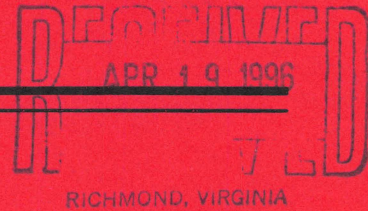


252 Va 433

CLERK  
SUPREME COURT OF VIRGINIA



---

IN THE  
**Supreme Court of Virginia**  
AT RICHMOND

---

RECORD NO. 951973

---

GROVER ROBBS,

*Appellant,*

v.

COMMONWEALTH OF VIRGINIA,

*Appellee.*

---

APPELLANT'S APPENDIX

---

L. Willis Robertson, Jr.  
COSBY AND ROBERTSON  
8090 Mechanicsville Pike  
Suite A  
Mechanicsville, VA 23111  
(804) 746-2905

*Counsel for Appellant*

Robert H. Anderson, III  
OFFICE OF THE ATTORNEY  
GENERAL  
900 East Main Street  
Richmond, VA 23219  
(804) 786-4624

*Counsel for Appellee*



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# WARRANT OF ARREST - FELONY

VA. CODE ANN. §19.2-112

Hanover  
CITY OR COUNTYGeneral District Court ☒ Criminal ☐ Traffic  
☐ Juvenile and Domestic Relations District Court

## TO ANY AUTHORIZED OFFICER:

You are hereby commanded in the name of the Commonwealth of Virginia forthwith to arrest and bring the Accused before this Court to answer the charge that the Accused, within this city or county, on

or about June 19, 1992 did unlawfully and feloniously in violation of Section

18.2-95

Code of Virginia:

steal property, namely assorted merchandise, valued at more than

two hundred dollars and belonging to Rite-Aid

Received and/or Filed  
Clerk's Office

AUG 5 1992

Circuit Court  
Hanover County

317 92

check if applicable: ☐ commercial motor vehicle ☐ hazardous materials

I, the undersigned, have found probable cause to believe that the Accused committed the offense charged, based on the sworn statements of

M.R. Smith Hanover Sheriffs Dept.

Resigned on 9-15-92 9 AM

July 10, 1992 11:02 A.M.

DATE AND TIME ISSUED

☐ CLERK ☐ MAGISTRATE ☐ JUDGE92205526  
HEARING DATE 8-4-92 9 A.M. CASE NO. C92

### ACCUSED:

Grover Robbs

LAST NAME, FIRST NAME, MIDDLE INITIAL

1518 Southampton Ave

ADDRESS/LOCATION

Richmond, Va.

COMPLETE DATA BELOW IF KNOWN

RACE	SEX	MO.	BORN DAY	YR.	FT.	IN.	WEI.	DOB
B	M	1	2	51				

SSN

225-74-0542

Commonwealth of Virginia

## WARRANT OF ARREST FELONY

☒ EXECUTED by arresting the Accused  
named above on this day7-10-92 0743 1115 AM  
DATE AND TIME

M.R. Smith

ARRESTING OFFICER

6808 Hanover Co. S.D. 042

JUDGE NO. AGENCY AND JURISDICTION

for J. J. Cook

SHERIFF

Attorney for the Accused:

W. H. Robinson C9 7-10-92  
8-4-92



FIRST NAME <b>Robert George</b>		MIDDLE NAME <b>TO THUG TUGS</b>		CONTRIBUTOR'S NO. <b>170-1000</b>		VISA NUMBER <b>170-1000</b>		CORE NUMBER <b>170-1000</b>	
ALIAS OR NICKNAME <b>Don</b>		DATE OF BIRTH <b>08-17-74</b>		PLACE OF BIRTH (CITY/TOWN/COUNTY) <b>Richmond, VA</b>		STATE <b>VA</b>		CITY/TOWN/COUNTY <b>Richmond</b>	
SEX <b>M</b>	RACE <b>B</b>	MONTH <b>08</b>	DAY <b>17</b>	YEAR <b>74</b>	SOCIAL SECURITY NO. <b>025-74-0945</b>	HEIGHT <b>5'11"</b>	WEIGHT <b>160</b>	EYES <b>BW</b>	HAIR <b>BLK</b>
HOME ADDRESS <b>1518 South Hampton Ave. Rm. 1</b>					CITY/TOWN/COUNTY <b>Richmond</b>		STATE <b>VA</b>		ZIP CODE <b>23220</b>
CHARGE-1 <b>Grand Larceny</b>					JURISDICTION OF OFFENSE <b>OLD</b>		TIME OF OFFENSE <b>2002</b>		DATE OF OFFENSE <b>6-14-92</b>
DESCRIPTION <b>Grand Larceny</b>					JURISDICTION OF ARREST <b>OLD</b>		TIME OF ARREST <b>11:00am</b>		DATE OF ARREST <b>7-10-92</b>
FELONY CLASS <input type="checkbox"/> 1 <input type="checkbox"/> 2 <input type="checkbox"/> 3 <input type="checkbox"/> 4 <input type="checkbox"/> 5 <input type="checkbox"/> 6 <input type="checkbox"/> UNCLASSIFIED					MISDEMEANOR <input type="checkbox"/> 1 <input type="checkbox"/> 2 <input type="checkbox"/> UNCLASSIFIED		ARRESTING OFFICER (LAST NAME-FIRST-MIDDLE INITIAL) SHIELD OR CODE NO. <b>Smith, Michael R 8808</b>		CONTRIBUTING AGENCY <b>Henrico Co. S.D.</b>
LEAVE BLANK					SIGNATURE OF PERSON FINGERPRINTED <b>[Signature]</b>		SIGNATURE OF OFFICIAL TAKING FINGERPRINT <b>[Signature]</b>		DOCUMENT CONTROL NUMBER <b>E 457408</b>

### ATTENTION CLERK OF COURT

THE REVERSE SIDE OF THIS FORM IS TO BE USED TO REPORT THE FINAL COURT DISPOSITION AND MUST BE COMPLETED IN ITS ENTIRETY.

THE CLERK OF A DISTRICT COURT SHOULD NOT FORWARD THIS FORM TO THE CENTRAL CRIMINAL RECORDS EXCHANGE UNTIL AFTER THE PERIOD ALLOWED FOR AN APPEAL HAS ELAPSED AND NO APPEAL HAS BEEN PERFECTED.

THIS FORM SHALL BE FORWARDED TO THE CLERK OF THE CIRCUIT COURT WHEN A CHARGE IS APPEALED OR CERTIFIED TO THAT COURT FROM THE GENERAL DISTRICT COURT.

AFTER FINAL DISPOSITION INFORMATION HAS BEEN RECORDED ON REVERSE SIDE OF THIS COPY, FORWARD THIS COPY TO THE DEPARTMENT OF STATE POLICE, CENTRAL CRIMINAL RECORDS EXCHANGE, P.O. BOX 27472, RICHMOND, VIRGINIA 23261-7472.

QUESTIONS CONCERNING THE COMPLETION OF THIS FORM SHOULD BE DIRECTED TO THE DEPARTMENT OF STATE POLICE: PHONE NUMBERS 804-674 2070 OR 804-674 2022.

# COMMITMENT TO JAIL

NAME <u>James Robb</u>		JURISDICTION <u>Hanover</u>	
STREET ADDRESS <u>1518 Southampton Ave</u>		<input type="checkbox"/> GEN. DIST. CT. (TRAFFIC) <input type="checkbox"/> GEN. DIST. CT. (CRIMINAL) <input type="checkbox"/> GEN. DIST. CT. (CIVIL) <input type="checkbox"/> J & DR DIST. CT. <input type="checkbox"/> CIRCUIT COURT	
CITY <u>Richmond</u> STATE <u>VA</u>		CHARGED UNDER <input checked="" type="checkbox"/> STATE <input type="checkbox"/> LOCAL LAW	
SEX <input checked="" type="checkbox"/> M <input type="checkbox"/> F	STATUS <input checked="" type="checkbox"/> ADULT <input type="checkbox"/> JUVENILE	TYPE OFFENSE CHARGED <input checked="" type="checkbox"/> FELONY <input type="checkbox"/> MISD.	
CHARGE(S) <u>Grand Larceny</u>			
BOND (IF APPLICABLE) \$ <u>10,000.00</u>		HEARING DATE IF RELEASED ON BAIL <u>8-4-92</u>	
<input type="checkbox"/> NOT ELIGIBLE FOR BAIL <input type="checkbox"/> SEE BAIL CONDITIONS ON BACK		HEARING TIME (IF APPLICABLE) <u>9AM</u>	
HEARING DATE IF NOT RELEASED ON BAIL <u>ASAP</u>		TYPE OF HEARING <input type="checkbox"/> TRIAL <input type="checkbox"/> PRELIMINARY <input type="checkbox"/> ARRAIGNMENT	
TO THE SHERIFF OR JAILOR: You are hereby commanded to take custody of and safely keep the person named above in accordance with the appropriate instructions on the back of this card.			
<input type="checkbox"/> Assigned to home-electronic incarceration by judge.			
DATE <u>July 10, 1992</u>		By <u>Davis Powell</u> <input type="checkbox"/> MAGISTRATE <input type="checkbox"/> CLERK <input type="checkbox"/> JUDGE	
Received _____ AM/PM By _____ DATE AND TIME			

FORM DC-352 6/91 (114:9-015 8/91)



## File No.

City/County

# REQUEST FOR APPOINTMENT OF A LAWYER

VA. CODE ANN. §§ 16.1-266, 267;  
§§ 19.2-159, 160, 163

File No. ....

