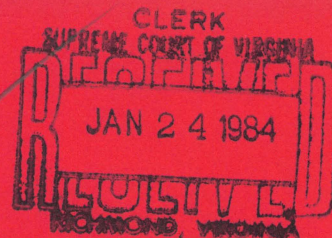


227Va 460



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

RECORD NO. 830788

NELSON ALEXANDER GODFREY

Appellant,

v.

COMMONWEALTH OF VIRGINIA

Appellee.

JOINT APPENDIX

James William Osborne  
The Campbell House  
103 East Washington Street  
P. O. Box 756  
Lexington, Virginia 24450

Counsel for Appellant

Robert H. Anderson, III  
Assistant Attorney General  
Criminal Law Enforcement  
Division  
101 N. Eighth Street  
Richmond, Virginia 23219

Counsel for Appellee



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# WARRANT OF ARREST - FELONY

VA. CODE ANN. § 19.2-71-72

CLLifton, Forge  
CITY OR COUNTY

☐ Criminal  
☒ General District Court ☐ 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 the Accused, and to bring the Accused before the Court to answer the charge that the Accused, within this city or county, on or about

July 26, 1981 around 7:10 a.m.

did unlawfully and feloniously

operate a motor vehicle upon the public highway after being declared  
a habitual offender.

46-1-387.8

Code of Virginia

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

Officer E.E. Motheny

Complainant

August 3, 1981 2:25 p.m.  
DATE AND TIME ISSUED

15-20-01-PM 12-7-81 2:30 PM  
HEARING DATE 1-25-82 2:15 PM FILE NO. T9181  
8/24/81 @ 1:30 p.m.  
Set: 9-28-81 12:20 PM 2-21-81  
cont. 11-9-81 2:15 PM 1-25-82 2:15 PM  
Nelson, Alexander Godfrey 2-8-82  
ACCUSED  
115 Bath Street  
ADDRESS / LOCATION  
CLLifton, Forge, VA 24422  
Complete data below if known  
RACE SEX HT WT IN EYES HAIR BORN  
B M 170 5 10 Brn. BLk 8 4 38  
SSN 229-46-6309

WARRANT OF ARREST  
FELONY  
Copy sent to 12-7-81  
31 at 2:30  
11-30-81  
EXECUTED by arresting the Accused named above  
on this day:  
Aug. 21, 1981 2:00 PM  
DATE AND TIME  
Officer E.E. Motheny ARRESTING OFFICER  
Signature #1474  
Badge No. 1474 and jurisdiction  
for Clifton Forge City Police  
Mooney → app. 2-8-82  
ATTORNEY FOR THE ACCUSED:  
(Parks (CIA) 12-8-81 withdrawn 7/8/82  
Stephenson  
CIA  
8-24-81 withdrawn  
(CRACK-EL) CIA withdrawn  
12-7



# WAIVER OF PRELIMINARY HEARING

Understanding my right to a preliminary hearing before the Court named in this warrant to determine whether there is probable cause to believe that I committed a felony AND, having the consequences of my waiver explained to me by the Judge of this Court, I nevertheless WAIVE MY RIGHT TO A PRELIMINARY HEARING on this warrant.

Certified to the Circuit Court of this jurisdiction

ACCUSED

ATTORNEY FOR ACCUSED

JUDGE

## DISPOSITION OF CASE

The Accused named within was brought before me or appeared this day, and upon hearing the evidence I order:

- ☒ The case certified to the Grand Jury of this jurisdiction, at its next term date, having found probable cause to believe that the Accused committed the felony charged.
- ☐ That the Accused be discharged.
- ☐ a nolle prosequi on Commonwealth's motion
- ☐ On motion to change bond increased ☐ decreased bond to \$..... (special conditions on Conditions of Release and Bond).
- ☐ the charge reduced to.....

On which the Accused was arraigned and pleaded

- ☐ GUILTY
- ☐ NOT GUILTY ☐ nolo contendere and was found
- ☐ not guilty
- ☐ guilty as charged above
- ☐ guilty of.....

On this reduced charge, I impose the following sentence on the Accused:

\$..... fine with \$..... suspended.

..... ☐ DAYS ☐ MONTHS in jail with

..... ☐ DAYS ☐ MONTHS Suspended.

☐ License suspended ..... days ☐ months

Restitution of ..... payable to ..... by ..... as condition of suspended sentence.

☐ BOND FORFEITED in the sum of \$.....

☐ BOND applied to fine and costs

OTHER: \$.....

ATTORNEY(S) PRESENT ☐ COMMONWEALTH ☐ DEFENSE

DATE

JUDGE

APPEAL

DATE NOTED

BOND SET

DATE WITHDRAWN

☐ CLERK

☐ JUDGE

FINE  
COSTS

Misdemeanor Conviction

- 112 TRIAL FEE
- 113 BAIL FEE
- 305 FILING FEE
- 132 CICF
- 120 CT. APPT. ATTY. (state)
- 113 WITNESS FEE

Preliminary Hearing Assessments

- 119 COMM. ATTY. (state)
- 203 COMM. ATTY. (local)
- 120 CT. APPT. ATTY. (state)
- 113 WITNESS FEE

Other (specify):

*Continue to Court  
50 at 2 P.M.  
11-9-81  
Clem*

TOTAL

RECEIPT NO.

