campbell, speak up so that the gentleman in the
12. back corner there can hear you. State your name and residence.

13. A. Dorsey Lee Campbell, 90M Dutch Mill Court,
14. Harrisonburg.

15. Q. What's your occupation, Mr. Campbell?

16. A. Unemployed.

17. Q. Now, Mr. Campbell, you lived most of your life in
18. Staunton, Virginia?

19. A. Yes, I did.

20. Q. In Augusta County. All right, now, who are your
21. parents?

22. A. James Campbell and Catherine Campbell.

23. Q. And where do they live?

24. A. 722 Allegheny Avenue, Staunton, Virginia.

25. Q. Now, how did you--you were charged--got in trouble

1. down in Augusta County, is that right?

2. A. Yes sir, I did.

3. Q. And you were convicted of breaking and entering?

4. A. Yes sir, in 1977.

5. Q. And how did that happen, what were the basic--in very
6. few words tell us what . . .

7. A. It was a friend's store of mine, and I went in and I
8. got a case of beer while I was at a party that night. We ran
9. out of beer and I went in and stole, got a case of beer. I had
10. forgot to leave a note for him and he called the law and then
11. the Commonwealth took it up.

12. Q. And you were placed on probation, is that right?

13. A. Right, yes sir, I was.

14. Q. And you got in trouble again in 1981, is that right?

15. A. Yes sir, it was a drinking problem, which I went and I
16. stole a ladder and I sold that to buy booze.

17. Q. Now, have you ever been accused of or convicted of any
18. sort of sexual offense or anything before this?

19. A. No sir, I haven't. Nothing like this.

20. Q. Now, after this last little bit of trouble you got
21. into in 1981, that was in Staunton?

22. A. Say that . . .

23. Q. That was in Staunton, right?

24. A. Yes sir.

25. Q. And you were put on probation by the Court, is that

1. right?

2. A. Yes sir, I was.

3. Q. Now, what did you do about the drinking problem and
4. all that when you were convicted in 1981?

5. A. I went to Shenandoah Lodge in July of 1981.

6. Q. That was right after you were convicted, is that
7. right?

8. A. Yes sir.

9. Q. How long did you stay there?

10. A. I was there for thirty-four days. And after that I
11. went to a halfway house in Winchester.

12. Q. And how long did you live there?

13. A. I was there three months and I made assistant manager.
14. I was a cook for about a month and then I made assistant
15. manager and another guy took over cooking.

16. Q. And what did you do after you left the halfway house
17. in Winchester?

18. A. Well, I had a job. I done got a job while I was at
19. the halfway house. At that point I went and got my own
20. apartment in Winchester and stayed on working until I got laid
21. off there.

22. Q. What kind of work were you doing there?

23. A. I was doing electrical and carpentry and plumbing work
24. for a contractor.

25. Q. And when were you laid off?

1. A. It was in June, it was about the first of June, 1982.

2. Q. When did you move down here in Harrisonburg?

3. A. It was the middle of January of 1982, this year.

4. Q. And why did you move there?

5. A. Because of my girlfriend. I had been coming up every
6. weekend on the bus seeing her and stuff and going back. When I
7. was at the halfway house I was getting passes and coming up and
8. going back. And then I got an apartment and we moved in
9. together.

10. Q. And, do you have a child?

11. A. Yes, I do.

12. Q. When was it born?

13. A. It was born about a month and a half ago.

14. Q. And where is Dutch Mill Court?

15. A. It's on the south side of Route 33.

16. Q. And do you know where Country Club Village is?

17. A. Yes, I do.

18. Q. Where is it located?

19. A. It's on the north side after you go under the bridge,
20. heading north on the tracks, across from the tracks.

21. Q. Now, there's a railroad track that runs along Dutch
22. Mill Court and runs under Route 33 and runs on north, right?

23. A. Yes sir, it is.

24. Q. And it's right behind Dutch Mill and also borders
25. Country Club Village, is that right?

1. A. Yes sir.

2. Q. And you've heard the testimony here that they've seen
3. you walking up and down the railroad tracks. When did you
4. first start walking those tracks and how often did you do it?

5. A. Well, I started walking the tracks, I guess around
6. February. I had been getting wild asparagus and garlic along
7. them tracks for a long time. My dad, I had been giving it to
8. my dad, and her father too. They eat it and I like it too.
9. I've even got some at home in the freezer frozen.

10. Q. Did you walk up those tracks in July?

11. A. Yes sir, I did.

12. Q. Do you know what particular dates you walked?

13. A. No sir.

14. Q. Did you ever have anybody with you when you walked?

15. A. Yes sir.

16. Q. Who would go with you from time to time?

17. A. Sometimes my girlfriend would go. We've been, you
18. know, walked almost to Keezletown looking for asparagus and
19. stuff. And my father has went with me and her father has went
20. with me and her brother has went with me.

21. Q. Has your father gone with you on occasion?

22. A. Yes sir, he has.

23. Q. Have you walked it by yourself on occasion?

24. A. Yes sir, I have.

25. Q. Now, you've heard the testimony here today that on

1. July the 9th you were seen up there on the railroad tracks.
2. You saw the little girl testify here, Nikki Eherenman, you saw
3. the little boy, Danny Brown. Do you have any recollection of
4. having seen either one of those children up around Country Club
5. Village at all?

6. A. No sir.

7. Q. Do you remember seeing them at all?

8. A. No sir, I haven't.

9. Q. Did you ever expose yourself to them at all?

10. A. No sir, unless it was accidentally.

11. Q. And how would that have been?

12. A. I have used the bathroom up there at the bushes where
13. it's honeysuckles up, you know, this high. It's no way no one
14. can see me unless they was looking for me or something.

15. Q. Did you ever beckon toward either one of these
16. children at all?

17. A. No sir.

18. Q. Did you ever motion to them to come over to you?

19. A. No sir, I haven't.

20. Q. Have you ever been accused before of any child offense
21. or any untoward liking to children?

22. A. No sir, not at all, nothing.

23. Q. Have you ever done anything like that before?

24. A. No sir, nothing related to nothing like that, nothing
25. to do with kids or nothing like that. I would never do it.

1. Q. And, you have gone up since and taken along with John
2. Fitzwater III, taken some pictures of this area and all?

3. A. Yes sir.

4. COURT: Have you seen them, Mr. Walsh?

5. MR. WALSH: No, I haven't.

6. MR. COBBS: I beg the pardon of the Court. I
7. thought I had shown these to Mr. Walsh in his office several
8. weeks ago.

9. COURT: Could you go ahead with another line of
10. questioning while Mr. Walsh is looking at the photographs.

11. MR. COBBS: All right, sir.

12. Q. Dorsey, when Officer McDorman came down to talk to you
13. about this, what did you tell him?

14. A. Well, at first he just said, you know, "Would you be
15. glad to go in, I'd like to talk to you." I said, "Yes sir."
16. He took me in and questioned me. He asked me if he could
17. fingerprint me and take my picture and I said, "Yes sir, you
18. can." Because, you know, I hadn't did nothing, I wasn't
19. worried. About a week later then is when he came back and, you
20. know, he was talking to me and stuff. He said he had a couple
21. warrants for my arrest.

22. Q. Did he accuse you of exposing yourself to Nikki?

23. A. No sir, not at the time he took me in and questioned
24. me.

25. Q. Did he accuse you of that later on?

1. A. He just had the warrants. He didn't accuse me of it,
2. he just had the warrants that he read.

3. Q. Did he talk to you about it?

4. A. Yes sir, he asked me had I and I said, "No sir."

5. Q. You denied it to him?

6. A. Yes sir.

7. Q. After you told him did he ask you why you were up on
8. the railroad tracks?

9. MR. WALSH: Your Honor, I'm going to object to
10. any further line of questioning.

11. COURT: The objection is sustained. Will the
12. Commonwealth wish to be heard on the admissibility of the
13. photographs?

14. MR. WALSH: No, I have no objection.

15. COURT: All right, I'll ask the Clerk to mark
16. them beginning with Defendant's Exhibit #1. And while he's
17. doing that, go ahead with another line of questioning. When
18. he's finished, I'll ask the Bailiff to hand them to Mr. Cobbs.

19. Q. I hand you what has been marked Commonwealth's Exhibit
20. #1. Now, have you seen--are you familiar with this area?

21. A. Yes sir, I know where it is.

22. Q. And this is the railroad track up here at the top?

23. A. Yes.

24. Q. Come over here to the jury so that they can . . .

25. A. (Witness stands in front of jury box)

1. Q. Point out to the jury where the railroad and all runs.

2. A. The railroad runs straight across here.

3. Q. Now, what sort of land is the land in between the
4. railroad track and this cul-de-sac, this street here?

5. A. Right in here is 33 coming up at the bridge, and from
6. here up it's nothing but honeysuckles and brush all the way to
7. this, right up where you come into Country Club.

8. Q. Now, you've heard some talk, the little girl said
9. something about a creek, and I believe Mr. McDorman said
10. something about a gully through here.

11. A. That's straight down through here.

12. Q. And you have never at any time seen any children on
13. bicycles or anything else through there?

14. A. No sir. (Witness Resumes Stand)

15. Q. I'm going to ask you to look at these photographs
16. consisting of Prosecution's Exhibits #3, #4 and #5 and ask you
17. if they accurately depict how the railroad appears from down
18. there into Country Club Village?

19. A. Yes sir.

20. Q. Now, was there more--you've heard when these
21. photographs were taken. You went down after the preliminary
22. hearing in this case at my request and took some pictures or
23. had some pictures taken, is that correct?

24. A. I showed a guy about where to take them and he went
25. down and took the pictures, I did not take them.

1. Q. All right. I show you what has been marked
2. Prosecution Exhibit #2, Commonwealth's Exhibit #2, and ask you
3. if this is a pretty accurate depiction of what Country Club
4. Village looks like when you look down from the railroad track.

5. A. Yes sir, it is.

6. Q. I hand you what has been marked Defendant's Exhibit #1
7. and ask you is this a pretty accurate photograph of Country
8. Club Village as you look down from the railroad tracks?

9. A. Yes sir. Yes sir, it is.

10. Q. Now, are these some of the bushes and all growing up
11. along the railroad tracks?

12. A. Yes sir.

13. Q. In that area.

14. A. Yes sir.

15. COURT: Is that Defendant's Exhibit #2 for
16. identification?

17. MR. COBBS: Defendant's Exhibit #2, yes sir.

18. COURT: As I understand it, these will all be
19. received in evidence.

20. MR. WALSH: No objection.

21. COURT: Without objection, all right.

22. Q. And is this another--this is Defendant's Exhibit #3,
23. and would you identify it?

24. A. Yes sir, this is the railroad tracks above here and
25. the bushes and stuff. And that's Country Club over there. And

1. the mailboxes is right in there.