- ☐ Circuit Court  
☒ General District Court  
☐ Juvenile and Domestic Relations District Court

*Wannew*  
*Grover R. H. H.*  
 CITY OR COUNTY

Adult

TO THE ADULT: You have been charged with an offense punishable by death or confinement in the penitentiary or in jail or are involved in a case in which you may be subjected to termination of your residual parental rights and responsibilities. You have the right to be represented by a lawyer with respect to this charge. You may retain a lawyer at your own expense or, if it is determined by the court that you are unable to afford a lawyer, this court will appoint a lawyer to represent you. If the judge appoints a lawyer for you, you shall be required to pay the statutory fee of that lawyer if you are convicted. You may also waive your right to a lawyer.

## REQUEST FOR APPOINTMENT OF A LAWYER—STATEMENT OF INDIGENCY

I, the undersigned, have been advised this day by this Court of my right to be represented by a lawyer in the trial of the case involving me; I certify that I am without means to employ a lawyer and I hereby request the Court to appoint a lawyer for me. My financial statement accompanies this request.

I have been informed that the lawyer appointed for me will be paid with public funds, but if I am convicted of a criminal offense, I shall have to pay the amount of the court-appointed lawyer's fee as part of the costs of prosecution. This lawyer will represent me in this case in all state courts until relieved or replaced by another lawyer.

*July 10, 1992* *Grover* *Babbs*  
 DATE ADULT

The Court was advised that \_\_\_\_\_, a lawyer, has been retained to represent the accused in this Court. This information was provided by:

- ☐ the above-named person ☐ the lawyer ☐

☐ JUDGE ☐ CLERK

## ORDER OF APPOINTMENT OF COUNSEL

The Request for Appointment of a Lawyer was executed under oath. Having examined the Adult and considered other competent evidence, I find that

- ☐ the Adult is not indigent and not entitled to representation by a court-appointed attorney.
- ☐ the Adult is indigent within the guideline formula set forth in the law and is entitled to representation by court-appointed counsel;
- ☐ the Adult is not indigent and the Adult refuses to either employ counsel or waive his right to representation by a lawyer, but that the following circumstances and the ends of justice require the appointment of counsel:

Therefore, I appoint the lawyer indicated below to represent the Adult at such hearings and all other stages of the proceeding in this court and in any other court to which this case may be appealed or certified until relieved or replaced by another lawyer.

*8-492*  
 NEXT HEARING DATE AND TIME

NAME, ADDRESS  
 OF COURT  
 APPOINTED  
 LAWYER

*William Robertson*

*7-10-92*  
 DATE

*Robert P. Beam*  
 JUDGE



# COMMITMENT TO JAIL

NAME <u>Riggs, Ernie</u>		JURISDICTION <u>Hanover</u>
STREET ADDRESS <u>1518 South Hampton Ave</u>		<input type="checkbox"/> GEN. DIST. CT. (TRAFFIC) <input type="checkbox"/> GEN. DIST. CT. (CRIMINAL) <input type="checkbox"/> GEN. DIST. CT. (CIVIL) <input type="checkbox"/> J & DR DIST. CT. <input checked="" type="checkbox"/> CIRCUIT COURT
CITY <u>Richmond</u>	STATE <u>VA</u>	ZIP <u>23220</u>
SSN <u>225-77-0592</u>	DOB <u>1-2-51</u>	CHARGES <u>Capias</u>
SEX <input checked="" type="checkbox"/> M <input type="checkbox"/> F	STATUS <input checked="" type="checkbox"/> ADULT <input type="checkbox"/> JUVENILE	TYPE OFFENSE CHARGED <input type="checkbox"/> FELONY <input checked="" type="checkbox"/> MISD.
CHARGE(S) <u>Capias</u>		STATE <input checked="" type="checkbox"/> LOCAL LAW
BOND (IF APPLICABLE) <u>\$50.00</u> <input checked="" type="checkbox"/> SECURED <input type="checkbox"/> UNSECURED		(FOR JUDICIAL OFFICER) HEARING DATE AND TIME RELEASED ON BAIL
(FOR JAILOR) HEARING DATE AND TIME IF NOT RELEASED ON BAIL <u>ASAP</u>		PLACE INITIALLY DETAINED (IF OTHER THAN JURISDICTION OF COURT)
TO THE SHERIFF OR JAILOR: You are hereby commanded to take custody of and safely keep the person named above in accordance with the appropriate instructions on the back of this card. <input type="checkbox"/> Assigned to home-electronic incarceration by judge.		
DATE <u>3/15/93</u>		<input type="checkbox"/> MAGISTRATE <input type="checkbox"/> CLERK <input type="checkbox"/> JUDGE
Received _____	AM/PM _____	By <u>Henrico County</u>
DATE AND TIME _____		

FORM DC-352 11/91 (114-9-015 4/92)

9/15/92

347-92

**VIRGINIA**

County of Hanover To-Wit:

In the Circuit Court of the County of HANOVER:

The GRAND JURORS of the Commonwealth of Virginia, in and for the body of the County of HANOVER duly  
summoned to and now attending said Court, on their oaths present, that

GROVER ROBBS

on the 19th day of JUNE in the year one thousand nine hundred and NINETY-TWO  
in the said County, and within the Jurisdiction of the said Circuit Court of the County of Hanover unlawfully and fel-  
oniously

take, steal and carry away merchandise valued at Two Hundred Dollars or more  
belonging to Rite-Aid with the intent to deprive the owner thereof permanently.

against the peace and dignity of the Commonwealth of Virginia. §18.2-95

Upon the evidence of:

7



VIRGINIA:

IN THE CIRCUIT COURT OF THE COUNTY OF HANOVER  
COMMONWEALTH OF VIRGINIA

v.

GROVER ROBB

347-92

MOTION TO SUPPRESS

The defendant, Grover Robb, by counsel, moves the Court to suppress as evidence against him all evidence, oral and physical, including any statements made by the defendant, whether prior to or subsequent to his arrest, and any property seized as a result of the arrest, detention or interrogation of the defendant to be used as evidence against the defendant for the following reasons:

1. That on June 19, 1992, the defendant was detained by Deputy M. R. Smith of the Hanover County Sheriff's Department in reference to a possible larceny or shoplifting charge.

2. That prior to detaining the defendant, Deputy M. R. Smith stopped the vehicle in which he was riding as a passenger, ordered everyone out of the car at gunpoint and with other officers began removing items from the car.

3. That Deputy Smith stopped the car, detained the occupants and conducted a search on the basis of information received from employees of a Rite Aid store in Mechanicsville to the effect that the car in which your defendant was riding had been seen near the store before, that they thought they may have taken something but no one saw them take anything.

HANOVER CIRCUIT COURT  
FILED

8

10-6-92 EOT


4. That as a result of the stop, detention and search of the vehicle your defendant was arrested on a charge of grand larceny.

5. That prior to the stop, detention and search Deputy Smith possessed no articulable facts to support a reasonable suspicion that your defendant or anyone in the vehicle he stopped was engaged in criminal activity.

WHEREFORE, the defendant was stopped, detained and arrested illegally and, by counsel, moves the Court to suppress as evidence against him all evidence, oral and physical, including any statements made by the defendant, whether prior to or subsequent to his arrest, and any property seized as a result of the arrest, detention or interrogation of the defendant as said evidence was obtained by the Commonwealth as a result of an illegal stop, detention and arrest and the resultant illegal search and seizure and admission of said evidence would violate defendant's rights under the 4th Amendment to the Constitution of the United States and Article, Section 10, of the Constitution of Virginia.

GROVER ROBB

By

  
Counsel

L. Willis Robertson, Jr.  
COSBY AND ROBERTSON  
5810 Mechanicsville Pike, Suite A  
Mechanicsville, Virginia 23111



CERTIFICATE

I hereby certify that a true copy of the foregoing Motion was delivered to the Office of the Commonwealth's Attorney for Hanover County, Hanover, Virginia, on this the 6<sup>th</sup> day of October, 1992.

  
\_\_\_\_\_  
L. Willis Robertson, Jr.

Virginia:

In the Circuit Court for the County of Hanover

October 26, 1992

Case No. 347-92

Commonwealth of Virginia

Vs. Upon an Indictment, to-wit: Grand Larceny

Grover Robbs

O R D E R

This day came the Attorney for the Commonwealth, and Grover Robbs, date of birth 1-2-51, §225-74-0542, who stands indicted for a felony, to-wit: Grand Larceny, §18.2-95, offense date of 6-19-92, as charged in the Indictment, was led to the bar in the custody of the Sheriff of this County, and came also Willis Robertson, his attorney, heretofore appointed.

Whereupon, the Court having heard evidence on a Motion to Suppress, previously filed, doth overrule said motion, all as stated to the record.

This case is set for trial on December 9, 1992, at 1:00 P.M., with a jury requested by the defendant.

And the defendant is remanded to jail.