DATE PAID



# CONDITIONS OF RELEASE AND RECOGNIZANCE

VA CODE ANN § 19.2-123, 19.2-258

The Accused promises to appear before the CLIFTON FORGE

CITY OR COUNTY

- ☒ General District Court ( ☐ Criminal Division ☒ Traffic Division )  
☐ Juvenile and Domestic Relations District Court ☐ Circuit Court

Main and Jefferson Streets

(STREET ADDRESS OF COURT)

8/24/81 1:30 PM

DATE AND TIME

to answer the following charge(s) against the accused.

OPERATE A MOTOR VEHICLE UPON THE PUBLIC HIGHWAY AFTER BEING DECLARED A HABITUAL OFFENDER ☐ continued on back

The Accused further promises to appear to answer for the offenses for which he may be charged at all times and places and before any court or judge to which this case may be rescheduled, continued, transferred, certified or appealed. The Accused promises not to depart the Commonwealth of Virginia without leave of such court or judge, to keep the peace and be of good behavior until final disposition of this case.

OTHER CONDITIONS ON REVERSE SIDE

I, the Accused, hereby promise to fulfill faithfully the conditions given above

Nelson A Godfrey  
(Accused)

WARNING: Failure to fulfill the terms conditions above or any violation thereof may result in your arrest and forfeiture of the bond on the lower portion of this page (if applicable). Failure to appear may result in your being tried and convicted in your absence. Failure to appear is a separate offense. If bonded to appear in circuit court on a misdemeanor charge, failure to appear constitutes waiver of trial by jury.

- ☐ The accused is released into the custody of the person/organization named below, on the condition that said custodian make all reasonable effort to ensure that the accused fulfill the conditions given above, and that any violation by or disappearance of the accused be promptly reported to the court.

Name of Custodian

Address

Signature of Custodian

**BOND** The Accused, and Surety(ies) (if any), each hereby acknowledges himself, his heirs and assigns indebted to the Commonwealth of Virginia for: ☐ City or Locality named above in the sum of \$ 500.00

SECURED by: ☐ CASH DEPOSIT ☐ SURETY BOND ☐ REAL PROPERTY located at: ☒ UNSECURED

(and if secured by real property, the undersigned, having demonstrated to the officer taking this bond the nature of their interest in the property, also make oath that the equity of the undersigned in the property equals or exceeds the amount of this bond). The undersigned each waives all benefit of homestead exemptions as to this debt and further covenants jointly and severally that none of them shall permit or cause title to or possession of the property pledged to secure this bond to be transferred in any manner to any degree or encumbered to the extent of this obligation. The above terms of the conditions of Release and Recognizance are hereby incorporated by reference.

If the Accused shall faithfully fulfill the conditions of release and recognizance given above, this debt is to be void; otherwise this debt is to remain in full force and effect until declared void by a Court of competent jurisdiction.

Nelson A Godfrey  
(SEAL) SURETY (SEAL) SURETY (SEAL) ACCUSED

12-1-81, 2:30 PM  
 HEARING DATE 8/24/81 FILE NO. 981-181  
1:30 PM  
**CONDITIONS of RELEASE  
 RECOGNIZANCE, and BOND**  
NELSON ALEXANDER GODFREY  
 ACCUSED  
115 BATH STREET  
CLIFTON FORGE VIRGINIA  
 RETURNABLE TO: 2:15 PM  
☐ General District Court (CRIMINAL)  
☐ General District Court (TRAFFIC)  
☐ Juvenile & Domestic Relations District Court  
☐ Circuit Court  

|               |                               |
|---------------|-------------------------------|
| DATE RECEIVED | DATE DISBURSED/DISCHARGED     |
| BOND AMOUNT   | RECEIPT NO. (IF CASH DEPOSIT) |
| \$            |                               |

**ADMITTANCE TO BAIL:** The promise to fulfill the conditions of release, and the bond, if any, were subscribed and sworn to before me this day. The Accused is ordered released pursuant to the terms within.  
Cecil G. May  
☐ CLERK ☒ MAGISTRATE ☐ JUDGE  
8/24/81 2:45 PM  
 DATE AND TIME  
**SURETY:** Name(s), Address(es), and if corporate surety, name(s) of authorized agent(s).  
W. PARK  
CLTA