2. Q. All right. And #4, Defendant's Exhibit #4, what are
3. these bushes here?

4. A. These are--I'm not really sure. John took the
5. pictures. This is took . . . this is took from the railroad
6. tracks over to Country Club through the bushes.

7. Q. Okay.

8. A. It's where . . .

9. Q. I hand you which is Defendant's Exhibit #5, what is
10. that view there?

11. A. That's from the railroad tracks to the apartments,
12. townhouses.

13. Q. I hand you Defendant's Exhibit #6.

14. A. This is from up at the apartments over to the railroad
15. tracks way over here.

16. Q. And you're standing up in the middle of the apartment
17. street when you--when that picture was taken, is that correct?

18. A. Right, yes sir.

19. Q. This is Defendant's Exhibit #7.

20. A. Yes sir, this is about the same view as that there.
21. But it's took a little further out where you can start to turn
22. in to Country Club.

23. Q. When you say that there, you mean the last one you
24. saw, Defendant's Exhibit #6, the last picture?

25. A. Yes sir.

1. Q. I hand you Defendant's Exhibit #8 and ask you what it
2. depicts?

3. A. This is from the mailboxes up to the railroad tracks
4. down toward--like it goes down towards my apartment, and the
5. bushes and all that. And this is . . .

6. Q. This is Defendant's Exhibit #9.

7. A. This is from the mailboxes down through there to the
8. railroad tracks and down.

9. Q. Mr. Campbell, you were present at the preliminary
10. hearing, of course, when Nikki and Danny testified before.

11. A. Yes sir, I was.

12. Q. And where did they testify that they were riding their
13. bicycles at the time they saw you?

14. A. They said that they was at the mailboxes when they
15. seen me, so I got pictures from the mailboxes up to the bushes
16. and tracks and stuff. Because that's what they said at the
17. preliminary hearing, that they was at the mailboxes on the
18. bikes.

19. Q. All right. And these pictures were taken after the
20. preliminary hearing, is that correct?

21. A. Yes sir, they was.

22. MR. COBBS: Please answer Mr. Walsh's questions.

23. COURT: When you finish with all the photographs
24. I'll ask the Bailiff to pick them up from the last juror who is
25. examining them and give them to me. And Defendant's Exhibits

1. #1 through #9 are received in evidence. Mr. Walsh.

2.

3. Cross Examination by Mr. Walsh:

4. Q. Mr. Campbell, you said you were convicted of burglary,
5. or statutory burglary, in 1979.

6. A. 1977.

7. Q. 1977, I'm sorry. All right. And you were placed on
8. probation?

9. A. Yes sir, I was.

10. Q. And you were given a specific sentence, but it was all
11. suspended.

12. A. Yes sir, it was three years.

13. Q. All right.

14. A. But it was suspended.

15. Q. For how long?

16. A. For--and I was placed on probation for four years.

17. Q. For four years?

18. A. Yes sir.

19. Q. And then you were convicted of grand larceny in 1981?

20. A. Yes sir, it was 1981.

21. Q. Okay, four years after your first conviction.

22. A. Yes sir.

23. Q. For an offense that you committed while you were still
24. on probation under the first charge.

25. A. Yes sir.

1. Q. And you were again given a specific sentence.
2. A. Yes sir, I was.
3. Q. And it was suspended and you were placed on probation
4. again.
5. A. Yes sir, I was.
6. Q. And your original burglary sentence was not revoked as
7. a result of the grand larceny conviction?
8. A. No sir, it wasn't.
9. Q. Now, when did you move up here from Augusta County,
10. Staunton?
11. A. It was about January the 8th or 9th, around in there.
12. Q. Of this year?
13. A. Yes sir. I got my car January the 17th.
14. Q. Okay, now, and then from about February on you started
15. walking the railroad track.
16. A. Yes sir.
17. Q. Looking for wild asparagus.
18. A. Yes sir. It was around--it was later than February,
19. about March.
20. Q. About March, okay. Now, and on occasion you walked it
21. by yourself.
22. A. Yes sir, I did.
23. Q. And that included in the summertime.
24. A. Yes sir.
25. Q. Now, during the times that you were walking up the

1. railroad tracks did you on occasion stop around where the
2. tracks pass by the Country Club Court townhouses?

3. A. Yes, I did. In one of the particulars there it was a
4. huge pile of asparagus grew there at a little pond like. You
5. know, I would stand, I would go around there looking through
6. the honeysuckles and stuff where it come up and stuff.

7. Q. During those times that you stopped near the Country
8. Club Court did you on occasion do anything that might be taken
9. to be peeping around the bushes toward the townhouses?

10. A. No sir, I was looking at the honeysuckle, if anything.

11. Q. Did you ever leave the railroad tracks and go on to
12. the--other than the time that the photographs were taken, go
13. into the area known as Country Club Court and around any of the
14. townhouses?

15. A. No sir.

16. Q. Do you know where the Eherenmans live?

17. A. No sir, I don't.

18. Q. Were you ever there at their townhouse?

19. A. No sir, I haven't.

20. Q. You never have been?

21. A. No sir.

22. Q. You never left the railroad tracks.

23. A. No sir.

24. Q. Or the area immediately adjacent to the railroad
25. tracks as you went by the Country Club Court townhouses.

1. A. No sir. I've crossed the road there where you go in
2. and on up the tracks toward the quarry and interstate like
3. you're heading to Keezletown.

4. Q. But you were still along the railroad tracks is what
5. you're saying.

6. A. Right, yes sir.

7. Q. You never went into the complex itself.

8. A. No sir.

9. Q. Never went up to the Eherenman's townhouse.

10. A. No sir.

11. MR. WALSH: That's all I have, Your Honor.

12. COURT: Re-direct.

13. MR. COBBS: No re-direct, Your Honor.

14. COURT: You may step down. Call your next
15. witness.

16. MR. COBBS: Mr. John Fitzwater.

17.

18. JOHN FITZWATER,

19. having been called as a witness, was duly sworn, and
20. testified as follows:

21.

22. Direct Examination by Mr. Cobbs:

23. Q. Mr. Fitzwater, would you speak up and speak so that
24. the last juror in the back can hear you, sir?

25. A. All right, sir.

1. Q. And speak to the jury. Would you state your name and
2. occupation and residence?

3. A. John Fitzwater, 292 East Washington Street, and I'm
4. disabled.

5. Q. How long have you lived in Harrisonburg, Virginia,
6. sir?

7. A. All my life.

8. Q. And how old are you?

9. A. Fifty.

10. Q. Do you know the defendant in this case, Mr. Dorsey Lee
11. Campbell?

12. A. Yes sir, I do.

13. Q. And what is your relationship to him?

14. A. He goes with my daughter. We are no relation.

15. Q. How long have you known Mr. Campbell?

16. A. A year and a half.

17. Q. During that period has he been dating your daughter?

18. A. Yes sir.

19. Q. What is your daughter's name?

20. A. Rebecca, but everybody calls her Becky.

21. Q. Do you know where Mr. Campbell lives?

22. A. Yes sir.

23. Q. And where is that?

24. A. 90 Dutch Mill Court.

25. Q. And that is down along the Shenandoah and Western

1. railroad tracks in the City of Harrisonburg?

2. A. Yes sir.

3. Q. Now, Mr. Fitzwater, have you known Mr. Campbell going
4. up and walking those tracks and all?

5. A. Yes sir.

6. Q. Have you accompanied him?

7. A. Several times, yes sir.

8. Q. And what did he go up there for, do you know?

9. A. Yes, we'd go after asparagus and garlic, herbs and
10. things like that.

11. Q. All right, sir. Now, have you ever had any--strike
12. that. I believe that Becky and Dorsey have a child at the
13. present time, is that right?

14. A. Yes sir.

15. Q. When was it born, do you remember?

16. A. The 22nd of this month.

17. Q. All right, sir. And have you ever noticed anything
18. particular or off color sexually in any way by Dorsey?

19. A. No sir.

20. Q. Have you ever known him to express any interest in
21. children in any way whatsoever?

22. A. No sir, other than his own child.

23. Q. Now, after the preliminary hearing of this case did
24. you have occasion to go with your son, John Fitzwater, III, and
25. Mr. Campbell down to Country Club Village?

1. A. Yes, we went down to take some measurements.

2. Q. And that was at my request?

3. A. Yes sir.

4. Q. And did you make those measurements, Mr. Fitzwater?

5. A. Yes, I did.

6. Q. Did you make a memorandum and write them down at the
7. time, sir?

8. A. Yes, I did.

9. Q. Can you remember those measurements without referring
10. to that memorandum, sir?

11. A. No, I cannot, sir.

12. Q. If you looked at the memorandum would you recognize
13. it?

14. A. Yes sir.

15. Q. Would it refresh your recollection?

16. A. Yes sir.

17. Q. So that you could testify to the jury about these
18. measurements?

19. A. Yes sir.

20. MR. COBBS: Your Honor, if the Clerk will mark
21. this for identification.

22. COURT: It will be marked for identification as
23. Defendant's Exhibit #10.

24. MR. COBBS: I offer it for the purpose of the
25. witness refreshing his recollection.

1. COURT: Very well.

2. Q. I tender to you what has been marked as Defendant's
3. Exhibit #10 for identification, Mr. Fitzwater. Is that the
4. memorandum of the measurements that you made down at Country
5. Club Village or Court?

6. A. Yes, it is, sir.

7. Q. Now, Mr. Fitzwater, would you give to--does that
8. refresh your memory as to what those measurements were and
9. where you measured from and all?

10. A. Yes sir.

11. Q. Now, would you measure--would you give the jury those
12. measurements and all?

13. A. Yes, from the tracks where Dorsey was supposed to be
14. to the mailbox was 140.8 feet. From the mailbox to the little
15. girl's house, I suppose, was 210.9 feet. And from the house to
16. the tracks was 351.7 feet.

17. COURT: All right, just hand it to the Clerk.

18. MR. COBBS: Yes sir.

19. COURT: It's marked for identification, but not
20. received in evidence.

21. MR. COBBS: Yes sir, that's right.

22. Q. Mr. Fitzwater, did your son take some pictures down
23. there at the same time?

24. A. Yes, he did.

25. Q. Would you recognize those pictures if you saw them

1. again?