  
Judge



VIRGINIA:

IN THE CIRCUIT COURT OF THE COUNTY OF HANOVER

COMMONWEALTH OF VIRGINIA )

vs. )

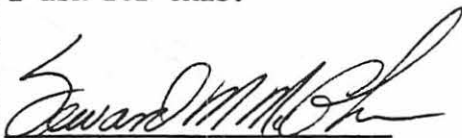
GROVER ROBBS )

MOTION

COMES now the Commonwealth, by her Attorney, Seward M. McGhee, and the defendant, GROVER ROBBS, with counsel, Willis Robertson and Motions this Honorable Court as follows:

1. That the defendant is incarcerated in our jail at this time and has been incarcerated since his preliminary hearing on August 4, 1992;
2. That the defendant came before this Honorable Court on October 26, 1992, on a Motion to Suppress, and at which time the defendant requested a jury trial, set for December 9, 1992;
3. That on December 8, 1992, the Commonwealth requested a continuance, which the defendant still requested a jury trial, which was set for February 17, 1993;
4. That the defendant is still incarcerated in our jail and appears he may well remain;
5. That since the February date is past the five (5) month statutory time for speedy trial, the Commonwealth requests the defendant be released upon a \$25,000 personal recognizance bond to appear in this Honorable Court on February 17, 1993, at 10:00 a.m.

I ask for this:



Seward M. McGhee  
Assistant Commonwealth's Attorney  
Hanover County

CERTIFICATE

I hereby certify that a true and exact copy of the foregoing MOTION was hand delivered to Mr. L. Willis Robertson, Esq., 5810-A Mechanicsville Pike, Mechanicsville, Virginia 23111 this 14<sup>th</sup> day of December, 1992.

  
Seward M. McGhee

Virginia:

In the Circuit Court for the County of Hanover

December 14, 1992

Case No. 347-92

Commonwealth of Virginia

Vs. Upon an Indictment, to-wit: Grand Larceny

Grover Robbs

O R D E R

This day came the Attorney for the Commonwealth, and Grover Robbs, date of birth 1-2-51, §225-74-0542, who stands indicted for a felony, to-wit: Grand Larceny, §18.2-95, offense date of 6-19-92, was led to the bar in the custody of the Sheriff of this County, and came also Willis Robertson, his attorney, heretofore appointed.

For reasons stated to the record, and upon motion of the Commonwealth, it is Ordered that the defendant be recognied for his appearance before this Court on February 17, 1993, at 10:00 A.M., in the penalty of \$25,000.00.

And the defendant is remanded to jail to be released.

  
Judge



Virginia: In the Circuit Court for the County of Hanover, held on Wednesday, the 17th day of February, in the year of our Lord, nineteen hundred and ninety-three:

PRESENT: The Honorable Richard H. C. Taylor, Judge

Case No. 347-92

Commonwealth of Virginia

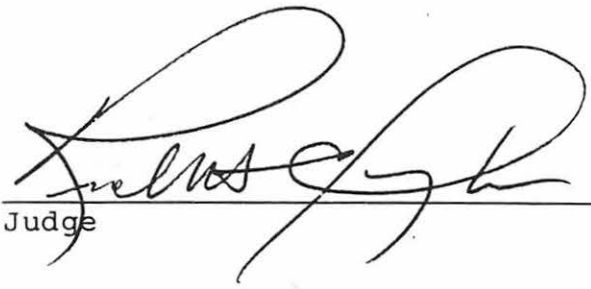
Vs. Upon an Indictment, to-wit: Grand Larceny

Grover Robbs

O R D E R

This day came the Attorney for the Commonwealth, and Grover Robbs, date of birth 1-2-51, §225-74-0542, who stands indicted for a felony, to-wit: Grand Larceny, §18.2-95, offense date of 6-19-92, as charged in the Indictment, appeared NOT, though solemnly called, and came also Willis Robertson, his attorney, heretofore appointed.

The Court doth ORDER that a Capias be issued for Grover Robbs, for his failure to appear on this day as recognized by the Court in the penalty of \$25,000.00.

  
Judge

Virginia: In the Circuit Court for the County of Hanover, held on  
Wednesday, the 17th day of February, in the year of our Lord,  
nineteen hundred and ninety-three:

PRESENT: The Honorable Richard H. C. Taylor, Judge

Case No. 347-92

Commonwealth of Virginia

Vs. Upon an Indictment, to-wit: Grand Larceny

Grover Robbs

O R D E R

This day came the Attorney for the Commonwealth, and Grover Robbs, date of birth 1-2-51, \$225-74-0542, who stands indicted for a felony, to-wit: Grand Larceny, \$18.2-95, offense date of 6-19-92, as charged in the Indictment, appeared NOT, though solemnly called, and came also Willis Robertson, his attorney, heretofore appointed.

The Court doth ORDER that a Capias be issued for Grover Robbs, for his failure to appear on this day as recognized by the Court in the penalty of \$25,000.00.

*Executed by Arresting  
the Accused Named  
Above on this day*

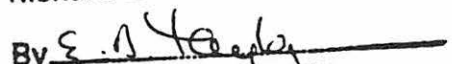
*3/15/95 225542*

*J. O. O'Leary*

*0569 Henrico 043*

  
Judge

A COPY TESTE  
Richard L. Shelton, Clerk

By   
DEPUTY CLERK

V I R G I N I A:

IN THE CIRCUIT COURT OF THE COUNTY OF HANOVER

COMMONWEALTH OF VIRGINIA

vs.

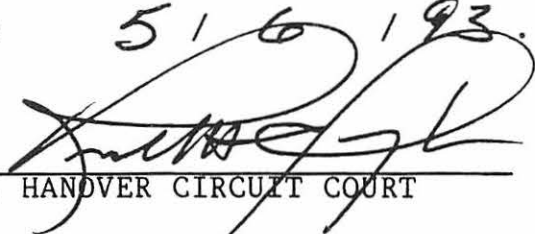
GROVER ROBBS

HENRICO COUNTY JAIL

TRANSPORTATION ORDER

It being represented to the Court that GROVER ROBBS, Defendant in the above-styled case, is now in the custody of the HENRICO COUNTY JAIL and that HIS presence is necessary in this Court for the trial of the above-styled case on MAY 11, 1993 (TUESDAY), it is ORDERED that the above-named Defendant be released to the custody of the Hanover County Sheriff, or one of the deputies, so that he may appear before this Court at 10:00 a.m. on the 11th day of May, 1993 (Tuesday) and at the conclusion of said trial, to be returned to the custody of the HENRICO COUNTY JAIL.

ENTER:

516193.  
  
JUDGE, HANOVER CIRCUIT COURT

I ask for this:



Eddie R. Vaughn, Jr.,  
Commonwealth's Attorney  
Hanover County



Virginia:

In the Circuit Court for the County of Hanover

May 11, 1993

Case No. 347-92

Commonwealth of Virginia

Vs. Upon an Indictment, to-wit: Grand Larceny

Grover Robbs


O R D E R

This day came the Attorney for the Commonwealth, and Grover Robbs, date of birth 1-2-51, \$225-74-0542, who stands indicted for a felony, to-wit: Grand Larceny, \$18.2-95, offense date of 6-19-92, as charged in the Indictment, was led to the bar in the custody of the Sheriff of this County, and came also Willis Robertson, his attorney, heretofore appointed.

This case is set for trial on June 7, 1993, at 10:00 A.M., with a jury requested by the defendant.

Investigator Schneider was recognized for his appearance before this Court on June 7, 1993, at 10:00 A.M., in the penalty of \$100.00.

And the defendant is remanded to jail.

  
Judge

RECEIVED and/or FILED

MAY 23 1993

CLERK'S OFFICE  
HANOVER CIRCUIT COURT

VIRGINIA:

IN THE CIRCUIT COURT OF HANOVER COUNTY

COMMONWEALTH

v.

GROVER ROBB

347-92

MOTION TO DISMISS

Comes now the defendant, Grover Robb, by counsel, and moves this Honorable Court to dismiss the charges against him for the following reasons:

1. Your defendant, Grover Robb, was arrested on June 19, 1992, and charged with grand larceny.

2. On August 4, 1992, a preliminary hearing on the grand larceny charge was held in the Hanover County General District Court.

3. On September 15, 1992, the defendant was indicted on a grand larceny charge and a motions date was set for October 26, 1992.

4. On October 26, 1992, the Court overruled the defendant's Motion to Suppress and scheduled trial for December 9, 1992.

5. On December 8, 1992, the Commonwealth asked for and was granted a continuance until February 17, 1993.

6. On December 8, 1992, the Commonwealth requested that the Court release your defendant on a recognizance bond and your defendant was so recognized for his appearance on February 17, 1993.

7. On February 17, 1993, your defendant failed to appear and a capias was issued for his arrest.

8. On May 11, 1993, your defendant appeared before this Court in custody on a capias return, and the Court scheduled his trial for June 7, 1993.

9. Your defendant has been incarcerated in excess of 151 days from the date of his preliminary hearing to the date of his trial not including the days he was released from incarceration on his own recognizance.

WHEREFORE, your defendant, Grover Robb, by counsel, pursuant to §19.2-243 of the Code of Virginia and the United States Constitution moves this Honorable Court to dismiss all charges against your defendant as no trial on those charges has been commenced within five months of the probable cause hearing on August 4, 1992, and your defendant has been denied his constitutional right to a speed trial.