|   |                  |                  |                             |                      |                    |                            |                          |   |  |  |  |                          |  |  |                           |  |  |   |  |  |                    |  |  |   |  |  |                                   |  |  |  |  |  |  |  |  |                                   |  |  |  |  |  |  |  |  |
|---|------------------|------------------|-----------------------------|----------------------|--------------------|----------------------------|--------------------------|---|--|--|--|--------------------------|--|--|---------------------------|--|--|---|--|--|--------------------|--|--|---|--|--|-----------------------------------|--|--|--|--|--|--|--|--|-----------------------------------|--|--|--|--|--|--|--|--|
| LAST NAME<br><b>CODREY</b>  |                  |                  | FIRST<br><b>NELSON</b>      |                      |                    | MIDDLE<br><b>ALEXANDER</b> |                          |   | CONTRIBUTOR'S NO.<br><b>8465</b>   |  |  | FBI NUMBER<br><b>104</b> |  |  | CCRE NUMBER<br><b>104</b> |  |  |   |  |  |                    |  |  |   |  |  |                                   |  |  |  |  |  |  |  |  |                                   |  |  |  |  |  |  |  |  |
| ALIAS AND/OR NICK NAME  |                  |                  |                             |                      |                    |                            |                          |   | B MONTH<br><b>8</b>  |  |  | DAY<br><b>4</b>          |  |  | YEAR<br><b>38</b>         |  |  | PLACE OF BIRTH (CITY-TOWN-COUNTY)<br><b>EAGLE ROCK</b>  |  |  | STATE<br><b>VA</b> |  |  | SOCIAL SECURITY NO.<br><b>229-46-6309</b> |  |  |                                   |  |  |  |  |  |  |  |  |                                   |  |  |  |  |  |  |  |  |
| SEX<br><b>M</b>   | RACE<br><b>B</b> | AGE<br><b>43</b> | HEIGHT<br><b>5 FT 10 IN</b> | WEIGHT<br><b>176</b> | EYES<br><b>BRN</b> | HAIR<br><b>BLK</b>         | COMPLEXION<br><b>BLK</b> | SCARS, MARKS, TATTOOS, PECULIAR CHARACTERISTICS |  |  |  |                          |  |  |                           |  |  |   |  |  |                    |  |  |   |  |  |                                   |  |  |  |  |  |  |  |  |                                   |  |  |  |  |  |  |  |  |
| HOME ADDRESS<br><b>115 BATH ST.</b>   |                  |                  |                             |                      |                    |                            |                          |   | CITY-TOWN-COUNTY<br><b>CLIFTON FORGE, VA</b>                             |  |  |                          |  |  |                           |  |  | STATE<br><b>VA</b>  |  |  |                    |  |  |   |  |  |                                   |  |  |  |  |  |  |  |  |                                   |  |  |  |  |  |  |  |  |
| CHARGE #1<br><b>A HABITUAL TRAFFIC OFFENDER</b>   |                  |                  |                             |                      |                    |                            |                          |   | JURISDICTION OF ARREST<br><b>104</b>                                     |  |  |                          |  |  |                           |  |  | TIME OF ARREST<br><b>2:20 PM</b>  |  |  |                    |  |  |   |  |  | DATE OF ARREST<br><b>8-21-81</b>  |  |  |  |  |  |  |  |  |                                   |  |  |  |  |  |  |  |  |
| STATE CODE<br><b>46.1-3878</b>  |                  |                  |                             |                      |                    |                            |                          |   | CONTRIBUTING AGENCY<br><b>CLIFTON FORGE, VA P.D.</b>                     |  |  |                          |  |  |                           |  |  | JURISDICTION OF OFFENSE<br><b>104</b>   |  |  |                    |  |  |   |  |  | TIME OF OFFENSE<br><b>7:10 AM</b> |  |  |  |  |  |  |  |  | DATE OF OFFENSE<br><b>7-26-81</b> |  |  |  |  |  |  |  |  |
| ARRESTING OFFICER (LAST NAME - FIRST NAME - MIDDLE INITIAL) SHIELD OR CODE NO.<br><b>R. CRUSH # 1474</b>  |                  |                  |                             |                      |                    |                            |                          |   | MISO <input type="checkbox"/> FELONY <input checked="" type="checkbox"/> |  |  |                          |  |  |                           |  |  | PHOTO AVAILABLE THIS ARREST<br><b>YES <input type="checkbox"/> NO <input checked="" type="checkbox"/></b> |  |  |                    |  |  |   |  |  |                                   |  |  |  |  |  |  |  |  |                                   |  |  |  |  |  |  |  |  |
| DISPOSITION:<br>(CHECK ONE) INCARCERATED <input type="checkbox"/> RELEASED PENDING TRIAL <input type="checkbox"/> TRANSFERRED OTHER AGENCY <input type="checkbox"/> |                  |                  |                             |                      |                    |                            |                          |   | SIGNATURE OF PERSON FINGERPRINTED<br><i>Nelson A. Codrey</i>             |  |  |                          |  |  |                           |  |  | SIGNATURE OF OFFICIAL TAKING FINGERPRINT<br><i>Dorsey A. Hoffman Jr</i>                                   |  |  |                    |  |  |   |  |  |                                   |  |  |  |  |  |  |  |  |                                   |  |  |  |  |  |  |  |  |
| PROSECUTIVE DISPOSITION: DATE<br>(CHECK ONE) FELONY <input type="checkbox"/> MISDEMEANOR <input type="checkbox"/>   |                  |                  |                             |                      |                    |                            |                          |   | DECLINED TO PROSECUTE <input type="checkbox"/> SET NO <b>058416 C</b>    |  |  |                          |  |  |                           |  |  | RIGHT INDEX FINGER  |  |  |                    |  |  |   |  |  |                                   |  |  |  |  |  |  |  |  |                                   |  |  |  |  |  |  |  |  |