2. A. Yes sir.

3. Q. I hand you Defendant's Exhibits #1 through #9 and ask
4. you if these are the pictures that he took down at Country Club
5. Village at my request after the preliminary hearing?

6. A. Yes sir, they are.

7. MR. COBBS: Please answer Mr. Walsh's questions.

8. MR. WALSH: I have no questions.

9. COURT: You may step down, sir. Call the next
10. witness.

11. MR. COBBS: I call Mr. John Fitzwater, III.

12. COURT: May this witness be excused, gentlemen?

13. MR. COBBS: Yes sir.

14. MR. WALSH: Yes sir.

15. COURT: You're excused from further attendance.

16. MR. FITZWATER: Can I remain in the Courtroom?

17. COURT: You may remain in the Courtroom or leave.

18.

19. JOHN WILLIAM FITZWATER, III,

20. having been called as a witness, was duly sworn, and
21. testified as follows:

22.

23. Direct Examination by Mr. Cobbs:

24. Q. Mr. Fitzwater, speak up, speak to the juror in the
25. upper corner of the box there so that they can all hear you.

1. State your name, occupation and residence.

2. A. My name is John William Fitzwater, III. I am
3. unemployed. I live at 292 East Johnson Street, Harrisonburg.

4. Q. And you live with your father?

5. A. Yes sir.

6. Q. How old are you, Mr. Fitzwater?

7. A. Twenty.

8. Q. Do you know the defendant in this case?

9. A. Yes sir, I do.

10. Q. Would you point him out to the jury?

11. A. He's the one in the brown (indicating defendant).

12. COURT: Let the record show the witness indicated
13. the accused.

14. Q. How long have you known Mr. Campbell?

15. A. A year and a half.

16. Q. And I understand that he's been dating your sister and
17. that they live at Dutch Mill Court, is that correct?

18. A. Yes sir.

19. Q. Do they have a child?

20. A. Yes sir.

21. Q. Do you know when the child was born, approximately?

22. A. October 21st of 1982.

23. Q. How long has Mr. Campbell been living up at Dutch Mill
24. Court?

25. A. Since around August, maybe a little before or a little

1. after.

2. Q. Have you had occasion to walk on the railroad tracks
3. with him any or what?

4. A. Yes sir, I have.

5. Q. And those are the Shenandoah and Western tracks that
6. run . . .

7. A. It's the Chesapeake and Western tracks.

8. Q. Chesapeake and Western, I beg your pardon.

9. A. Yes sir.

10. Q. What did you all walk up and down the tracks for?

11. A. For wild garlic and asparagus.

12. Q. Did anybody else walk up and down those tracks?

13. A. With me and him?

14. Q. No. Have you seen other people walking up and down
15. the tracks?

16. A. Yes sir, the college, James Madison University
17. students, they all go up and down that railroad track. They
18. use it right well, I mean a whole lot.

19. Q. Sort of as a route to get down to the University?

20. A. Yes sir.

21. Q. Now, have you ever noticed any children playing around
22. Country Club Village at all?

23. A. No sir. Me and Dorsey walked up and down, we've
24. walked up and down the tracks, but we've never noticed any
25. children at all.

1. Q. You're familiar with Country Club Village?

2. A. Yes sir.

3. Q. Now, did you have occasion after the preliminary
4. hearing of this case at my request to go out and take some
5. photographs of Country Club Village and all?

6. A. Yes sir, I have.

7. Q. I hand you what has been marked Defendant's Exhibits
8. #1 through #9 and ask you to explain to the jury what these
9. are. And refer to them by number, if you would.

10. A. All right. Number one is where I was standing taking
11. a picture of the mailboxes of where . . .

12. Q. Where were you standing when you took this?

13. A. I was standing on the railroad track.

14. Q. Looking toward the mailboxes?

15. A. Looking toward the mailboxes.

16. Q. At Country Club Village?

17. A. Yes sir. Number two is a shot from where the wild
18. garlic was that we picked straight up to the--I don't know if
19. it would be the plaintiff . . . the prosecutor. Their
20. apartment. Number eight is from the mail--let's see. Yeah,
21. that's #8. This here one is from where I was standing at the
22. mailboxes, my father was standing in behind the bushes right
23. here, and I took a picture from the mailboxes where the
24. children was to the place where Dorsey was supposed to have
25. been seen. And you cannot see no one in that picture there.

1. Here I moved six paces to my right and three paces forward in
2. order to see my father standing behind the bushes. I took a
3. picture of there. Number three is a picture from where I was
4. standing to the mailboxes again.

5. Q. Where were you standing when you took that picture?

6. A. I was standing in the same place, but it was . . .

7. Q. Up on the railroad tracks?

8. A. Up on the railroad track. Number four is another shot
9. of where I was standing on the railroad tracks to their
10. apartment again. Number five is another picture of where I was
11. standing on the railroad track. In order to see their
12. apartment I had to move six paces to the left. And number six,
13. I went to where their apartment was and took a picture from
14. their apartment to where he was supposed to have been seen.
15. And number seven, I was standing on the step of the child's
16. house to the place where Mr. Campbell was supposed to have been
17. seen.

18. Q. Now, Mr. Fitzwater, have you been pretty close to
19. Dorsey since he came down and started dating your sister?

20. A. Yes sir, I have--me and Dorsey have run around quite a
21. bit looking for jobs and places and going places and markets
22. and stuff like that.

23. Q. Have you ever heard him say or do anything which would
24. indicate an unusual interest in children?

25. A. No sir, never.

1. Q. Has he ever expressed anything along that line?

2. A. Only toward my son and his own.

3. Q. And what kind of interest has that been?

4. A. Well, toward my son and his own he has a whole lot of
5. interest which would be more like a father, what a father would
6. think more of his child to him.

7. Q. He's never shown any sexual interest in any child?

8. A. No sir.

9. Q. He never stated that to you or anything like that?

10. A. No sir.

11. Q. Has he given any indication of it?

12. A. No sir.

13. MR. COBBS: Please answer Mr. Walsh's questions.

14.

15. Cross Examination by Mr. Walsh:

16. Q. Mr. Fitzwater, when you took these photographs, you
17. took them according to the defendant's instructions, is that
18. correct, as to where he said he was supposed to be and where he
19. said that the children were supposed to have been?

20. A. Yes sir. But where . . .

21. Q. He told you where he was supposed to have been and
22. where the children were supposed to have been.

23. A. Yes sir, but where I have--where I took the pictures
24. there was old garlic laying there. It was piled up in a pile.
25. And I stood right at the garlic and took the pictures.

1. Q. And that's where Dorsey, the defendant, told you that
2. he was supposed to have been standing.

3. A. Yes sir.

4. Q. And he told you where he thought the children were
5. supposed to have been and that was the basis that you took the
6. photographs.

7. A. Yes sir.

8. Q. You did not talk to the children?

9. A. No sir.

10. Q. You didn't talk to their parents.

11. A. No sir.

12. Q. You didn't talk to the police officer.

13. A. Well, I was going to try to talk to the police
14. officer, but he kind of give me a rough situation and I just
15. never spoke to him.

16. MR. WALSH: That's all.

17. COURT: Re-direct.

18. MR. COBBS: No re-direct.

19. COURT: Step down. Call your next witness.

20. MR. COBBS: All right. I call James Campbell.

21. COURT: Can the last witness be excused?

22. MR. COBBS: Yes sir, Your Honor.

23. COURT: You're excused from further attendance,
24. Mr. Fitzwater.

25.

JAMES CAMPBELL,

having been called as a witness, was duly sworn, and testified as follows:

Direct Examination by Mr. Cobbs:

Q. Mr. Campbell, speak up, speak so that the juror in the back of the box can hear you. State your name, occupation and residence.

A. I'm James Campbell, I live at 722 Allegheny Avenue in Staunton, and I'm an electronic technician for American Safety Razor Company.

Q. How long have you lived in Staunton, Mr. Campbell?

A. Thirty-six years.

Q. All right, you know the defendant, of course.

A. Yes sir.

Q. He is your son, Dorsey Lee Campbell?

A. Yes sir.

Q. Now, Mr. Campbell, how long, to your knowledge, has Dorsey been living up here in Harrisonburg?

A. How long?

Q. Yes sir.

A. He's been in Harrisonburg about a year now, I think.

Q. He--Dorsey had a little trouble down in Augusta County and Staunton, right?

A. Yes sir.

1. Q. And after the last time that he got in trouble down
2. there and the Judge put him on probation, what did he do with
3. himself, if you know?

4. A. He had a problem with drinking, I suppose, as you
5. know. He recognized his problem with drinking, which a lot of
6. people don't do, and I don't know whether I would, but he
7. recognized his problem. And one night at eleven thirty at
8. night I had a telephone call . . .

9. Q. Well, just tell--did he voluntarily commit himself?

10. A. He voluntarily went to Shenandoah Lodge Treatment
11. Center.

12. Q. All right, now, after he left Shenandoah Lodge he went
13. up to Winchester?

14. A. Yes sir.

15. Q. And he went to a halfway house?

16. A. Yes sir.

17. Q. And he worked for a while, is that correct?

18. A. Yes sir.

19. Q. And then he came down to Harrisonburg.

20. A. Yes sir.

21. Q. Now, where does Dorsey live in Harrisonburg?

22. A. Dutch Mill Court, 90 Dutch Mill Court, Apartment M.

23. Q. That's just south of Route 33?

24. A. Yes sir.

25. Q. That's along the Chesapeake and Western Railroad

1. tracks.

2. A. Yes sir.

3. Q. Now, do you know that Dorsey goes up and walks on
4. those tracks at all?

5. A. Yes sir.

6. Q. And how frequently does he do it, do you know?

7. A. I don't know, but he done it a whole lot of time
8. looking for asparagus or whatever. He must have walked it
9. quite a bit.

10. Q. Now, have you walked it with him?

11. A. Yes sir.

12. Q. And have you walked up and down those tracks helping
13. him gathering asparagus and garlic?

14. A. Yes sir, I sure did.

15. Q. Have you gotten some of that garlic in your possession
16. that you gathered up there?

17. A. Sir, I think it's in the bag that I brought. I had it
18. in my garage. I would take it home and dry it out.

19. MR. COBBS: All right, please mark this as a
20. defendant's exhibit.

21. COURT: Defendant's Exhibit #11 for
22. identification.

23. MR. COBBS: I'll ask permission to withdraw this,
24. Your Honor.

25. COURT: The Clerk will probably appreciate it.

1. MR. COBBS: I thought he might.

2. Q. Mr. Campbell, I present you with what's been marked
3. Defendant's Exhibit #11 and ask you to state for the jury what
4. it is.