GROVER ROBB

BY 

Counsel

L. Willis Robertson, Jr.  
COSBY AND ROBERTSON  
5810 Mechanicsville Pike, Suite A  
Mechanicsville, Virginia 23111

CERTIFICATE

I hereby certify that a true copy of the foregoing Motion to Dismiss was delivered to Seward McGhee, Deputy Commonwealth's Attorney for Hanover County, Hanover, Virginia 23069, on this the 28<sup>th</sup> day of May, 1993.

  
L. Willis Robertson, Jr.

Virginia:

In the Circuit Court for the County of Hanover

June 16, 1993

Case No. 347-92

Commonwealth of Virginia

Vs. Upon an Indictment, to-wit: Grand Larceny

Grover Robbs

O R D E R

This day came the Attorney for the Commonwealth, and Grover Robbs, date of birth 1-2-51, \$225-74-0542, who stands convicted of a felony, to-wit: Grand Larceny, \$18.2-95, offense date of 6-19-92, as charged in the Indictment, was led to the bar in the custody of the Sheriff of this County, and came also Willis Robertson, his attorney, heretofore appointed.

Whereupon, the accused waived his right to a pre-sentence report, and asked that he be sentenced this day, and it being demanded if anything was known to be said why judgment should not now be pronounced according to law, and nothing being offered or alleged in delay, it is the judgment of this Court that the defendant is sentenced to eight (8) years in the penitentiary, the verdict handed down by the jury in his trial on June 7, 1993; and it is Ordered that he pay the court costs.

The Court certifies that at all times during the trial of this case, the defendant was personally present and the attorney was likewise personally present and capably represented the defendant.



June 16, 1993

Case No. 347-92, Cont.

Page 2.

The defendant is remanded to jail to await transfer to the penitentiary.



Judge

The defendant has 8 years to serve.

COURT OF APPEALS OF VIRGINIA

Present: Judges Baker, Fitzpatrick and Senior Judge Cole  
Argued at Richmond, Virginia

GROVER ROBBS

v. Record No. 1277-93-2  
COMMONWEALTH OF VIRGINIA

MEMORANDUM OPINION\* BY  
JUDGE JOHANNA L. FITZPATRICK  
DECEMBER 6, 1994

FROM THE CIRCUIT COURT OF HANOVER COUNTY  
Richard H. C. Taylor, Judge

L. Willis Robertson, Jr. (Cosby and Robertson, on brief),  
for appellant.

Robert H. Anderson, III, Assistant Attorney General  
(James S. Gilmore, III, Attorney General, on brief),  
for appellee.

In this criminal appeal, Grover Robbs (appellant) argues that his prosecution for grand larceny was not timely brought pursuant to Code § 19.2-243, and that the Commonwealth improperly struck two African-Americans from the jury venire. We hold that, because appellant was not held continuously in custody, and his actions caused the trial delay, he was properly tried within nine months of the determination of probable cause.

Additionally, sufficient evidence supports the trial court's finding that the Commonwealth provided race-neutral reasons for its jury strikes. We affirm the conviction.

BACKGROUND

On July 10, 1992, appellant was arrested for grand larceny and held continuously in jail until December 14, 1992. His

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\*Pursuant to Code § 17-116.010 this opinion is not designated for publication.

preliminary hearing was held on August 4, 1992, and he was indicted by the grand jury September 15, 1992. On October 6, 1992, appellant filed a motion to suppress that was denied October 26, 1992. The case was set for a jury trial December 9, 1992. The trial was continued to February 17, 1993, chargeable to the Commonwealth. On December 14, 1992, the Commonwealth requested that appellant be released on a personal recognizance bond to remove any statutory speedy trial problems. The court released appellant on December 14, 1992, and recognized him to appear before the court on February 17, 1993.

On February 17, 1993, appellant failed to appear for trial, and a capias was issued. Appellant was arrested on the capias March 15, 1993, and remained in custody on the capias until his June 7, 1993, trial date. On the morning of trial, appellant moved to dismiss the indictment for violation of his right to a speedy trial. At that hearing, appellant asserted that he had not been tried within the five-month period required by Code § 19.2-243. The motion was denied.

Counsel completed jury selection. After opening statements, appellant moved for a mistrial pursuant to Batson v. Kentucky, 476 U.S. 79 (1989), asserting that the Commonwealth improperly struck two of three African-American jurors. The Commonwealth's explanations for these strikes were (1) that one juror was inattentive, and (2) that another was a nurse who might possess knowledge about the value of medical supplies, the items taken. The trial judge found that the Commonwealth gave sufficient, race-neutral reasons and overruled appellant's motion.

## RIGHT TO SPEEDY TRIAL

Appellant argues that the trial court erred in finding that the Commonwealth prosecuted appellant within the nine-month limitation of Code § 19.2-243. Initially, appellant argued that the five-month limitation of Code § 19.2-243 should apply.

Code § 19.2-243 provides that if a defendant is not held continuously in custody before trial, then the Commonwealth must prosecute the defendant within nine months of the determination of probable cause to protect the defendant's right to a speedy trial. The nine-month limitation, not the five-month limitation, applies in this case, because the court released appellant on bond and recognized him to appear in February. He was not held "continuously in custody," the trigger for a five-month calculation. In determining whether the time period is met, a court may exclude any time attributable to the defendant's "escaping from jail or failing to appear according to his recognizance." Code § 19.2-243(4).

This Court held that "those [circumstances] caused, requested or concurred in by the accused, may warrant a delay in the trial to ensure a fair trial to both the accused and the Commonwealth." Baity v. Commonwealth, 16 Va. App. 497, 502, 431 S.E.2d 891, 894 (1993) (en banc). In addition, the Virginia Supreme Court held that a court may exclude from the nine-month period any time attributable to the consideration of a defendant's motion to suppress evidence. Stephens v.



Commonwealth, 225 Va. 224, 233-34, 301 S.E.2d 22, 27-28 (1983).

"When the defendant filed his motion to suppress he was not asking for a speedy trial. It was an act that necessitated a slow-down of the judicial process . . . . [H]e should not be permitted to take advantage of the delay thus occasioned." Id.

As in Stephens, appellant filed a motion to suppress the evidence on October 6, 1992, and the court denied the motion on October 26, 1992. Thus, twenty days passed while the court considered the merits of the suppression motion, a delay caused by appellant. In addition, on December 14, 1992, the court released appellant on a recognizance bond and recognized him to appear in court on February 17, 1993. Appellant failed to appear, and was arrested on a capias on March 17, 1993, twenty-six days later. The court properly excluded these days pursuant to Code § 19.2-243(4).

Appellant's preliminary hearing was on August 4, 1992, and his trial was on June 7, 1993. Excluding the twenty days necessary for the motion to suppress and the twenty-six days for the failure to appear at trial, appellant was properly tried within the nine-month period.

#### PEREMPTORY STRIKES OF JURORS

Appellant also argues that the trial court erred in finding the reasons offered by the Commonwealth for striking two of three African-American jurors to be race-neutral. The Virginia Supreme Court held that once the Commonwealth "produce[s] explanations for striking the juror which are race-neutral[,] . . . the

reasons may be challenged by the defendant as pretextual." Buck v. Commonwealth, 247 Va. 449, 451, 443 S.E.2d 414, 415 (1994) (citation omitted). "[T]he trial court must decide whether the defendant has carried his burden of proving purposeful discrimination by the [Commonwealth] in selecting the jury panel. On appeal, the trial court's findings will be reversed only if they are clearly erroneous." Id. (citation omitted).

As in Buck, the Commonwealth offered race-neutral reasons for striking the two jurors, and the trial court accepted these reasons. We cannot say that the court's findings were clearly erroneous.

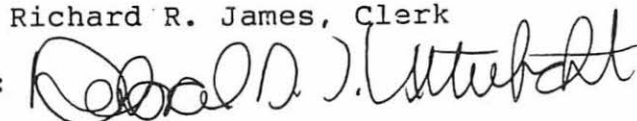
Affirmed.

A Copy,

Teste:

Richard R. James, Clerk

By:



Deputy Clerk

**VIRGINIA:**

*In the Court of Appeals of Virginia on* Tuesday *the* 6th  
*day of* December, 1994.

Grover Robbs,

Appellant,

against

Record No. 1277-93-2  
Circuit Court No. 347-92

Commonwealth of Virginia,

Appellee.

Upon an appeal from a  
judgment rendered by the  
Circuit Court of Hanover  
County.

Before Judges Baker, Fitzpatrick and Senior Judge Cole

For reasons stated in writing and filed with the record, the Court is of opinion that there is no error in the judgment appealed from. Accordingly, the judgment is affirmed. The appellant shall pay to the Commonwealth of Virginia thirty dollars damages.

It is ordered that the trial court allow counsel for the appellant a fee of \$400 for services rendered the appellant on this appeal, in addition to counsel's costs and necessary direct out-of-pocket expenses.

The Commonwealth shall recover of the appellant the amount paid court-appointed counsel to represent him in this proceeding, counsel's costs and necessary direct out-of-pocket expenses, and the fees and costs to be assessed by the clerk of this Court and the clerk of the trial court.