### NOTICE TO CLERK OF COURT

THE REVERSE SIDE OF THIS FORM IS TO BE USED TO REPORT THE COURT DISPOSITION.

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 SHOULD BE FORWARDED TO THE CLERK OF THE CIRCUIT COURT ON ALL CHARGES APPEALED OR CERTIFIED TO THAT COURT.

IN THE EVENT OF A DELAYED DISPOSITION, PLEASE CHECK THE APPROPRIATE BLOCK ON THE REVERSE SIDE OF THIS FORM AND ANOTHER FORM WILL BE FURNISHED IN ORDER THAT YOU MAY PROVIDE A FINAL DISPOSITION.

**AFTER FINAL DISPOSITION HAS BEEN RECORDED ON REVERSE SIDE OF THIS COPY, FORWARD THIS COPY TO THE DEPT. OF STATE POLICE, CENTRAL CRIMINAL RECORDS EXCHANGE, P.O. BOX 27472, RICHMOND, VA. 23261**



## DISTRICT COURT

|   |  |
|---|--|
| FILE NUMBER:<br><b>T81-181</b>  | INITIAL COURT FILE:<br><b>84-81</b>  |
| RETENTION DECISION (CHECK ONE):<br>OWN RECOGNIZANCE <input checked="" type="checkbox"/><br>BAIL SET <input type="checkbox"/><br>RELEASED ON SUMMONS <input type="checkbox"/>          |  |
| PLEA (CHECK ONE):<br>NOT GUILTY <input type="checkbox"/><br>GUILTY <input type="checkbox"/><br>NOLLE CONTENDERE <input type="checkbox"/><br>OTHER <input checked="" type="checkbox"/> | TYPE OF COUNSEL (CHECK ONE):<br>COURT APPOINTED <input checked="" type="checkbox"/> <b>Mooney</b><br>PUBLIC DEFENDER <input type="checkbox"/><br>PRIVATE <input type="checkbox"/><br>WAIVED <input type="checkbox"/> |
| DISPOSITION (CHECK ONE):<br>GUILTY <input type="checkbox"/><br>DISMISSED <input type="checkbox"/><br>CERTIFIED TO GRAND JURY <input checked="" type="checkbox"/>                      |  |
| DISPOSITION DATE:<br><b>2-22-82</b>   |  |
| CONVICTED OF:   |  |
| SENTENCE IMPOSED BY COURT:  |  |
| DATE OF SENTENCE:   |  |
| NAME OF COURT:<br><b>Clifton Forge General District</b>   |  |
| SIGNATURE OF CLERK:<br><b>W. Nicely</b>   |  |
| USE THIS BLOCK FOR DELAYED DISPOSITION ONLY:  |  |
| DISTRICT COURT <input type="checkbox"/>   | CIRCUIT COURT <input type="checkbox"/>   |
| DATE:   |  |