5. A. To tell you the truth, I didn't know what it was
6. myself until the boy told me it was garlic. I'm kind of
7. ignorant of this, but him being a Boy Scout and an Eagle Scout
8. he knew all the herbs, so this is one of them. It's little
9. garlic bulbs and he says you grind it up and put it in a bag or
10. something, make some kind of stuff out of it.

11. Q. Was this gathered up on the railroad track?

12. A. This was gathered along the railroad track. It sure
13. was.

14. MR. COBBS: I'll offer that in evidence as
15. Defendant's Exhibit #11 with leave to withdraw it, Your Honor.

16. COURT: Defendant's Exhibit #11 is received in
17. evidence with leave to the defendant to withdraw it after
18. verdict. And if the defendant fails to do so, within
19. twenty-four hours the Clerk may destroy it.

20. MR. COBBS: Thank you, Your Honor.

21. Q. Mr. Campbell, what does your wife do for a living?

22. A. We have a day-care center for children, we keep small
23. children.

24. Q. How long have you had that?

25. A. Eighteen years.

1. Q. And . . .

2. MR. WALSH: Your Honor, I . . .

3. COURT: What is the relevance of this, Mr. Cobbs?

4. MR. COBBS: I'm going to offer--let me make it at
5. the bench, Your Honor.

6. (At the Bench)

7. MR. COBBS: Your Honor, I offer that Mr.
8. Campbell, Mr. Dorsey Campbell, lived at the day-care center
9. being operated for a period of years and that there were no
10. complaints ever made about him.

11. COURT: I see. There has been no evidence . . .

12. MR. COBBS: That indicates such, right. But I
13. think lack of no incident, Your Honor, is a circumstance which
14. would tend to indicate it.

15. COURT: The objection is sustained.

16. MR. COBBS: All right. Note my exception.

17. COURT: Duly noted.

18. (In Open Court)

19. MR. COBBS: Please answer Mr. Walsh's questions,
20. Mr. Campbell.

21. MR. WALSH: I have no questions.

22. COURT: You may step down, sir. Call the next
23. witness.

24. MR. COBBS: That concludes the defendant's case,
25. Your Honor.

1. COURT: Can Mr. Campbell be excused?

2. MR. COBBS: Yes sir.

3. COURT: You're excused from further attendance.

4. Does the Commonwealth have any evidence on rebuttal?

5. MR. WALSH: Yes sir.

6. COURT: Could you estimate the time as to whether
7. we should excuse the jury for lunch or if it might be completed
8. before one o'clock?

9. - MR. COBBS: Your Honor, I have a motion that I
10. want to renew.

11. COURT: Well, the Commonwealth hasn't rested.

12. MR. COBBS: Right.

13. MR. WALSH: We might be able to get it in all by
14. one o'clock, Your Honor. We have three witnesses.

15. COURT: Would counsel approach the bench.

16. MR. WALSH: Yes sir.

17. (At the Bench)

18. COURT: Do you think that we can have a
19. preliminary instruction conference now?

20. MR. WALSH: Yes sir.

21. MR. COBBS: Yes sir.

22. COURT: All right.

23. (In Open Court)

24. COURT: Ladies and gentlemen, the evidence is not
25. completed yet, but after the evidence is completed it is my

1. responsibility to prepare the instructions of law to be given
2. to you. And I am going to try to prepare as much of those as I
3. can during the lunch recess and when you come back from lunch
4. you, of course, will hear some more evidence. So I'll permit
5. you to take a rather long recess of let's say an hour and ten
6. minutes and I'll hope during that time that I can have those
7. instructions completed so that when you come back after lunch
8. you won't have to sit and wait very long for me to get the
9. instructions prepared. So while you are in recess for lunch, I
10. must instruct you that you must not discuss the case with
11. anyone or permit anyone to discuss it in your hearing or in
12. your presence. The jury will be excused for lunch until 1:45,
13. a quarter to two.

14. (Jury Leaves Courtroom)

15. MR. COBBS: Your Honor, for the record, in order
16. to preserve my point, I would like to renew the motion to
17. strike which I made at the conclusion of the prosecution's
18. initial case and ask the Court to reconsider its ruling.

19. COURT: Shouldn't it wait until the Commonwealth
20. rests on rebuttal?

21. MR. COBBS: I think you've got to make it three
22. times.

23. COURT: All right, sir, then I'll adhere to the
24. previous ruling and exception is noted.

25. Gentlemen, let us have a preliminary instruction

1. offer any other instructions.

2. MR. COBBS: No, Your Honor. I might say, Your
3. Honor, I believe you marked my instruction on the burden of
4. proof and the presumption of innocence, which I believe is
5. identical to the prosecution's instruction.

6. COURT: The Commonwealth withdrew his and I'm
7. granting yours.

8. MR. COBBS: All right.

9. COURT: It makes no difference. I assume they're
10. in identical language.

11. MR. COBBS: Yes sir.

12. COURT: All right, suppose we do this. I'm going
13. to put these instructions together in a paper clip and ask the
14. Reporter to correct the one instruction. And when the
15. Commonwealth rests, I will ask counsel if they are ready to
16. argue the case. If you are ready to argue the case you may
17. proceed with your argument. If you ask for a recess--I will go
18. ahead and give the jury the instructions and I will mark them
19. as I give them to them. If you want any further instruction
20. conference, ask for a recess after the Commonwealth rests and
21. you've rested, rebuttal, and we'll have a further instruction
22. conference if it should be necessary. If you feel that you
23. want to renew your motion at the conclusion of the
24. Commonwealth's case on rebuttal, the record may show that you
25. have renewed the motion, the Court adhered to its previous

1. ruling and you have leave to enlarge the record. The
2. Commonwealth has prepared this verdict form. Is that
3. satisfactory?

4. MR. COBBS: In connection with your previous
5. comment, Your Honor, may the record also show that my exception
6. will be noted to the ruling?

7. COURT: Certainly. All right, thank you, and
8. we'll reconvene then at 1:45.

9. (Luncheon Recess)

10. (In Open Court)

11. COURT: The defendant and his counsel are present
12. and the Commonwealth is present. You have a matter to take up,
13. gentlemen?

14. MR. COBBS: Yes, Your Honor, in order to put it
15. on the record. Mr. Walsh, the Commonwealth Attorney has given
16. me the gist of the rebuttal evidence that he plans to present
17. here and I wish to enter an objection to it as not being proper
18. rebuttal or proper evidence. It's my understanding Mr. Walsh
19. intends to call witnesses which would indicate that the
20. defendant had been down into the townhouse development of
21. Country Club Court that we're involved with today at some time
22. on some occasions between the 19th and 26th of July. And that
23. on one occasion he was seen at or near the back fence of the
24. Eherenman residence. These offenses are alleged to have
25. occurred on July 9th and that is when I think the evidence

1. should be cut off. There's no relevance to his visits to the
2. area after that time.

3. And, secondly, I don't think it's proper
4. rebuttal. The only evidence that came out at all regarding
5. whether Mr. Campbell had been down into the area at all or not
6. was brought out on cross examination by Mr. Walsh or by the
7. defendant himself. And I do not believe it's proper to set
8. that up and then rebut it by calling evidence to disprove it,
9. Your Honor. I just don't think it's relevant to this case or
10. proper rebuttal, Your Honor.

11. COURT: Mr. Walsh.

12. MR. WALSH: Your Honor, there's a little bit more
13. to the rebuttal than just the incident where the defendant was
14. seen at the back fence of the victim's family's townhouse. It
15. was also that he was seen in the area of the railroad tracks
16. near the bushes, standing there staring in the direction of the
17. townhouses.

18. But, the defendant has opened up this area by Mr.
19. Cobbs questioning him, by the defendant's testimony as to his
20. habit of being on the railroad tracks, and his purpose for
21. being there was to simply look for wild asparagus and wild
22. garlic; that he had done it before that and on that date and he
23. has done it since that date.

24. The defendant during his testimony on direct also
25. intimated at least, if not directly testifying, that he had

1. never stopped in that area to peer over toward the townhouses
2. or was ever in the development of Country Club Court.

3. COURT: Didn't the defendant testify on direct
4. examination, Mr. Cobbs, that his activity in that area was
5. limited to walking either up and down or along the railroad
6. tracks?

7. MR. COBBS: Yes sir. Along the immediate area of
8. the tracks, that's correct.

9. COURT: Then the proffer, as I understand it, is
10. responsive to the defendant's direct examination. The
11. objection is overruled and the record may show that it's
12. received over your objection.

13. MR. COBBS: Thank you.

14. COURT: Call the jury. You may get your first
15. witness ready.

16. (Jury Enters Courtroom)

17. COURT: Ladies and gentlemen, the defendant has
18. now rested and the Commonwealth has the right to call witnesses
19. in rebuttal. And you may call your first witness, Mr. Walsh.

20.

21.

22.

23.

24.

25.

1. KITTY COAKLEY,
2. having been called as a witness, was duly sworn, and
3. testified as follows:
4.

5. Direct Examination by Mr. Walsh:

6. Q. State your name, please.

7. A. Kitty Coakley.

8. Q. And where do you live, Mrs. Coakley?

9. A. 1239 Country Club Court.

10. Q. In Harrisonburg?

11. A. Yes sir.

12. Q. All right. Are you any relation to Daniel Brown?

13. A. Yes, I'm his mother.

14. Q. And he lives with you?

15. A. Right.

16. Q. Now, were you living there back in July of this year?

17. A. Yes sir.

18. Q. All right, let me draw your attention to the 26th of
19. July of this year and ask you whether or not you saw anybody on
20. that date up by the railroad tracks looking in the direction of
21. the townhouse complex.

22. A. Yes sir, I did.

23. Q. Have you seen that person since that date?

24. A. I've seen him since, yes.

25. Q. Have you seen him today?

1. A. Yes sir.

2. Q. All right, is he here today?

3. A. Yes.

4. Q. Would you point him out, please.

5. A. The gentleman sitting right here (indicating
6. defendant).

7. COURT: The record may show the witness indicated
8. the accused.

9. Q. All right, now, about what time of the day was this on
10. the 26th of July that you saw the defendant?

11. A. It was in the afternoon around--I can't remember,
12. around three, I think. I'm not positive.

13. Q. Now, what drew your attention to the defendant at that
14. time?

15. A. Well, I had talked to the neighbors about the
16. gentleman the children had seen, so I more or less had an eye
17. out for him. And I had told some of the neighbors and the
18. next-door neighbor came in and said . . .