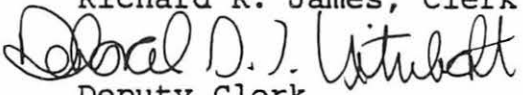
This order shall be certified to the trial court.

Costs due the Commonwealth  
by appellant in Court of  
Appeals of Virginia:

Attorney's fee       \$400.00       plus costs and expenses

A Copy,

Teste:

By:       Richard R. James, Clerk  
 Deputy Clerk

### Assignment of Error

The trial court erred by overruling Robbs' Motion to Dismiss the indictment against him on June 7, 1993.



1217-93

951973

PATRICIA S. WRIGHT  
COURT REPORTER  
2410 BLAKERIDGE AVENUE  
MECHANICSVILLE, VIRGINIA 23111  
(804) 746-0707

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CLERK'S OFFICE  
HANOVER CIRCUIT COURT

1 VIRGINIA:

2 IN THE CIRCUIT COURT OF HANOVER COUNTY

3 CLERK  
4 COURT OF APPEALS OF VIRGINIA

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6 DEC 27 1995

7 COMMONWEALTH OF VIRGINIA

8 -v-

9 GROVER ROBBS

10 \* \* \* \* \*

11  
12 TABLE OF CONTENTS

13 Defendant's Motion to Suppress dated  
14 October 26, 1992

15 Commonwealth's Motion to Continue dated  
16 December 8, 1992

17 Defendant's Motion to Continue dated  
18 February 17, 1993

19 Setting of Trial Date dated May 11, 1993

20 Defendant's Motion to Dismiss Indictment,  
21 Arraignment, Evidence at Trial, and Finding  
22 dated June 7, 1993

23 Defendant's Motion to Withdraw Motion for  
24 Presentence Report and Defendant's Motion  
25 for Immediate Sentencing dated June 16, 1993

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PATRICIA S. WRIGHT

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(804) 746-0707

1.

1 VIRGINIA:

2 IN THE CIRCUIT COURT OF HANOVER COUNTY

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6 \* \* \* \* \*

7 COMMONWEALTH OF VIRGINIA

8 -v-

9 GROVER ROBBS

10 \* \* \* \* \*

CASE NO. 347-92

11  
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14 TRANSCRIPT of DEFENDANT'S MOTION TO

15 SUPPRESS, in the above, when heard on October 26, 1992,

16 before the Honorable Richard H. C. Taylor, Judge.

17  
18  
19  
20 APPEARANCES:

21 Eddie R. Vaughn, Jr., Attorney at Law, Commonwealth's  
22 Attorney for Hanover County;

23 L. Willis Robertson, Jr., Attorney at Law, 5810-A,  
24 Mechanicsville Turnpike, Mechanicsville, Virginia,  
25 23111, Counsel for the Defendant;

Grover Robbs, the Defendant herein, in person.

PATRICIA S. WRIGHT

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I N D E X

DIRECT

Deputy Sheriff Michael R. Smith

4

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18.

1 taken something yesterday is sufficient  
2 reason to stop the car.

3 MR. ROBERTSON: We would  
4 except to the Court's ruling.

5 THE COURT: Yes, sir. All  
6 right, sir. Do you want a jury, Mr.  
7 Robertson?

8 MR. ROBERTSON: He does, Your  
9 Honor.

10 THE COURT: All right, sir.  
11 Now, the other jury case for Mr. Williams  
12 is set on December the 9th. So --

13 MR. VAUGHN: Your Honor, I  
14 would, I might make a proffer to the  
15 Court. I know it's unusual. These should  
16 not be lengthy procedures. We might be  
17 able to just bring in two panels and do  
18 one in the morning and one in the  
19 afternoon. The witnesses are going to be  
20 all the same. I hate to do that but I  
21 also hate, from the standpoint of  
22 available dates.

23 THE COURT: Yes, sir. I  
24 don't have anymore available dates in this  
25 year.

1 MR. VAUGHN: Well, that would  
2 be, that would be agreeable to the  
3 Commonwealth if that would be agreeable to  
4 Mr. Robertson. Perhaps set this at 1:00,  
5 just bring in two separate panels and try  
6 them both the same day, because --

7 THE COURT: We'll certainly  
8 be here because I told you we've got ten  
9 sentences on that day, too.

10 MR. ROBERTSON: Yes, sir.  
11 I'm going to be here for one of those.  
12 So --

13 THE COURT: All right. All  
14 right.

15 MR. ROBERTSON: -- it's fine  
16 with me, 1:00.

17 THE COURT: I don't mind  
18 doing that if we're going to -- that will  
19 be three juries that week, four juries  
20 that week. I guess we're going to --

21 MR. VAUGHN: Both Mr.  
22 Robertson and I have an advantage the  
23 Court doesn't have. We're not going to  
24 have all of them.

25 **35** THE COURT: Yes, sir.



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20.

1                   Somebody is going to have them from your  
2                   office, Mr. Vaughn.

3                   MR. VAUGHN: Yes, sir. I  
4                   understand that.

5                   THE COURT: Yes, sir.

6                   MR. VAUGHN: But, I want  
7                   to --

8                   THE COURT: Oh, I see.

9                   MR. VAUGHN: -- I want to  
10                  tell you in advance it won't be me.

11                  THE COURT: All right. We  
12                  will try to do that. If there's any  
13                  change we've got to know when we get there  
14                  so that Mr. Shelton will know how to  
15                  summons them. Mr. Shelton, bring in a  
16                  second panel at 1:00.

17                  MR. SHELTON: Yes, sir.

18                  THE COURT: I don't like to  
19                  do that, but --

20                  MR. VAUGHN: Your Honor, I  
21                  don't like to do it either but I, I hate  
22                  to take all those matters over --

23                  THE COURT: Yes.

24                  MR. VAUGHN: -- to the end of  
25                  the year.

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THE COURT: However, Mr.  
Robertson, if we don't use Mr. Williams'  
jury at 10:00, we might put you in at  
10:00 with your jury trial.

MR. ROBERTSON: Well, I'll,  
I'll be here.

THE COURT: Yes, sir. That's  
what I'm saying. And, then stop the 1:00.

MR. VAUGHN: Yes, sir.

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HEARING CONCLUDED

PATRICIA S. WRIGHT

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23.

1 VIRGINIA:

2 IN THE CIRCUIT COURT OF HANOVER COUNTY

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7 COMMONWEALTH OF VIRGINIA

8 -V-

9 GROVER ROBBS

10 \* \* \* \* \*

CASE NO. 347-92

11  
12  
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14 TRANSCRIPT of COMMONWEALTH'S MOTION TO  
15 CONTINUE, in the above, when heard on December 8, 1992,  
16 before the Honorable Richard H. C. Taylor, Judge.

17  
18  
19  
20 APPEARANCES:

21 Seward McGhee, Attorney at Law, Assistant Commonwealth's  
22 Attorney for Hanover County;

23 L. Willis Robertson, Jr., Attorney at Law, 5810-A,  
24 Mechanicsville Turnpike, Mechanicsville, Virginia,  
25 23111, Counsel for the Defendant;

Grover Robbs, the Defendant herein, not present.

1 NOTE: At the calling of the  
2 case, the Court Reporter being duly sworn,  
3 the matters are begun as follows:  
4

5 MR. MCGHEE: Your Honor, the  
6 Commonwealth would ask for a continuance.  
7 There's a couple reasons, one of which we  
8 have a problem with the amount of jurors  
9 that we have. We have juries that we've  
10 picked so far. We've run out of names.  
11 Another reason is because the Commonwealth  
12 is anticipating a witness in this case  
13 coming forward, and I need to talk to that  
14 person prior to, to the trial, and I'm not  
15 going to have time before tomorrow to do  
16 so. And, this is --

17 THE COURT: Is Mr. Robbs --

18 MR. MCGHEE: -- this is the  
19 first call of the case.

20 THE COURT: -- is he, Robbs,  
21 is he in jail, or is he on bond?

22 MR. ROBERTSON: I think he's  
23 in jail.

24 MR. MCGHEE: We think he's in  
25 jail in some other, some other

1 jurisdiction. Isn't he in Richmond?

2 MR. ROBERTSON: I don't know.  
3 I haven't seen him.

4 THE COURT: Is this -- this  
5 is the first time around, though, so we  
6 wouldn't have a problem as to the speedy  
7 trial situation, would we?

8 MR. MCGHEE: No, we have no  
9 problem with the speedy trial.

10 THE COURT: I don't know if I  
11 can get you a jury in, in this term or  
12 not.

13 MR. MCGHEE: Let's see. He  
14 was indicted in September.

15 THE COURT: Count it up. I  
16 wouldn't do like that because we did that  
17 all day yesterday with the drunk drivers.  
18 All right.

19 MR. ROBERTSON: Your Honor, I  
20 don't think we'll have a problem with  
21 doing it sometime in January, early  
22 February, Your Honor.

23 THE COURT: All right, so  
24 long as we get to it before the end of the  
25 January term, which is March, I guess. I



1 have February the 17th.