## CIRCUIT COURT

|  |  |
|--|--|
| DOCKET NUMBER:<br><b>949</b>   | DATE OF FILING:<br><b>2-23-82</b>  |
| TYPE OF FILING (CHECK ONE):<br>CERTIFIED FELONY <input checked="" type="checkbox"/><br>MISD. APPEAL <input type="checkbox"/><br>INFORMATION <input type="checkbox"/><br>REINSTATEMENT <input type="checkbox"/>                   | GRAND JURY FINDING (IF APPLICABLE, CHECK ONE):<br>INDICTMENT <input type="checkbox"/><br>NO TRUE BILL <input type="checkbox"/>   |
| DATE OF ARRAIGNMENT:<br><b>1-19-83</b>   |  |
| RETENTION DECISION (CHECK ONE):<br>OWN RECOGNIZANCE <input checked="" type="checkbox"/><br>BAIL SET <input type="checkbox"/><br>RELEASED ON SUMMONS <input type="checkbox"/>   |  |
| INITIAL PLEA (CHECK ONE):<br>NOT GUILTY <input checked="" type="checkbox"/><br>GUILTY <input type="checkbox"/><br>NOLLE CONTENDERE <input type="checkbox"/><br>AT OTHER COURT <input type="checkbox"/>                           | TYPE OF COUNSEL (CHECK ONE):<br>COURT APPOINTED <input checked="" type="checkbox"/><br>PUBLIC DEFENDER <input type="checkbox"/><br>PRIVATE <input type="checkbox"/><br>WAIVED <input type="checkbox"/> |
| TRIAL DOCKET DATE:   |  |
| TYPE OF TRIAL (CHECK ONE):<br>TRIAL BY JUDGE <input type="checkbox"/><br>TRIAL BY JURY <input checked="" type="checkbox"/>   |  |
| DISPOSITION (CHECK ONE):<br>GUILTY <input checked="" type="checkbox"/><br>NOT GUILTY <input type="checkbox"/><br>DISMISSED <input type="checkbox"/><br>NOLLE PROSEQUI <input type="checkbox"/><br>OTHER <input type="checkbox"/> |  |
| DISPOSITION RENDERED (CHECK ONE):<br>JUDGE <input type="checkbox"/><br>JURY <input checked="" type="checkbox"/>  |  |
| DISPOSITION DATE:<br><b>2/22/83</b>  |  |
| CONVICTED OF:<br><b>Actual Traffic Offense</b>   |  |
| SENTENCE IMPOSED BY COURT:<br><b>12 months in jail</b>   |  |
| DATE OF SENTENCE:<br><b>2/22/83</b>  |  |
| NAME OF COURT:<br><b>Circuit Court</b>   |  |
| SIGNATURE OF CLERK:<br><b>Kathleen C. Miller</b>   |  |



COMMONWEALTH OF VIRGINIA,

City of Clifton Forge, to-wit:

In the Circuit Court of the City of Clifton Forge, May Term, 1982.

The grand jurors of the Commonwealth of Virginia, in and for the body of the City of Clifton Forge, now attending the Circuit Court of the said City, upon their oath present that Nelson Alexander Godfrey within twelve months prior to the finding of this indictment, to-wit, on the 26th day of July, in the year of one thousand nine hundred and eighty-one and in the said City did feloniously operate a motor vehicle upon the public highway after being declared a habitual traffic offender, in violation with §46.1-387.8, of the Code of Virginia, as amended, 1950, against the peace and dignity of the Commonwealth of Virginia.

Upon the evidence of E. E. Matheny, Officer of the Clifton Forge Police Department, witness sworn in open Court and sent to the grand jury to give evidence.



COMMONWEALTH

vs.

( INDICTMENT FOR A  
(  
( FELONY

... Nelson Alexander Godfrey ...

A TRUE BILL

*John M. Cerroghrey*  
Foreman



KATHLEEN C. MILLER  
CLERK OF CIRCUIT COURT  
MEMORANDUM

Commonwealth  
v  
Nelson A. Godfrey

To : Nelson A. Godfrey

Date: 7-7-82

From :

Subject : At our July term of court, Monday, your case was set for  
August 24 at 9:30 A.M.

Kathleen C. Miller

*K.C.M.*

*D*  
*ERBL*



JAMES WILLIAM OSBORNE  
ATTORNEY AT LAW  
THE CAMPBELL HOUSE  
103 EAST WASHINGTON STREET  
P. O. BOX 756  
LEXINGTON, VIRGINIA 24450  
(703) 463-5828

September 22, 1982

The Honorable Duncan M. Byrd, Jr.  
Judge, Circuit Court for the City  
of Clifton Forge  
Courthouse  
Clifton Forge, Virginia

Re: Commonwealth v. Nelson Godfrey

Dear Judge Byrd:

Following our conference regarding the above-captioned criminal matter in Clifton Forge on Tuesday, September 21, I conferred with my client and this is to advise that we will request a jury in this case. Therefore, according to your direction, Mr. Godfrey and I will appear at 2:00 p.m. November 1st in the Clifton Forge Circuit Court to establish a trial date.

Respectfully,

  
James W. Osborne

JWO/gw

cc: Dueward H. Scott, Esq.  
Nelson A. Godfrey

FILE  
C/F



AMES WILLIAM OSBORNE

ATTORNEY AT LAW  
THE CAMPBELL HOUSE  
103 EAST WASHINGTON STREET  
P.O. BOX 756  
LEXINGTON, VIRGINIA 24450  
(703) 463-5828

November 5, 1982

11-10-82  
Mrs. Kathleen Miller, Clerk  
Circuit Court for the City of Clifton  
Forge  
P. O. Box 27  
Clifton Forge, VA 24422-0027

Re: Commonwealth v. Nelson A. Godfrey

Dear Mrs. Miller:

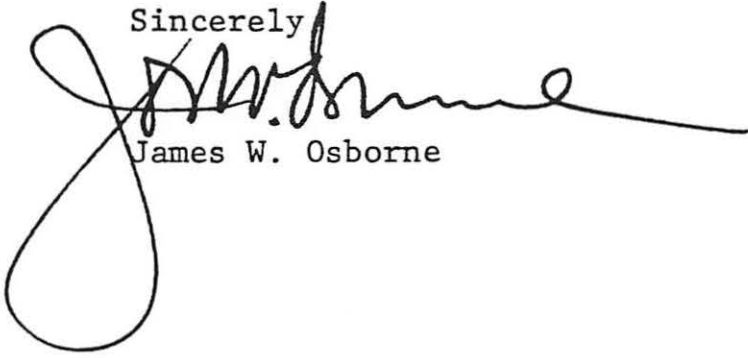
The above was set for trial by Judge Byrd January 3, 1983 at 9:30 a.m. A jury is requested.