19. COURT: All right, just a minute.

20. Q. Without going into what your neighbors said . . .

21. A. All right, they just came in and told me. I went
22. outside and saw him. I went back in and called and I followed
23. him so I could see him closer.

24. Q. All right, and when you first observed the defendant,
25. what was he doing?

1. A. He was just standing behind the bushes sort of looking
2. out around up toward--looking toward the townhouses.

3. Q. For what period of time did you observe him doing
4. that?

5. A. Just a few moments, and then I started walking down
6. toward him.

7. Q. Okay, and when you started walking down, were you
8. still able to see the defendant?

9. A. Yes sir.

10. Q. Could you tell whether or not the defendant was able
11. to see you?

12. A. Oh, I'm sure he could.

13. Q. What happened after you started walking down toward
14. the railroad tracks?

15. A. Well, he started walking down the tracks. And he
16. didn't just continue walking, he'd stop a little while. I
17. guess he was thinking I was coming, I don't know. I just
18. kept . . .

19. COURT: Just a minute.

20. A. I'm sorry.

21. COURT: You cannot guess as to what he was
22. saying.

23. A. I'm sorry.

24. COURT: I'll instruct the jury to disregard that.

25. Q. Just with respect to what you observed happened.

1. A. I just walked down to see him closely.

2. Q. All right.

3. MR. WALSH: Answer any questions Mr. Cobbs may
4. have.

5.

6. Cross Examination by Mr. Cobbs:

7. Q. Mrs. Coakley, the essence of your testimony is that on
8. the 26th day of July you saw the defendant standing up on the
9. railroad tracks looking toward Country Club Village, is that
10. correct?

11. A. Yes sir.

12. Q. And that you went out and walked down toward the
13. street which borders the front of the development, and when you
14. did that he started walking up the railroad tracks, is that
15. correct?

16. A. Yes sir.

17. Q. Was this after you had reported the incident to the
18. police?

19. A. Yes sir.

20. Q. And do you know whether or not this was after Mr.
21. Campbell had been interrogated by Officer McDorman?

22. A. (No response)

23. Q. If you don't know just . . .

24. A. I don't know.

25. Q. All right. And you know that the incident with your

1. son and Nikki Eherenman had occurred over two weeks before, is
2. that correct?

3. A. Yes.

4. MR. COBBS: I have no further questions.

5. COURT: Re-direct.

6. MR. WALSH: No sir.

7. COURT: You may step down. Call your next
8. witness.

9. MR. WALSH: Mr. Shumate.

10. COURT: May this witness be excused?

11. MR. COBBS: Yes, Your Honor.

12. COURT: You're excused from further attendance,
13. ma'am.

14.

15. ROBERT SHUMATE,

16. having been called as a witness, was duly sworn, and
17. testified as follows:

18.

19. Direct Examination by Mr. Walsh:

20. Q. State your name, please.

21. A. Robert Shumate.

22. Q. Where do you live, Mr. Shumate?

23. A. 961 Mt. Clinton Pike here in Harrisonburg.

24. Q. All right, let me draw your attention to July of this
25. year, July 19th, and ask you whether or not you had occasion to

1. be at Country Club Court on that date?

2. A. Yes sir, I did.

3. Q. All right, do you recall about what time you were
4. there?

5. A. Yes sir, it was approximately between eight to eight
6. thirty. It was early in the morning.

7. Q. In the morning, eight to eight thirty in the morning.

8. A. Yes sir.

9. Q. Okay, now, where had you come from?

10. A. I had come from my apartment, sir.

11. Q. On Mt. Clinton Pike?

12. A. Yes sir.

13. Q. Now, did you drive up there?

14. A. Yes sir, I did.

15. Q. When you were driving up into the complex--let me show
16. you what has been marked as Commonwealth's Exhibit #1, and to
17. orient you this is Country Club Road here and the entrance to
18. the Country Club Court townhouses. I'll hold this up so that
19. the jury can see it, and I'll ask you to, just with your
20. finger, show the direction that you drove into the complex.

21. A. Okay, I came from this way, sir, and I turned and I
22. came down this way over to the townhouse over here.

23. Q. Okay, now, did you see anybody that morning as you
24. were driving in?

25. A. Yes sir, I did. I noticed someone standing on the

1. railroad tracks when I was driving in from here. And it struck
2. me as kind of odd that someone would be on the railroad tracks
3. that early in the morning, so as I came down to the actual
4. entrance to Country Club Court I slowed down very slow and I
5. went real slow across the railroad tracks and I saw someone
6. standing approximately over in this area of the railroad
7. tracks, right where the bushes are.

8. Q. Okay, that would be--the point that you were
9. indicating is north of the unit marked "C" here, is that
10. correct?

11. A. Yes sir.

12. Q. All right, now, describe what you saw that person
13. standing there at the bushes and the railroad tracks doing.

14. A. When I came in the person was standing with his back
15. toward me. It struck me as kind of odd. From the way the
16. person was standing it looked like he may have been doing
17. something, such as maybe . . .

18. MR. COBBS: Your Honor, I'm going to object to
19. this supposition and all and ask that it be stricken.

20. COURT: I'll instruct the jury to disregard any
21. conclusion that the witness may have drawn. You may describe
22. what you observed, but the conclusions are drawn by the jury.

23. Q. Simply, did you notice where his hands were?

24. A. Yes sir.

25. Q. Where were they?

1. A. May I stand up, Your Honor?

2. COURT: You may.

3. A. He was standing with his back toward me and his hands
4. were down like this (witness stands with his hands in front of
5. him below his waist), and that's all I saw.

6. Q. All right, now, as a result of seeing that
7. individual--well, first of all, could you recognize him if you
8. saw him again?

9. A. Yes sir, I could.

10. Q. All right, is he here today?

11. A. Yes sir, he is.

12. Q. Could you point him out, please.

13. A. That's him (indicating defendant).

14. COURT: The record may show the witness indicated
15. the accused.

16. Q. Now, as you were coming in the drive into the complex,
17. you indicated his back was somewhat toward you. Which
18. direction would he have been facing at that time? Let me again
19. use the diagram and ask you if that would help you.

20. A. He would have been standing looking roughly this way.
21. As I came down and parked here, when I got out of my car and
22. looked back, he had turned and was facing back toward these
23. townhouses here.

24. Q. Okay, so that he was facing towards you?

25. A. Yes sir.

1. Q. What did you do after you observed the defendant
2. standing there? Did you talk to anybody?

3. A. Yes sir, I did. Mrs. Pandora Eherenman and Ms. Lena
4. Scurry were standing out in front of their townhouses talking.
5. And I had gone over to talk with Ms. Scurry, and I had
6. mentioned that there was someone standing on the railroad
7. tracks.

8. Q. Did you then do anything as a result of having talked
9. with those two ladies?

10. A. Yes sir, I did. I went in and I phoned the police
11. department.

12. Q. Okay, now, did Mrs. Eherenman do anything? Don't go
13. into the conversation that you had with her, but did she then
14. do anything as a result of the conversation?

15. A. No sir.

16. Q. After you went into--after you called the police, did
17. you then do something?

18. A. Yes sir. When Officer Eaton came over I gave a
19. description of the person that I saw. And he asked me if I saw
20. the person again, if I could identify him. And I said yes sir,
21. I could. And he asked me to go with him to try to find the
22. person.

23. Q. And were you able to?

24. A. Yes sir.

25. MR. WALSH: That's all.

1. COURT: The defendant may inquire.

2.

3. Cross Examination by Mr. Cobbs:

4. Q. Where did you go to try to find the defendant?

5. A. We got in the officer's car. We went back up Country
6. Club Court, over to Carlton, and subsequently up Reservoir
7. Street.

8. Q. Did you go down to Dutch Mill Court?

9. A. Yes sir. We went over and there was a parking lot
10. there by--I think it's Dutch Pantry. The officer and I got out
11. of the car there and we walked down the railroad track back to
12. Country Club Court.

13. Q. Back to Country Club Court.

14. A. Yes sir.

15. Q. Did you say that the defendant was standing on the
16. railroad tracks looking toward Country Club Village with his
17. hands in front of him like this (indicating)?

18. A. Yes sir.

19. Q. Just like I am?

20. A. Yes sir.

21. Q. And you apparently must have heard something about an
22. earlier incident involving Mrs. Eherenman's child.

23. A. At that time, no sir, I hadn't.

24. Q. You didn't--without any knowledge of it at all, you
25. just thought that the man standing there with his hands in

1. front of him like I am right now was odd.

2. A. Yes sir, to me that early in the morning it was.

3. Q. Do you know if a lot of people walk up and down the
4. tracks there?

5. A. Well, sir, it struck me as odd that he would just be
6. standing there. I figured if he was going somewhere he would
7. be walking, not just standing there.

8. Q. Did you know Mrs. Eherenman before?

9. A. Yes sir.

10. Q. Did you know what had happened to her daughter?

11. A. No sir, I did not.

12. Q. Did you know Mrs. Coakley?

13. A. No sir.

14. Q. You don't know any of the other people, any of the
15. other ladies, the people there?

16. A. No sir, just Ms. Scurry and Mrs. Eherenman and her
17. family.

18. Q. Did Mrs. Eherenman tell you what had happened when you
19. spoke to her about the gentleman on the tracks, did they call
20. your attention to it or what?

21. A. They had mentioned--I asked--I pointed the gentleman
22. out and she said, well, that was the person that had done this.

23. Q. So you went in and called the police.

24. A. Yes sir, I did.

25. MR. COBBS: Thank you.

1. COURT: Re-direct.

2.

3. Re-Direct Examination by Mr. Walsh:

4. Q. It was at that point that you learned about this
5. incident?

6. A. Yes sir. At that time I didn't know until Mrs.
7. Eherenman informed me.

8. MR. WALSH: That's all.

9. COURT: Re-cross.

10. MR. COBBS: No sir.

11. COURT: Call the next witness.

12. MR. WALSH: Mrs. Eherenman. You may step down.

13. COURT: Is this witness excused, gentlemen?

14. MR. WALSH: Yes sir.

15. COURT: You're excused from further attendance.

16.

17. PANDORA EHERENMAN,

18. having been called as a witness, was duly sworn, and
19. testified as follows:

20.

21. Direct Examination by Mr. Walsh:

22. Q. State your name, please.

23. A. Pandora Eherenman.

24. Q. All right, are you any relation to Nikki?

25. A. Yes, she's my daughter.

1. Q. Mrs. Eherenman, I want to draw your attention to back
2. in July of this year, specifically on July 19th. Did you have
3. occasion to or did you observe a person standing up by the
4. railroad tracks near the Country Club Court townhouses on that
5. morning?