2 MR. MCGHEE: That's fine for  
3 the Commonwealth, Your Honor.

4 MR. ROBERTSON: That's an  
5 available trial date.

6 THE COURT: You like that,  
7 Mr. Robertson? That gives you one each  
8 week.

9 MR. ROBERTSON: That's better  
10 than day after day, Your Honor.

11 MR. MCGHEE: Isn't that the  
12 truth.

13 THE COURT: All right, 2-17,  
14 with a jury. Y'all stop the witnesses now  
15 for tomorrow --

16 MR. MCGHEE: I will, Your  
17 Honor.

18 THE COURT: -- and get them  
19 resummoned for that. I think it's R-o-b-  
20 b-s, isn't it?

21 MR. ROBERTSON: Yes, sir.

22 THE COURT: Now, let me ask  
23 you this. Therefore, we only need one  
24 panel in the morning?

25

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MR. ROBERTSON: That's

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correct.

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HEARING CONCLUDED

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1 VIRGINIA:

2 IN THE CIRCUIT COURT OF HANOVER COUNTY

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5 \* \* \* \* \*  
6 COMMONWEALTH OF VIRGINIA \*  
7 -V- \*  
8 GROVER ROBBS \*  
9 \* \* \* \* \*

CASE NO. 347-92

10  
11  
12  
13 TRANSCRIPT of DEFENDANT'S MOTION TO  
14 CONTINUE, in the above, when heard on February 17, 1993,  
15 before the Honorable Richard H. C. Taylor, Judge.  
16

17  
18  
19 APPEARANCES:

20 Seward McGhee, Attorney at Law, Assistant Commonwealth's  
21 Attorney for Hanover County;

22 L. Willis Robertson, Jr., Attorney at Law, 5810-A,  
23 Mechanicsville Turnpike, Mechanicsville, Virginia,  
23 23111, Counsel for the Defendant;

24 Grover Robbs, the Defendant herein, not present.

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30.

1 NOTE: At the calling of the  
2 case, the Court Reporter being duly sworn,  
3 the matters are begun as follows:  
4

5 MR. MCGHEE: We have a  
6 problem with the defendant in this case.

7 THE COURT: All right. Let's  
8 have it.

9 MR. MCGHEE: Grover Robbs.

10 THE COURT: All right.  
11 Grover Robbs. Mr. Robertson, where is Mr.  
12 Robbs?

13 MR. ROBERTSON: Your Honor,  
14 the last time I saw Mr. Robbs was when he  
15 was here and the Court put him on a  
16 recognizance bond. I haven't heard or  
17 seen him since.

18 THE COURT: That was a wise  
19 move that the Court made, wasn't it?

20 MR. MCGHEE: Your Honor, I  
21 think the Court --

22 MR. ROBERTSON: I think the  
23 Commonwealth should answer that. Your  
24 Honor, I think the Court had to do that or  
25 lose the case.

1 THE COURT: I see. Oh,  
2 that's right, the time had run out, hadn't  
3 it? All right. Let me see what I've got  
4 to do here now. He was present on  
5 December the 14th and we set it for today  
6 at 10:00 with a jury. I think I've got to  
7 issue a capias.

8 MR. MCGHEE: That's what the  
9 Commonwealth would ask for, Your Honor.

10 MR. ROBERTSON: Well, I'd ask  
11 for a show cause, Your Honor. But --

12 THE COURT: Yeah, I know  
13 you'd ask for a show cause, but I -- all I  
14 do in a show cause would be to recognize  
15 him again, and I've done that.

16 MR. ROBERTSON: Yes, sir.

17 THE COURT: And, he was --  
18 Grover Robbs. The only address we have is  
19 the Southampton Avenue in Richmond.  
20 That's where we'll issue the capias for.  
21 All right, we'll let you know when we find  
22 him, Mr. Robertson.

23 MR. ROBERTSON: Yes, sir. Is  
24 it okay if I let my witnesses go, Your  
25 Honor?



PATRICIA S. WRIGHT

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MECHANICSVILLE, VIRGINIA 23111

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32.

1 THE COURT: Yes, sir. And,  
2 we'll --

3 MR. ROBERTSON: They serve  
4 the capias then we can set a date.

5 THE COURT: And, I don't --  
6 most of these people have been here  
7 before, haven't they, Mr. Vaughn? You and  
8 Mr. Vaughn go back there and tell them  
9 that they, they're excused and they may go  
10 and they're subject to be called back  
11 before the end of the term.

12 All right. Call your  
13 witnesses and let them go.

14 MR. ROBERTSON: Mr. Crowder.

15 MR. VAUGHN: Mr. Crowder, Mr.  
16 Schools, Ms. Clark and Mr. Schneider and  
17 Mike Smith.

18 THE COURT: All right, now,  
19 the witnesses, you'll be notified when we,  
20 when we find the defendant and don't  
21 hesitate when you call if you've got a  
22 problem on the day we set it on to tell us  
23 that that's not convenient and we'll try  
24 to find a date convenient to everybody.  
25 But, we've got to find the defendant

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first.

MR. ROBERTSON: Thank y'all

so much.

THE COURT: Y'all are

excused.

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HEARING CONCLUDED

1 VIRGINIA:

2 IN THE CIRCUIT COURT OF HANOVER COUNTY

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5 \* \* \* \* \*  
6 \*  
7 COMMONWEALTH OF VIRGINIA \*  
8 \*  
9 -v- \*  
10 GROVER ROBBS \*  
11 \*  
12 \* \* \* \* \*

CASE NO. 347-92

13 TRANSCRIPT of SETTING OF TRIAL DATE, in  
14 the above, when heard on May 11, 1993, before the Honorable  
15 Richard H. C. Taylor, Judge.  
16

17  
18  
19 APPEARANCES:

20 Kirby H. Porter, Attorney at Law, Assistant Commonwealth's  
21 Attorney for Hanover County;

22 L. Willis Robertson, Jr., Attorney at Law, 5810-A,  
23 Mechanicsville Turnpike, Mechanicsville, Virginia,  
23 23111, Counsel for the Defendant;

24 Grover Robbs, the Defendant herein, in person.  
25

1                   NOTE: At the calling of the  
2 case, the Court Reporter being duly sworn,  
3 the matters are begun as follows:

4  
5                   THE COURT: All right. Let  
6 the record show that Mr. Robbs is present.  
7 His lawyer, Mr. Robertson, is present.  
8 The Commonwealth's Attorney is present.

9                   MR. PORTER: Your Honor, this  
10 is a case that we need to set for trial.  
11 The individual was picked up on a capias,  
12 I understand. Mr. McGhee is going to try  
13 the case and he has asked me to set it  
14 with a jury for a Monday or a Wednesday.

15                  THE COURT: Mr. Robertson.

16                  MR. ROBERTSON: That's fine,  
17 Your Honor.

18                  THE COURT: All right, sir.

19                  MR. PORTER: He also  
20 indicates here, Judge, I can't read his  
21 writing very well, should he wish a jury.  
22 Oh, I'm sorry. Should he wish a jury.  
23 I'm sorry. So, it's not a request by the  
24 Commonwealth for a jury.

25                  THE COURT: It was originally

PATRICIA S. WRIGHT

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MECHANICSVILLE, VIRGINIA 23111

(804) 746-0707

37.

1 set with a jury, according to the file.  
2 Was that at the request of the defendant  
3 or the Commonwealth, do you recall?

4 MR. ROBERTSON: I think it  
5 was a defense request, Your Honor.

6 THE COURT: Do you request a  
7 jury at this point?

8 MR. ROBERTSON: Yes, sir.

9 MR. PORTER: Then it goes on  
10 to say should he wish a jury, jury trial,  
11 advise Judge Taylor of my witnesses in  
12 another case.

13 MR. ROBERTSON: Mohammed Abu-  
14 Yaman.

15 MR. PORTER: Abu-Yaman.

16 THE COURT: Abu-Yaman. I  
17 just reset that with, that's set on June  
18 the 8th.

19 MR. PORTER: Oh, oh, I see  
20 what he's saying, Judge. Advise him of  
21 the witnesses in the Abu-Yaman case so  
22 that we don't have the same jurors called  
23 in. But, I think that will be after the  
24 new term. That's is what he was saying.

25 50 THE COURT: Yes, but Abu-

1 Yaman is in the new term.

2 MR. ROBERTSON: Right.

3 THE COURT: So, it means I've  
4 got to go to the July term.

5 MR. PORTER: Well, no, I  
6 don't think we need to do that. We just  
7 need to make sure when we call in jurors  
8 we don't get the same people we called in  
9 on Abu-Yaman when we try his case.

10 THE COURT: The federal court  
11 has looked with disfavor on me rigging  
12 juries, Mr. Kirby. I just pull them out  
13 the box as they come.

14 MR. PORTER: Yes, sir.

15 THE COURT: And, the last  
16 time -- that's the reason Mr. Abu-Yaman  
17 got messed up or somebody got messed up  
18 here recently because we ended up --

19 MR. PORTER: Yes, sir.

20 THE COURT: -- with nine on  
21 the panel that had tried the codefendant.

22 MR. PORTER: Well, perhaps,  
23 Judge, what we can do then instead of  
24 bring in on this case say 25 jurors, bring  
25 in 35. That way we should have enough for



1 any pre-emptory challenges, any strikes,  
2 and any individuals who might overlap.

3 THE COURT: I'm looking --  
4 well, do we have a problem -- since we  
5 just picked up Mr. Robbs on a capias, do  
6 we have any problem with the speedy trial  
7 issue?