On behalf of the defendant, please subpoena:

1. Mr. Ricky Ayers  
1410A Vine Street  
Charlottesville, VA 22901
2. Delphine Godfrey  
1410A Vine Street  
Charlottesville, VA 22901

Thanking you for your cooperation, I am,

Sincerely

  
James W. Osborne

JWO/gw



AMES WILLIAM OSBORNE  
ATTORNEY AT LAW  
THE CAMPBELL HOUSE  
103 EAST WASHINGTON STREET  
P.O. BOX 756  
LEXINGTON, VIRGINIA 24450  
(703) 463-5828

December 10, 1982

Mrs. Kathleen Miller, Clerk  
Circuit Court for the City of Clifton  
Forge  
P. O. Box 27  
Clifton Forge, VA 24422-0027

Re: Commonwealth v. Nelson A. Godfrey

Dear Mrs. Miller:

The above case has been re-set for trial on January 18, 1983. A jury is requested.

On behalf of the defendant, please subpoena:

1. Ricky Ayers  
1410A Vine Street  
Charlottesville, VA 22901
2. Delphine Godfrey  
1410A Vine Street  
Charlottesville, VA 22901

Thanking you for your cooperation in this matter, I am,

Sincerely,

  
James W. Osborne

JWO/gw

cc: Mr. Nelson A. Godfrey

Sent  
12-14-82



VIRGINIA,

IN THE CIRCUIT COURT OF CITY OF CLIFTON FORGE

COMMONWEALTH

Plaintiff,

Y.

ORDER

NELSON A. GODFREY

Defendant(s),

On motion of ~~PLANNON~~ (defendant) by counsel, this case is set for trial with (~~out~~) a jury on the 18 day of Jan., 1983, at 9:30 o'clock, A.M.

~~XXXXX ORDERED that all pretrial matters, including~~  
~~XXXXXX depositions and discovery proceedings shall be completed~~  
~~XXXXX as of on or before the day of XXXXXXXX, 19~~

The Clerk shall forthwith mail or deliver an attested copy of this order to all counsel of record.

ENTER: 12/13/82

**JUDGE**

**Copies Mailed (delivered) to:**

James W. Osborne, Esquire

D. H. Scott, Jr., Esquire



The Commonwealth of Virginia,

To the Sheriff of the City of Charlottesville, Greeting:

We COMMAND You, That you summon

Ricky Ayers, 1410A Vine St.

Charlottesville, Va.

to appear before the Judge of our Circuit Court of the City of Clifton Forge, at the Courthouse thereof, on the  
18th day of January, 1983, at 9:30 o'clock

A.M., to testify and the truth to say in behalf of the Defendant, in a certain  
matter of controversy in our said Court, before the said Judge, depending and undetermined between

Commonwealth

Nelson A. ~~XXXXXX~~ Godfrey



And have then there this writ.

WITNESS, Kathleen C. Miller, Clerk of our said Court, at the Courthouse, this 14th day of  
December, 1982, and in the 207th year of the Commonwealth.

Kathleen C. Miller, Clerk.



Net finding Ricky Ayers at his usual  
place of abode within the City of Charlottesville, Va., nor any member of his  
family there upon whom process might legally be served, I executed the within  
Sub on the 15 day of Dec 1982  
by leaving posted a true copy thereof, in writing, at front door of Ricky Ayers  
said usual place of abode.

City of Charlottesville, Va. [Signature]  
By [Signature] ☐ Deputy  
Fee \$ \_\_\_\_\_

~~Executed in the City of Charlottesville, Virginia,  
on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_  
by delivering a true copy of the within \_\_\_\_\_  
\_\_\_\_\_; in writing, to  
\_\_\_\_\_  
In person.  
Sergeant's Fee \$ \_\_\_\_\_~~

City of Charlottesville, Virginia  
By \_\_\_\_\_ ☐ Deputy



# The Commonwealth of Virginia,

To the Sheriff of the City of Charlottesville, Greeting:

We COMMAND You, That you summon

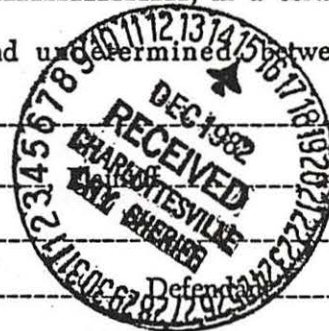
Delphine Godfrey, 1410A Vine St. Charlottesville

to appear before the Judge of our Circuit Court of the City of Clifton Forge, at the Courthouse thereof, on the 18th day of January, 1982, at 9:30 o'clock

A.M., to testify and the truth to say in behalf of the Defendant, in a certain matter of controversy in our said Court, before the said Judge, depending and undetermined between

Commonwealth

Nelson A. Godfrey



And have then there this writ.