6. A. Yes sir.

7. Q. All right, could you identify that person if you saw
8. him again?

9. A. Yes sir.

10. Q. Is he here today?

11. A. Yes sir, he's sitting right there (indicating
12. defendant).

13. COURT: The record may show the witness indicated
14. the accused.

15. Q. Now, how was your attention brought to the defendant
16. on that particular day?

17. A. He was just--well, I was looking out the window first,
18. and then my neighbor and I were standing outside talking. Then
19. Mr. Shumate had came over. Then he said, "There's a guy
20. standing on the tracks." And we both looked and I said,
21. "That's him."

22. Q. Okay.

23. A. And, I asked him if he would go in and call the police
24. and he said yes.

25. Q. All right, now, what was the defendant doing at that

1. time when you observed him?

2. A. He was just walking and standing there, actually
3. standing looking over toward the house, the townhouse.

4. Q. Over to where?

5. A. Our townhouse where we live.

6. Q. All right, now, did you see him--well, let me ask you.
7. For about how long did you observe him standing there looking
8. in the direction of your townhouse?

9. A. Gosh, I don't know. For a little while. Not, you
10. know, . . .

11. Q. Seconds, minutes, hours, what?

12. A. No, just a few minutes.

13. Q. Okay, now, did you notice him doing anything other
14. than standing there?

15. A. No.

16. Q. After that date, the 19th, after your conversation
17. with Mr. Shumate and observing the defendant, did you see the
18. defendant again in that area?

19. A. Yes sir.

20. Q. All right, specifically where was that that you saw
21. him?

22. A. Okay, I was inside my house and, if I'm not mistaken,
23. the following day or something like that, I'm sure it was about
24. the following day, my neighbor called and she said, "Pandora,
25. there's a man standing beside your fence." And I said, "What?"

1. She said, "There's a man standing beside your fence." Well, my
2. dog was barking, but I could not see anybody. So I went
3. upstairs to look out my back window. I still did not see
4. anybody. I came down the stairs and went out my front door.
5. And I turned sideways and he was no further from the gentleman
6. sitting right there looking straight at me.

7. Q. You are referring to the Clerk?

8. A. Yes, the gentleman right here.

9. COURT: May the record show that that's a
10. distance of about ten feet, is that what . . .

11. MR. COBBS: Ten to twelve feet, yes sir.

12. COURT: Ten to twelve feet.

13. Q. All right, was this in front of your house or in the
14. back of your house?

15. A. No, where I was standing right on my front.

16. Q. Okay.

17. A. And he came around the side right here, looked
18. straight at me and then he kept walking. My neighbor came out,
19. she was standing right there with me that saw him.

20. Q. All right, now, you said that he came from around the
21. side?

22. A. Right.

23. Q. What, do you mean from the side along your townhouse?

24. A. Right.

25. Q. From back to front?

1. A. Yeah, he was coming from the back part.

2. Q. All right. And, what happened after--or what did you
3. do or what did the defendant do after you saw him?

4. A. He was walking down and he crossed. And some lady was
5. getting out of her car, and he stopped and said something to
6. her. And then we were watching him and then he left, he was
7. going over towards the railroad tracks walking. And from the
8. time I went back in the house and came back out, he was gone
9. just like that, in a split second.

10. Q. All right, now, had you seen the defendant around the
11. railroad tracks prior to that time, prior to the 19th and 20th?

12. A. You mean after that time?

13. Q. Before that time.

14. A. Before. Yes, several times I had seen him, but when
15. I'd come back he would be gone.

16. Q. Now this is before the 19th?

17. A. Right.

18. Q. Okay, what about afterwards?

19. A. I didn't see him.

20. Q. The times that you saw him by the railroad tracks
21. before the 19th, what was he doing?

22. A. Just staring over to the townhouse.

23. MR. WALSH: That's all.

24. COURT: The defendant may inquire.

25.

1. Cross Examination by Mr. Cobbs:

2. Q. You say you didn't see him after the 20th?

3. A. No sir, or whatever the date.

4. Q. Didn't you in fact see him and Mr. Fitzwater or two or
5. three other gentlemen right after the preliminary hearing, or
6. the day after the preliminary hearing, when they came out to
7. take pictures and measure the distances from . . .

8. A. No sir, I was at work, I was not home.

9. Q. Did you make a complaint about that to the
10. Commonwealth Attorney?

11. A. No, I did not, I was not home.

12. Q. You never made a complaint to Mr. Walsh about that?

13. A. Not that I'm aware of.

14. Q. Now, . . .

15. COURT: Hand counsel the exhibits, Mr. Chenault.

16. Q. I hand you what has been identified as Commonwealth's
17. Exhibit #1. And would you identify where your townhouse is
18. located there.

19. A. Right here.

20. Q. And would you put your initials on that so that the
21. record will show it.

22. A. (Witness marks on exhibit)

23. Q. And draw a circle around it, if you will. I'm not
24. sure that pen will write very well, but . . .

25. A. (Witness marks on exhibit)

1. Q. Thank you, ma'am. You have an end house, is that
2. correct?
3. A. Yes sir.
4. Q. Who lives at 1239, do you know?
5. A. Lives where?
6. Q. 1239, the house depicted on Commonwealth's Exhibit #1.
7. A. That should be Mrs. Coakley, if I'm not mistaken.
8. Q. Mrs. Coakley?
9. A. Yeah. I think that's her unit.
10. Q. That's Danny Brown's, Daniel Brown's mother, right?
11. A. Right. Yeah, because we're catercornered.
12. Q. You say the defendant when you saw him, when Mr.
13. Shumate called him to your attention, this was on the 19th of
14. July, and he was just standing up on the tracks looking over
15. toward Country Club Village.
16. A. Yes sir.
17. Q. At that time had you already reported the incident,
18. the other incident, the original incident to the Harrisonburg
19. Police?
20. A. The very beginning?
21. Q. Yes, ma'am.
22. A. Yes.
23. Q. It had already been reported, hadn't it?
24. A. Yes.
25. Q. And how about when he came over towards your house on

1. the 20th, the same was true, was it not, that you had already
2. reported, that you had reported--when did you actually report
3. this to the police and Mr. McDorman talked to you about it?

4. A. I'm not sure of the date.

5. Q. It was right after, pretty close after it happened, I
6. assume.

7. A. Yeah, well, I think so.

8. Q. And Mr. McDorman interviewed you and you told him--did
9. you tell him at that time that you had seen the defendant on
10. the tracks a number of times?

11. A. I believe so.

12. Q. Do you see more than one person on those tracks, have
13. you seen other people walking up and down the tracks?

14. A. Walking, not just standing.

15. Q. Yes, but walking.

16. A. Very few.

17. Q. Very few. To your knowledge it's not used by people
18. as a walkway to get down to James Madison University.

19. A. Not in the summertime it's not. There's no students
20. usually around in the summertime.

21. Q. How about in the fall?

22. A. There hasn't been this year. We have--one of our
23. neighbors used to use the tracks, but as far as regular
24. students living there going, no, I haven't seen any.

25. Q. You really never thought anything about this until the

1. incident happened involving your daughter, is that right?

2. A. Right.

3. MR. COBBS: Okay, I have no further questions.

4. COURT: Re-direct.

5. MR. WALSH: No sir.

6. COURT: You may step down. Call your next
7. witness.

8. MR. WALSH: Al McDorman.

9. COURT: May this witness be excused?

10. MR. WALSH: Yes sir.

11. COURT: You're excused from further attendance,
12. ma'am.

13. A. Thank you.

14.

15. AL McDORMAN,

16. having been previously called as a witness, testified
17. as follows:

18.

19. Direct Examination by Mr. Walsh:

20. COURT: This witness has been previously sworn.

21. Q. Al, let me--well, first of all, you're Detective
22. McDorman, is that correct?

23. A. Yes sir.

24. Q. I want to ask you a couple questions as to the
25. sequence of events as to your involvement in this

1. investigation. When did you first become involved, directly
2. involved with the investigation of this incident?

3. A. I directly became involved on July the 20th. This was
4. the day after the incident was reported to Officer Eaton.
5. After the report was given to me, the next day I went to that
6. area to do some surveillance work of the area.

7. Q. When was the first time that you talked with any of
8. the family, you yourself talked to any of the family, the
9. Eherenmans or Mrs. Coakley or Daniel Brown?

10. A. This would have been on July the 26th.

11. Q. All right, and about when was that?

12. A. This was the evening of July the 26th, sometime after
13. 3:10 P.M. that afternoon.

14. Q. How was it that you started talking to them on the
15. 26th?

16. A. We received a call at the Harrisonburg Police
17. Department, I was there at that time, that a subject . . .

18. Q. All right, from whom?

19. A. From Kitty Coakley.

20. Q. Now, when was your first direct contact with the
21. defendant?

22. A. That was on the afternoon of July the 26th at
23. approximately 3:15 P.M.

24. Q. And when was it that you talked with the defendant?

25. A. I approached him at approximately that time on the

1. railroad tracks near Country Club Court, and Mr. Campbell
2. accompanied me to the Harrisonburg Police Department where I
3. spoke to him there. That interview took place at approximately
4. 3:40 P.M.

5. MR. WALSH: That's all I have.

6. COURT: The defendant may inquire.
7.

8. Cross Examination by Mr. Cobbs:

9. Q: Mr. McDorman, is there any significance in the term,
10. you say you became directly involved in this case, at all? Do
11. you know when the Harrisonburg Police Department first received
12. a complaint from Mrs. Eherenman?

13. A. Yes sir, I know by the fact that it was relayed to me
14. and that I read the complaints daily. And that afternoon of
15. the day that it was reported, on July the 19th, I did in fact
16. talk to Officer Eaton.

17. Q. Well, did you receive any complaint about indecent
18. exposure to Nikki Eherenman prior to that time?

19. A. Had it?

20. Q. Yes sir.

21. A. Not prior to July the 19th.

22. Q. How about the department, do you have a record of when
23. the department received a complaint from Mrs. Eherenman?

24. A. They received their first complaint on July the 19th,
25. 1982.

1. Q. In other words, ten days after this occurred.

2. A. Approximately, yes sir.

3. Q. So that if Mrs. Eherenman testified that she had
4. already reported this incident, she would be incorrect, is that
5. right?