8 MR. PORTER: Judge, the  
9 Courts have said that it's his -- the time  
10 that he was locked up or the time that we  
11 didn't try him on before is still time  
12 that counts against speedy trial.

13 THE COURT: I see.

14 MR. PORTER: Apparently, he  
15 wasn't incarcerated, so we don't have the  
16 nine months I think we've got now. Or now  
17 we're up to the nine months. Because he  
18 was not incarcerated. So, whatever  
19 portion of that he used, since he escaped  
20 it's totaled at that point, but now we  
21 pick up again adding onto the time that  
22 was, has elapsed before he took off. So,  
23 we don't want to go beyond nine months,  
24 unless he acquiesces in the extra time.  
25 If he wants to say I agree to go into next

1 term, he's waived speedy trial.

2 THE COURT: Yeah, he's not  
3 going to agree to anything, I reckon, are  
4 you, Mr. Robertson?

5 MR. ROBERTSON: He won't  
6 agree, Your Honor.

7 MR. PORTER: A Monday or a  
8 Wednesday, please, Judge.

9 THE COURT: Yes, sir. Let me  
10 ask you this, Mr. Shelton. I've got Abu-  
11 Yaman on Tuesday. If I put this one on  
12 Monday and I don't have a jury trial on  
13 that day, we'd have a pretty good chance  
14 of not having the same panel two days back  
15 to back, will we? Don't they pull one and  
16 pull the other immediately? See what I'm  
17 saying?

18 MR. SHELTON: Yes, sir. That  
19 normally would protect it, if we, the  
20 Monday and Tuesday would be --

21 THE COURT: June 7, and then  
22 Mr. Robbs would be tried on Monday and Mr.  
23 Abu-Yaman on Tuesday.

24 MR. ROBERTSON: That's fine,  
25 Your Honor.

1 THE COURT: June 7, June 7.

2 Is that agreeable to the witnesses?

3 MR. PORTER: Yes, sir.

4 THE COURT: June 7.

5 MR. PORTER: Jury, defense  
6 motion?

7 THE COURT: Yes, sir.

8 MR. PORTER: May I have  
9 Officer Schneider recognized for June 7th?

10 THE COURT: All right. When  
11 we try, when we get to June the 8th, Mr.  
12 Shelton, let's have a list of the panel  
13 that we used on June the 7th, and we want  
14 to make sure Mr. Abu-Yaman doesn't have  
15 anybody on there. I don't want to call  
16 the Sheriff and tell him because that's  
17 rigging juries. All right.

18 MR. SHELTON: I think we'll  
19 be all right.

20 THE COURT: Go ahead.

21 MR. SHELTON: Do you  
22 acknowledge yourself indebted to the  
23 Commonwealth in the sum of \$100.00 for  
24 your appearance before this Court on June  
25 7th, 1993, at 10:00 a.m.?

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INVESTIGATOR SCHNEIDER: I

do.

THE COURT: All right. Mr.  
Robbs will be incarcerated until then.

---

HEARING CONCLUDED

PATRICIA S. WRIGHT

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MECHANICSVILLE, VIRGINIA 23111

(804) 746-0707

44.

1 VIRGINIA:

2 IN THE CIRCUIT COURT OF HANOVER COUNTY

3  
4  
5  
6 \* \* \* \* \*

7 COMMONWEALTH OF VIRGINIA

8 -v-

9 GROVER ROBBS

10 \* \* \* \* \*

CASE NO. 347-92

11  
12  
13  
14 TRANSCRIPT of DEFENDANT'S MOTION TO  
15 DISMISS INDICTMENT and ARRAIGNMENT, in the above, when  
16 heard on June 7, 1993, before the Honorable Richard H. C.  
17 Taylor, Judge, and EVIDENCE AT TRIAL and FINDING, when  
18 heard on that same date, before the Honorable Richard H. C.  
19 Taylor, Judge, and a Jury.  
20  
21  
22  
23  
24  
25

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45.

APPEARANCES:

Seward McGhee, Attorney at Law, Assistant Commonwealth's  
Attorney for Hanover County;

L. Willis Robertson, Jr., Attorney at Law, 5810-A,  
Mechanicsville Turnpike, Mechanicsville, Virginia,  
23111, Counsel for the Defendant;

Grover Robbs, the Defendant herein, in person.

I N D E X

	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
R. Glenn Schneider	101	108	113	
Sharon Hicks	115	117	122 125	123
Michael R. Smith	127	132		
April Dale Clark	135	137		
John Crowder	138	141		
Linwood Schools	144	145	148 149	148
Sharon Hicks	151			
Commonwealth's Exhibit Number 1 (Photos)				107
Commonwealth's Exhibit Number 2 (Rights Waiver Form and Statement)				132
Defense Exhibit Number 1 (Letter)				122



1 NOTE: At the calling of the  
2 case at 11:41 a.m., the Court Reporter  
3 being duly sworn, the matters are begun,  
4 out of the presence of the jury, as  
5 follows:

6  
7 JURY OUT

8  
9 THE COURT: All right. Mr.  
10 Robertson, we finally got to you. We just  
11 had a few, a couple of short motions this  
12 morning before we got to you, Mr.  
13 Robertson.

14 MR. ROBERTSON: Yes, sir.

15 THE COURT: All right. Let  
16 the record show that Mr. Robbs is present.  
17 His lawyer, Mr. Robertson, is present.  
18 The Commonwealth's Attorney is present.  
19 There is one indictment. Is the defendant  
20 ready to be arraigned, Mr. Robertson?

21 MR. ROBERTSON: Your Honor, I  
22 have a preliminary motion --

23 THE COURT: All right.

24 MR. ROBERTSON: -- to  
25 dismiss.

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1 JURY OUT

2  
3 THE COURT: Yes, sir. State  
4 your motion. I didn't see it in the file.

5 MR. ROBERTSON: All right.  
6 Your Honor, I had filed a motion to  
7 dismiss on the basis of a speedy trial.  
8 Mr. Robbs was arrested -- the record will  
9 reflect he was arrested on June 19th. On  
10 August 4th there was a preliminary hearing  
11 on the grand larceny charge that was held  
12 in the Hanover County General District  
13 Court. On September 15, '92, he was  
14 indicted on the grand larceny charge and a  
15 motions date was set for October 26th. On  
16 October 26th the Court overruled the  
17 defendant's motion to suppress and  
18 scheduled trial for December 9th, 1992.  
19 On December 8th, the Commonwealth asked  
20 for and was granted a continuance until  
21 February 17th, 1993. The defendant stood  
22 mute, made no concurrence in that request.  
23 On December 8th, in addition to asking for  
24 a continuance, the Commonwealth requested  
25 by motion that the Court release your

JURY OUT

defendant on a recognizance bond. And, your defendant was recognized for his appearance on February 17th, '93. On February 17th the defendant failed to appear and a capias was issued. On May 11th, '93, Mr. Robbs appeared before the Court in custody on the capias return and the Court scheduled this trial for today, June the 7th. It's our contention that your defendant has been incarcerated in excess of 151 days from the date of his preliminary hearing to the date of his trial, not including the days he was released from incarceration on his own recognizance and failed to appear. Therefore, we believe that under 19.2-243, the Court should dismiss this indictment. Under 19.2-243 it says that the provisions of this section shall not apply to such period of time as the failure to try the accused was caused. Under number four, failing to appear according to his recognizance. And, we concede that that's

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50.

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the case but we also argue that he has been incarcerated for more than 151 days even if you don't count that time. And, according to my calculations, he's been incarcerated from, well from -- the date of his preliminary hearing was August 4th and the statute gives you five months from that date. He was incarcerated to 12-8-92. That's 126 days. He was back in this Court incarcerated on 5-11, 5-11-93 to 5-31-93 is an additional 21 days, and then 6-1-93 to 6-7 is an additional seven days. As I add that up I get 154 days, which is in excess of the 151 days which the case law indicates is allowed under 19.2-243. And, for those reasons I would ask the Court to dismiss. I would also say that what the Commonwealth attempted to do in this case on December 8th, by asking that he be released on his own recognizance, was to avoid the effect of this section and what I'm contending is even though they attempted that they still were not

JURY OUT

able to do it because the time has run since he came back. And, the 151 days has been exceeded.

THE COURT: Mr. McGhee.

MR. MCGHEE: Thanks. Your Honor, it's a couple dates that are very important to the case and the Commonwealth would show that we are well within the speedy trial issue. 8-4-92 was the day of the preliminary hearing, probable cause hearing in District Court. From that date, since he was incarcerated, you do not look at five months. But, on 12-14-92 the Commonwealth moved a motion to release the defendant on a personal recognizance bond of \$25,000.00. From 8-4 to 12-14 is just a little over four months. Then we set the trial date for February 17th. February 17th the defendant did not appear. A capias was issued. We did not revoke a bond. We issued a capias for his arrest. He was picked up on a capias on March the 17th, and he's been held since

JURY OUT

March 17th on a capias, not on the charges that we did on preliminary hearing on August the 4th of '92. So, from August the 4th of '92, since he was not incarcerated for those charges, he had nine months. Nine months from August the 4th of '92, if you take the straight time, goes to May the 4th of '92. He was, he failed to appear, and 19.2-243, as Mr. Robertson just very clearly set out, when he fails to appear and we try to find him that time does not count against the Commonwealth. And, anyway, after that period of time he was incarcerated, reincarcerated on a capias, not on the grand larceny charge. Therefore, the grand larceny, as far as the Commonwealth is concerned, he's still bonded on the grand larceny charge. He's just in jail on the capias for failing to appear.