WITNESS, Kathleen C. Miller, Clerk of our said Court, at the Courthouse, this 14th day of December, 1982, and in the 207th year of the Commonwealth.

Kathleen C. Miller, Clerk.

Executed in the City of Charlottesville, Virginia,  
on the 15 day of Dec, 1982

by delivering a true copy of the within Sub; in writing, to

Delphine Godfrey  
In person.

Sergeant's Fee \$

City of Charlottesville, Virginia

By [Signature] Deputy



This day came the Attorney for the Commonwealth and Nelson Alexander Godfrey, age 43, who stands <sup>indicted</sup> ~~indicted~~ for a felony, to-wit: that he did on the 26th day of July, in the year of one thousand nine hundred and eighty-one and in the said City idid feloniously operate a motor vehicle upon the public highway after being declared a habitual traffic offender, in violation with Sec. 46.1-387.8 of the Code of Virginia, as amended, 1950, against the peace and dignity of the Commonwealth of Virginia, appeared according to the condition of his recognizance; and came also his attorney, heretofore appointed, James W. Osborne.

Whereupon, the accused was arraigned and after private consultation with his said attorney, pleaded not guilty to the Indictment, which plea was tendered by the accused in person, who requested a trial by jury.

The Court then impanelled twenty qualified jurors, free from exception for the trial of the defendant, in the manner provided by law. Whereupon the Attorney for the Commonwealth and the attorney for the defendant each alternately exercised their rights to strike the names of four veniremen from the panel, as provided by law, and the remaining twelve jurors, constituting the jury for the trial of the defendant, were duly sworn.

The defendant then requested a continuance of this case since it appeared to the court that the witnesses for the defendant failed to appear. On motion, by the attorney for the defendant and by agreement with the Court, this case is set for trial with a jury on February 16th at 9:00 A.M. and the Clerk is directed to issue a capias for the two witnesses and for them to post a \$1000 personal recognizance bond for their appearance on Feb. 16, 1983.

And the Jury is discharged.



February 16, 1983

VIRGINIA

IN THE CIRCUIT COURT OF THE CITY OF CLIFTON FORGE

IN RE: DELPHINE GODFREY

It appearing to the Court that Delphine Godfrey, a witness in the case of Commonwealth v Nelson Alexander Godfrey failed to appear on January 18, 1983 when this case was set for trial with a jury. Therefore, the Court finds Delphine Godfrey in contempt of Court and sentences her to 30 days in jail, suspended.


  
Judge D. M. Byrd, Jr.

EXHIBIT "I"



February 16, 1983

VIRGINIA

IN THE CIRCUIT COURT OF THE CITY OF CLIFTON FORGE

IN RE: RICKY AYERS

It appearing to the Court that Ricky Ayers, a witness in the case of Commonwealth v Nelson Alexander Godfrey failed to appear on January 18, 1983 when this case was set for trial with a jury. Therefore, the Court finds Ricky Ayers in contempt of Court & sentences him to 30 days in jail, suspended.

---

Judge D. M. Byrd, Jr.

EXHIBIT "J"



This day came the Attorney for the Commonwealth, and Nelson Alexander Godfrey, age 43, who stands indicted for a felony, to-wit: that he did on the 26th day of July, in the year of one thousand nine hundred and eighty-one and in the said City did feloniously operate a motor vehicle upon the public highway after being declared a habitual traffic offender, in violation with Sec. 46.1-387.8, of the Code of Virginia, as amended, 1950, against the peace and dignity of the Commonwealth of Virginia, appeared according to the condition of his recognizance and came also James W. Osborne, his attorney heretofore appointed.

Whereupon the accused was arraigned and after private consultation with his said attorney, pleaded not guilty to the Indictment, which plea was tendered by the accused in person, who requested trial by jury.

The Court then impanelled twenty-qualified jurors, free from exception for the trial of the defendant, in the manner provided by law. Whereupon the Attorney for the Commonwealth and the attorney for the defendant each alternately exercised their rights to strike the names of four veniremen from the panel, as provided by law, and the remaining twelve jurors, constituting the jury for the trial of the defendant were duly sworn.

After opening statements, the court and jury heard the evidence presented by the Commonwealth and the defendant.

After hearing the evidence, the instructions of the court and arguments of counsel, the jurors were sent to the jury room to consider their verdict. They subsequently returned their verdict in open court, in the following words: "We, the jury, find the accused guilty as charged in the Indictment and fix his punishment at confinement in jail for 12 months", Bernard M. Campbell, Foreman.