6. COURT: That's a matter for the jury to
7. determine. One witness may not testify as to the credibility
8. of another witness.

9. MR. COBBS: All right, I'll withdraw that then,
10. Your Honor.

11. Q. Now, how was the defendant clothed when you arrested
12. or took him into custody or accosted him on the railroad track?

13. A. I can refer to my report. I know he was wearing an
14. athletic shirt that was . . .

15. Q. Well, let me cut it a little short to save some time.
16. He was dressed, wasn't he?

17. A. Yes sir.

18. Q. And he voluntarily accompanied you to the police
19. department, did he not?

20. A. Yes sir.

21. Q. And he voluntarily there gave you his--let you
22. photograph him and . . .

23. MR. WALSH: Your Honor, I'm going to object.
24. This has already been asked and answered on cross examination
25. the first time.

1. MR. COBBS: We had an objection sustained, I
2. believe, Your Honor, as to the statements the first time. And
3. this time the Commonwealth has opened the door as to what
4. statements were made by the defendant to the police officer at
5. that time.

6. MR. WALSH: Your Honor, I would object. We did
7. not go into any substance as to any conversation.

8. COURT: Has the Commonwealth introduced any
9. evidence of any prior inconsistent statement of the defendant?

10. MR. COBBS: No sir.

11. MR. WALSH: No sir.

12. COURT: The objection is sustained.

13. MR. COBBS: All right, Your Honor. I have no
14. further questions.

15. COURT: Re-direct.

16. MR. WALSH: No sir.

17. COURT: Step down. Call the next witness.

18. MR. WALSH: The Commonwealth rests, Your Honor.

19. COURT: The Commonwealth rests. Any rebuttal by
20. the defendant?

21. MR. COBBS: No, Your Honor. I will renew the
22. motion made at the close of the defense case and ask the Court
23. to take action opposite to the action it took before.

24. COURT: The Court will adhere to its previous
25. ruling. You have leave to enlarge the record.

1. MR. COBBS: 'All right, and note my exception.

2. COURT: Are we ready to proceed with the
3. instructions and argument, gentlemen?

4. MR. COBBS: Yes sir.

5. COURT: Or do you wish a recess. Can we proceed
6. at this time, gentlemen?

7. MR. COBBS: As far as I'm concerned, sir.

8. COURT: All right, ladies and gentlemen, that
9. completes the evidence you will hear in this case. Before you
10. hear the argument of counsel, the Court will give you these
11. instructions of law.

12. Instruction #1. The Court instructs the jury
13. that the defendant is charged with the crime of indecent
14. exposure to a child with lascivious intent. The Commonwealth
15. must prove beyond a reasonable doubt each of the following
16. elements of that crime.

17. 1) That the defendant knowingly and
18. intentionally exposed his sexual or genital parts to Nikki
19. Eherenman, who was at that time under the age of fourteen
20. years, and that the defendant acted with lascivious intent, and
21. the defendant was eighteen or older at that time.

22. If you find from the evidence that the
23. Commonwealth has proven beyond a reasonable doubt each of the
24. above elements of the offense charged, then you shall find the
25. defendant guilty and fix his punishment at (1) a term of

1. offenses, and the verdict is signed by your foreman or
2. forelady. If you find him not guilty your foreman or forelady
3. signs the bottom or the not guilty part. The Bailiff will also
4. give you the Court's instructions of law, and in just a few
5. minutes he will bring you the exhibits that were received in
6. evidence. The jury may now retire to consider its verdict.

7. (Jury Retires to Jury Room)

8. COURT: All right, gentlemen, I have these
9. exhibits. Commonwealth #1, #2, #3, #4 and #5. And Defendant's
10. Exhibits #1, #2, #3, #4, #5, #6, #7, #8 and #9. #10 for
11. identification was not received in evidence. And this is
12. Defendant's Exhibit #11. And, Bailiff, you may take the
13. exhibits into the jury room. Is there anything further,
14. gentlemen? Counselors? Call the next case.

15. (This case recessed to await the jury's verdict)

16. CLERK: Has the jury reached a verdict?

17. FOREMAN: We have.

18. CLERK: May I have the verdict. Dorsey Lee
19. Campbell, stand. We the jury find the defendant, Dorsey Lee
20. Campbell, guilty of indecent exposure to a child with
21. lascivious intent as charged in the indictment and fix his
22. punishment at confinement in jail for three months. Dated
23. November 30th, 1982, signed by G. Wassum, Foreman. So say yea
24. all?

25. JURORS: (Affirmative responses)

1. some misgivings about it, was a lesser included offense. The
2. jury could have fixed the punishment the same for merely
3. indecent exposure. So in my view the verdict is supported by
4. the evidence and the motion to set aside the verdict is
5. overruled.

6. Dorsey Lee Campbell, stand.

7. MR. COBBS: Your Honor, before--well, perhaps I'm
8. being a little bit premature here.

9. COURT: Yes. Do you have anything to say in your
10. own behalf before judgment of this Court is pronounced?

11. MR. CAMPBELL: No. If they seen me it was
12. accidentally. I didn't mean nothing.

13. COURT: Well, I'm sure I understand that that is
14. your view, but the jury has seen it differently. And I think
15. it's appropriate to say that the jury undoubtedly considered
16. your youth and your background as was brought out by your
17. attorney in fixing your punishment.

18. So in accordance with the verdict of the jury it
19. is the judgment of this Court that you are guilty of indecent
20. exposure to a child with the intent charged in the indictment.

21. Mr. Cobbs.

22. MR. COBBS: Yes sir. Your Honor, I would move
23. the Court to permit Mr. Campbell to remain at large on bail
24. until I can file a notice of appeal and perfect the appeal
25. before the state Supreme Court of Appeals. I say this, Judge,

1. MR. WALSH: No sir.

2. COURT: All right, Dorsey Lee Campbell, stand.
3. Do you have anything to say in your own behalf before sentence
4. of this Court is pronounced?

5. MR. CAMPBELL: No sir.

6. COURT: In accordance with the verdict of the
7. jury your sentence is fixed at three months in jail and you
8. shall pay the costs of this prosecution.

9. Now, what is the bail in this case?

10. MR. COBBS: I believe it's five thousand dollars
11. on this charge, Your Honor.

12. COURT: With surety?

13. MR. COBBS: Yes sir.

14. MR. WALSH: Yes sir.

15. COURT: Is the Commonwealth satisfied with the
16. adequacy of the bail?

17. MR. WALSH: Your Honor, the amount of the bail is
18. sufficient, but I would object to the defendant being released
19. on his bail. Or if the Court is anticipating doing so, I think
20. that there should be some specific additional conditions on
21. that. And that is to particularly stay away from the Country
22. Club Court townhouses from the railroad tracks, anywhere in
23. that area.

24. MR. COBBS: I would agree to those conditions,
25. Your Honor.

1. MR. COBBS: All right.

2. COURT: Do you understand that?

3. MR. COBBS: Yes sir.

4. COURT: And it will be up to you to have your
5. wife come down and sign it tomorrow. You can sign it today.

6. MR. JAMES CAMPBELL: Will that be here in this
7. building?

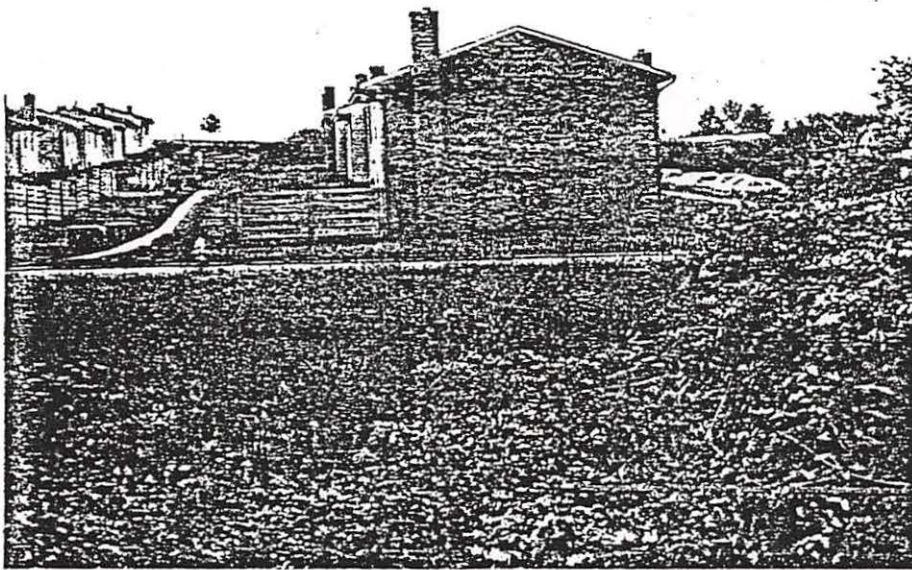
8. COURT: Yes. Mr. Chenault will prepare the bond
9. and you can sign it. And the defendant is committed to the
10. Sheriff until the bond is executed, and then he'll be released
11. in custody of his bail. And, of course, this Court has no
12. jurisdiction with respect to any possible revocation of
13. probation. So whatever the probation officer does in Augusta
14. County is up to him and the court in Augusta County. But in
15. view of the evidence I think it appropriate that there be
16. provision in the order in today's proceedings that the Clerk
17. send a certified copy of the order to the Chief Probation and
18. Parole Officer in the District of the Circuit Court of Augusta
19. County.

20. MR. COBBS: Yes sir.

21. COURT: Are there any other matters to come
22. before the Court? This Court will recess until the 6th of
23. December.

24.

25.