THE COURT: Mr. Robertson, isn't his recognizance still in effect?

MR. ROBERTSON: Your Honor,

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JURY OUT

well, I'm not sure what the status of his  
recognizance is. I know he appeared  
before this Court on May 11th in custody  
and the Court scheduled his trial for  
today on this, on this charge. As far as  
I know there's been no, anything said  
about a trial on the capias. The statute,  
though, as I, I mean Mr. McGhee is saying  
that you get to -- if the Commonwealth  
decides that it's running out of time and  
let's you go, you get to change the rule  
in mid-stream. And, I don't believe that  
that's, that's the case, that they can  
switch it to nine months when they, when  
they start running out of time, which is  
what occurred here. And, I'm not sure,  
maybe he's right. If he was released on  
12-14 then there are more days that he's  
been incarcerated than I calculated. So,  
I believe the statute has, has been  
violated and I don't think the  
Commonwealth can, can recognize you to  
avoid the purpose of the statute and



JURY OUT

change the rule in mid-stream. I mean, he had already been in jail over 126 days when the, when the Commonwealth made the motion. And, he didn't concur in the motion.

THE COURT: Yes, but if he had, if he had appeared on the date that the trial was set we wouldn't have had a speedy trial question, would we?

MR. ROBERTSON: Well, I agree with that, Your Honor. But, the statute makes provisions for that and says you don't count that time when he doesn't -- when it's -- you don't count the time that's, or the time is assessed against him for failing to appear. And, what I'm saying is even if you assess him that time, the, the 151 days has already run.

THE COURT: If what you say is true, Mr. Robertson, all I've got to do is to, to put Mr. Robbs on the, on the stand to answer the capias today and ask him the question, and that's what Mr.

1 JURY OUT

2  
3 McGhee is saying, why did you fail to  
4 appear on February the 27th, or whenever  
5 it was.

6 MR. ROBERTSON: Yes, sir,  
7 Your Honor, but he's not scheduled for  
8 trial on that matter at all, as I  
9 understand it, today.

10 THE COURT: I haven't set it  
11 for trial.

12 MR. ROBERTSON: Yes, sir.

13 THE COURT: So, the time  
14 hasn't started running again, has it?

15 MR. ROBERTSON: Not on that  
16 charge.

17 MR. MCGHEE: I think the time  
18 on the capias has started running. I  
19 think the time on the capias started  
20 running when we picked up him on the  
21 capias.

22 THE COURT: Yes, sir. The  
23 capias was issued on February the 17th,  
24 '93.

25 MR. ROBERTSON: Well, Your

1 JURY OUT

2  
3 Honor, even if you count that time from  
4 February, from February 17th to May 11th,  
5 I, I, I use that time in not -- I didn't  
6 use that in calculating the 154 days.

7 THE COURT: Yeah, I realize  
8 that.

9 MR. ROBERTSON: You've still  
10 got the 154 days problem.

11 MR. MCGHEE: That's not true  
12 because you look from August the 4th  
13 until --

14 THE COURT: It hadn't started  
15 running again, has it?

16 MR. MCGHEE: -- December the  
17 14th, because the grand larceny charge  
18 time hadn't started running yet.

19 MR. ROBERTSON: I thought the  
20 grand larceny charge had to start running  
21 on 8-4.

22 MR. MCGHEE: No, it ceased on  
23 12-14.

24 MR. ROBERTSON: It never  
25 starts running again?

1 JURY OUT

2  
3 THE COURT: It hadn't yet.  
4 He's being held on the capias, not on the  
5 charge. That's the argument that Mr. --

6 MR. ROBERTSON: I understand  
7 the argument he's making.

8 THE COURT: -- McGhee is  
9 making. That's what I'm asking you about.

10 MR. ROBERTSON: Well, Your  
11 Honor, I don't know what the, what the  
12 record reflects as far as whether he was  
13 bonded on the, on the capias or, or what,  
14 what he's being held on.

15 THE COURT: The capias on its  
16 face says no bond to be set. That's what  
17 they all say. That was pursuant to my  
18 order and my order, I don't think, says  
19 anything about bond, but it never does,  
20 the understanding being that the capias is  
21 issued, no bond is set.

22 MR. ROBERTSON: Well,  
23 certainly he was in Court on, on May the  
24 11th, and the Court scheduled his, his  
25 trial for today, and that's the, that's

1 JURY OUT

2  
3 the time I'm asking to be added to the, to  
4 the 126 days he already did. And, as I  
5 understood it he was in Court on that day  
6 to be scheduled for trial today on this  
7 charge. And, there wasn't any scheduling  
8 of the capias.

9 THE COURT: That's what I  
10 said. I haven't scheduled anything on the  
11 capias. Certainly, the record doesn't  
12 show it.

13 MR. ROBERTSON: Well, I think  
14 the Court also indicated on that day that  
15 he was being held, he should be held until  
16 today for his trial.

17 MR. MCGHEE: I think we've  
18 still got to August the 17th before the  
19 time runs out on the capias.

20 THE COURT: Isn't it  
21 interesting? Well, the order of the Court  
22 says that he was led to the bar in the  
23 custody of the Sheriff, which was, in  
24 fact, true. And, he was in custody of  
25 the Sheriff because of the capias, which

1 JURY OUT

2  
3 was executed by arresting the accused on  
4 March 15th, 1993, at 2255 hours.

5 MR. MCGHEE: And, it also, it  
6 also must be noted, Your Honor, he was in  
7 custody in another jurisdiction, too, for  
8 that period of time.

9 THE COURT: We don't get into  
10 that question --

11 MR. MCGHEE: I don't --

12 THE COURT: -- not at this  
13 point.

14 MR. MCGHEE: -- think we  
15 really need to be into that because --

16 THE COURT: No, sir.

17 MR. MCGHEE: -- I think we  
18 still look on the capias, yes, sir.

19 THE COURT: I think under the  
20 facts of this case, Mr. Robertson, the  
21 time has not run. Your motion is  
22 overruled and denied. Your exception is  
23 noted for the record.

24 MR. ROBERTSON: Thank you,  
25 Your Honor.

JURY OUT

THE COURT: Now, there is one indictment. Is the defendant ready to be arraigned?

MR. ROBERTSON: Yes, sir.

THE COURT: Arraign the defendant.

THE CLERK: The Grand Jurors of the Commonwealth of Virginia in and for the body of the County of Hanover duly summonsed to and now attending said Court, on their oaths, present that Grover Robbs on the 19th day of June, in the year One Thousand Nine Hundred and Ninety-two, in the said County, within the jurisdiction of the said Circuit Court of the County of Hanover, unlawfully and feloniously, take, steal and carry away merchandise valued at two hundred dollars or more, belonging to Rite Aid, with intent to deprive the owner thereof permanently, against the peace and dignity of the Commonwealth of Virginia.

Say you're guilty or not guilty?



1 JURY OUT

2  
3 THE DEFENDANT: Not guilty.

4 THE COURT: All right. The  
5 plea is not guilty. I have to ask you  
6 certain questions for the record.

7 Stand up, Mr. Robbs, so I can  
8 ask you the questions.

9 State for the record your  
10 full name and your age.

11 THE DEFENDANT: Grover Robbs,  
12 42.

13 THE COURT: Do you fully  
14 understand this charge against you?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: Have you  
17 discussed the charge and all of its  
18 elements with Mr. Robertson?

19 THE DEFENDANT: Yes, I have.

20 THE COURT: Did you discuss  
21 with Mr. Robertson possible defenses you  
22 have to the charge?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Did you discuss  
25 with Mr. -- did you give Mr. Robertson the

JURY OUT

names of witnesses so he could prepare  
your case.

THE DEFENDANT: I have to.

THE COURT: Are you entirely  
satisfied with the services of Mr.  
Robertson?

THE DEFENDANT: Yes, sir.

THE COURT: Are you entering  
the plea of not guilty freely and  
voluntarily?

THE DEFENDANT: Yes, sir.

THE COURT: Are you ready for  
trial today?

THE DEFENDANT: Yes, sir.

THE COURT: And, do you want  
to be tried by a jury or by the Court?

THE DEFENDANT: By the jury.

THE COURT: And, you've  
understood all the questions I've asked  
you?

THE DEFENDANT: Yes, sir.

THE COURT: All right. You  
may be seated. Are there any other

JURY OUT

motions now before we start the trial?

MR. ROBERTSON: I'd move to  
exclude the witnesses --

THE COURT: All right, sir.

MR. ROBERTSON: -- unless you  
want to do it --

THE COURT: Let's have the  
witnesses excluded. Do you have  
witnesses, Mr. Robertson?

MR. ROBERTSON: No, Your  
Honor.

THE COURT: All right. All  
right. Bring in the jury panel. The  
Clerk will pull the jury by lot. When he  
reads the name, he'll read the number.  
The number corresponds to the number on  
the master list. Do you have a master  
list, Mr. Robertson?

MR. ROBERTSON: Yes, sir,  
Your Honor.

THE COURT: All right, Mr.  
Shelton. Pull a jury.