#1 82-07-26-1444

EAM

Suspect view from tracks

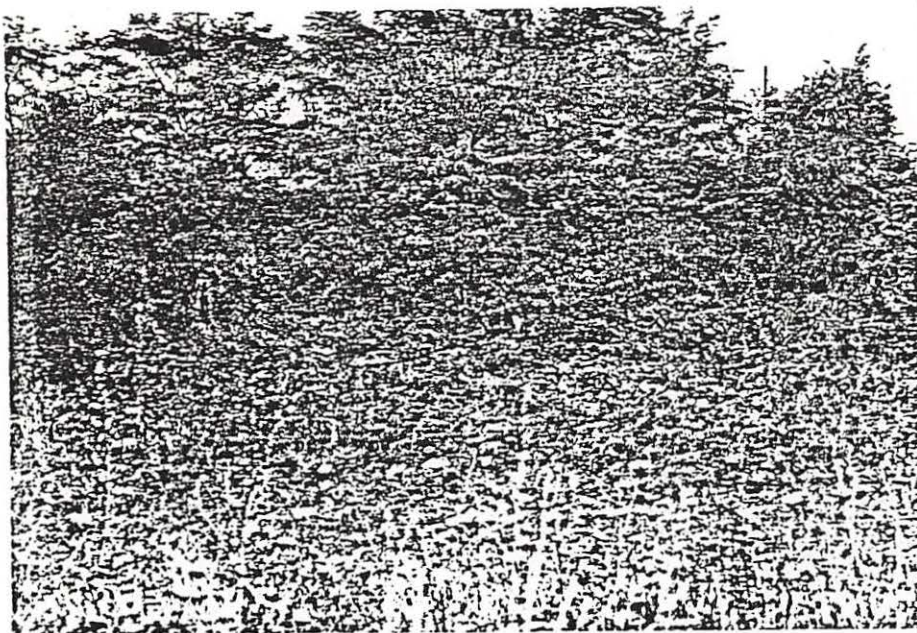
Approx location

9-28-82

330pm Approx

COMMONWEALTH #2

100
 View from about 1/2 mile toward
 and location of clothing
 8-2-07-26-1944
 9-28-52
 Exam

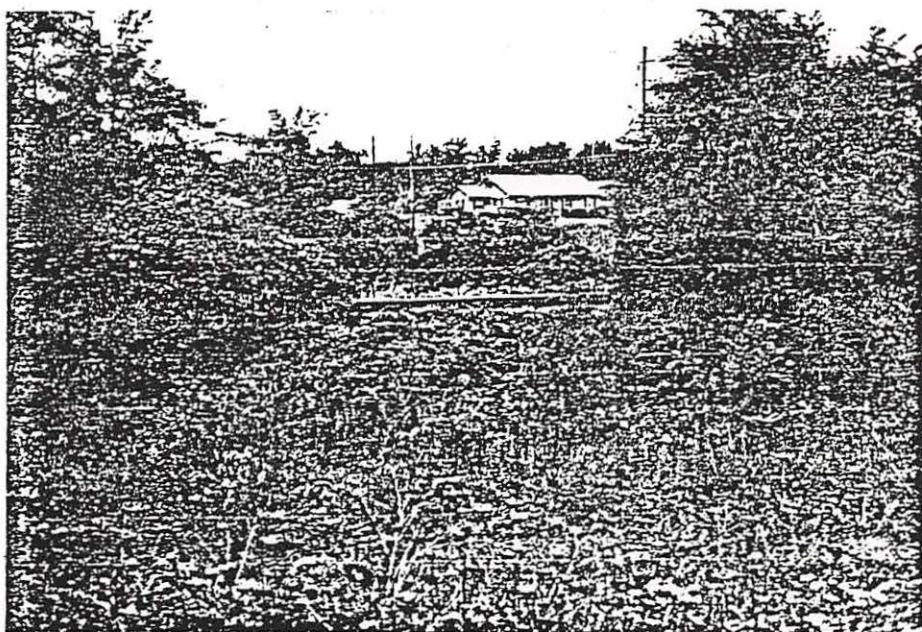


COMMONWEALTH'S #3

100
 View from about 1/2 mile toward
 and location of clothing
 8-2-07-26-1944
 9-28-52
 Exam



COMMONWEALTH'S #4



II 82-07-26-1404
EAM

Victim seen from road
apparent location.

7-28-82
330PM Apparent

COMMONWEALTH'S #5



2

PERC-10-82, N. 1
**DEFENDANT'S
 EXHIBIT**
 2
 11-30-82



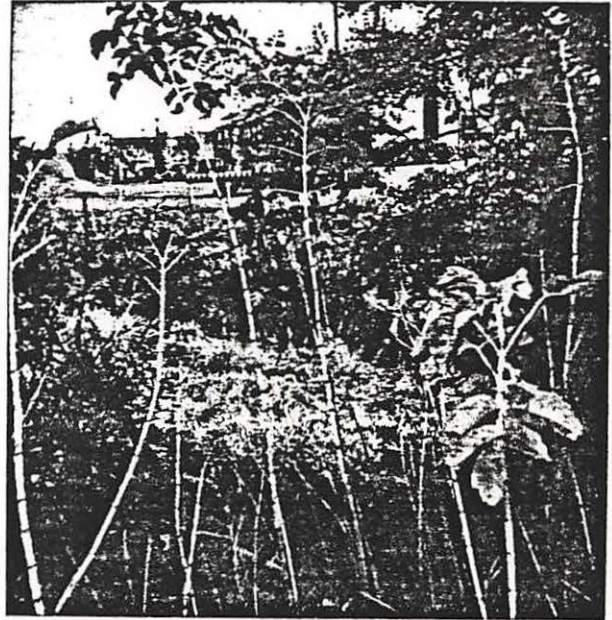
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PERC-10-82, N. 1
**DEFENDANT'S
 EXHIBIT**
 1
 11-30-82



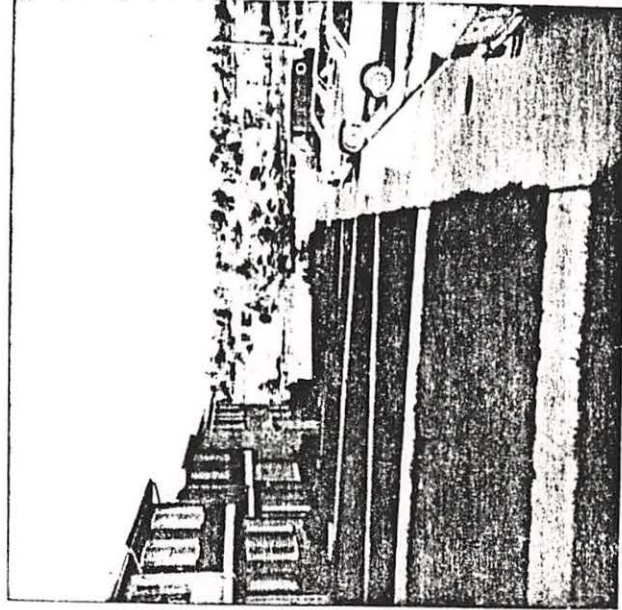
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FBI/DO-Deposits, N.Y.
**DEFENDANT'S
EXHIBIT**
4
11-30-82



3

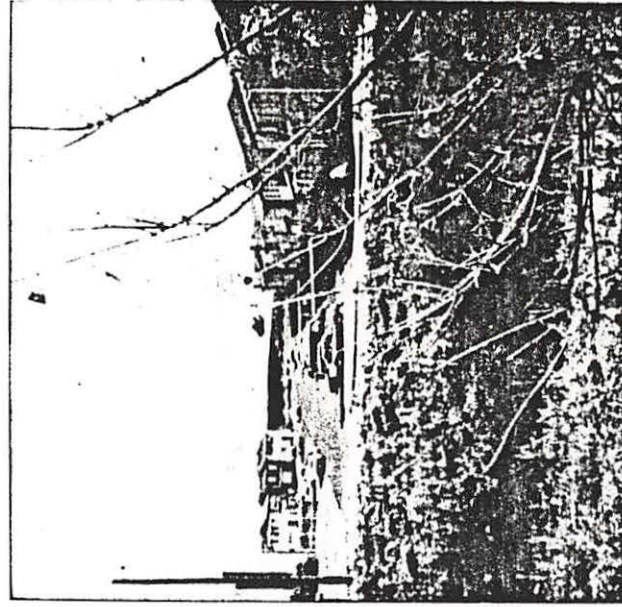
FBI/DO-Deposits, N.Y.
**DEFENDANT'S
EXHIBIT**
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11-30-82



6

DEFENDANT'S
EXHIBIT
6
11-30-82

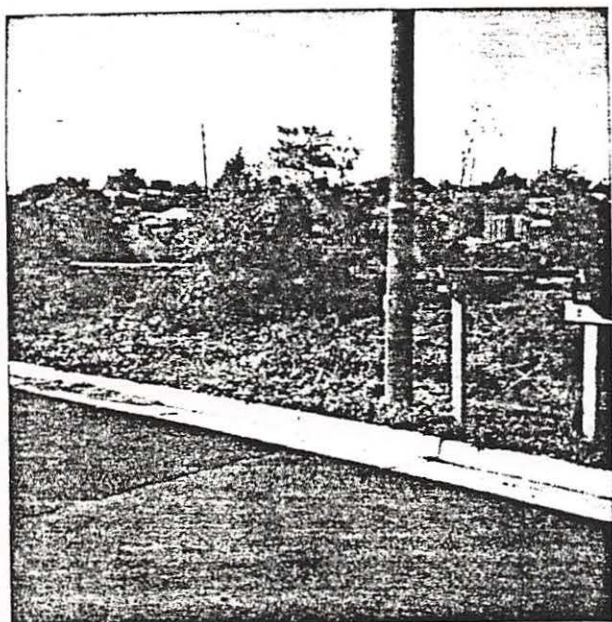
PERKINS-Bayonne, N. J.



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DEFENDANT'S
EXHIBIT
5
11-30-82

PERKINS-Bayonne, N. J.

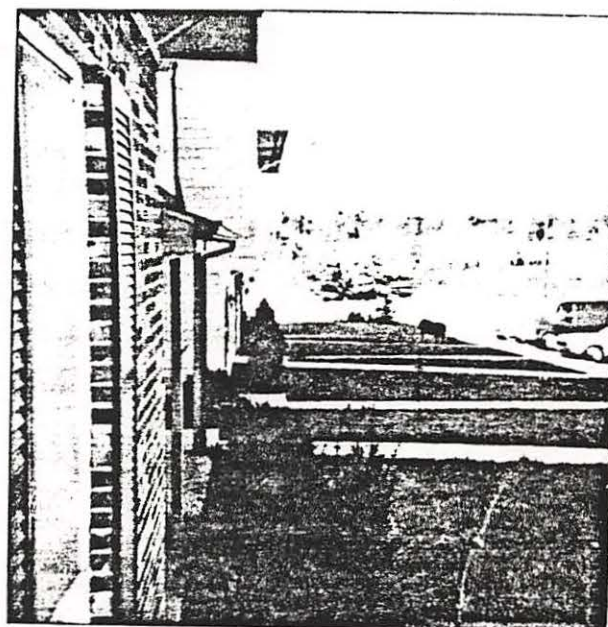


8

PERCADO-Argenteo, M. J.

DEFENDANT'S
EXHIBIT

8
11-30-82



7

PERCADO-Argenteo, M. J.

DEFENDANT'S
EXHIBIT

7
11-30-82