The Court then asked the defendant whether he desired to make a statement or to advance any reason why judgment should not be pronounced against him. The Court having heard and considered the defendant's statement, the Court finds the defendant guilty as charged in the Indictment and sentences the defendant to confinement in the city jail for the term of 12 months.

Counsel for the defendant advised the Court the defendant desires to appeal the judgment rendered to the Supreme Court of Virginia, and accordingly the Court suspends execution of the sentence for a period of ninety (90) days and such additional time, as may be necessary until the said appeal is acted upon.

The Clerk is ordered to have the record transcribed and such transcript is hereby made a part of the record.

And the Court appoints James W. Osborne, the defendant's court appointed attorney to represent him in said appeal.

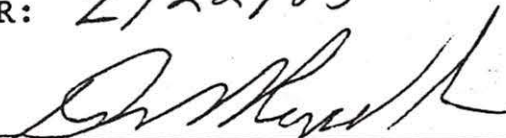
The Court certifies that at all times during the trial of this case the defendant was present in person and his attorney was likewise present in person and represented the defendant capably for which services he is allowed an attorney's fee of \$200.00 plus other costs.

The defendant is continued on same bond that he is currently on pending the counsel for the defendant perfecting an appeal.

And the defendant is allowed to depart.

ENTER:

2/22/83



JUDGE D. M. BYRD, JR.



STATEMENT OF FACTS

Filed: 4/12/83

Kathleen C. Miller, Clerk  
Kathleen C. Miller, Clerk  
City of Clifton Forge, Va.

Officer E. E. Matheney of the Clifton Forge, Virginia, Police Department, caused a felony warrant of arrest to be issued charging that "on or about July 26, 1981, around 7:10 a.m," that Nelson Alexander Godfrey, "did unlawfully and feloniously operate a motor vehicle upon the public highway after being declared a [sic] habitual offender in violation of §46.1-387.8, Code of Virginia." The warrant was issued August 3, 1981, and executed August 21, 1958 [sic.] (1981). The warrant of arrest is made a part hereof as Exhibit "A";

Nelson Alexander Godfrey was admitted to bail on his own unsecured \$500.00 personal recognizance bond August 24, 1981. The Conditions of Release and Recognizance is made a part of the record as Exhibit "B".

The General District Court for the City of Clifton Forge found probable cause February 22, 1982, and the case was certified to the grand jury on that date. This is shown from the warrant of arrest and the Clerk's dispositional forms, a copy of which is also made a part of the record as Exhibit "C".

At the May term of the Circuit Court of the City of Clifton Forge May 3, 1982, the Grand Jury returned a True Bill of Indictment, based upon the evidence of Officer E. E. Matheney; the Indictment is made a part of the record as Exhibit "D".

By Memorandum of July 7, 1982 to Nelson A. Godfrey, the case was set for trial on August 24, 1982 at 9:30 a.m. (Exhibit "L".)

On Defendant's Motion, a trial date of January 18, 1983,



was established by Order of the Honorable Duncan M. Byrd, Jr.

This Order is made a part of the record as Exhibit "E".

The Defendant subpoenaed two witnesses for January 18th, namely Ricky Ayers and Delphine Godfrey, both of 1410A Vines Street, Charlottesville, Va., and both were served with subpoenas. The Subpoenas collectively are made a part of the record as Exhibit "F".

A jury was empaneled on January 18th and said witnesses were called by the bailiff. The Defendant proffered to the Court that the two missing witnesses, Ricky Ayers and Delphine Godfrey, were indispensable to the Defendant's case and stated that the Defendant could not proceed without their presence. Whereupon, the Court directed the Clerk to issue a capias for the trial date of February 16 at 9:00 a.m. The Court prepared an order January 18, 1983, which is made a part of the record as Exhibit "G".

The two witnesses, Delphine Godfrey and Ricky Ayers, were served with the capias and posted bond. The capias and Conditions of Release and Recognizance for each are collectively made a part of the record as Exhibit "H". On February 16, 1983, both Delphine Godfrey and Ricky Ayers appeared as witnesses at the trial. After Defendant's trial, both were found in contempt for their failure to appear on January 18, 1983, sentenced to thirty days in jail, which sentences were suspended. Copies of both these Orders are made a part of the record as Exhibits "I" and "J".

At the trial, a jury was empaneled. As reflected in the Final Order entered February 22, 1983, a copy of which is made a part of the record as Exhibit "K".

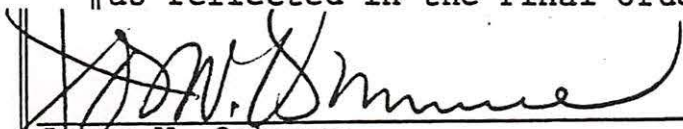
After the jury was empaneled and before opening statements, the Defendant moved the Court to dismiss the case against the Defendant on the grounds that the Defendant had not been afforded a speedy trial as provided under §19.2-243 of the Code of Virginia. The Commonwealth's Attorney argued to the Court that each time the

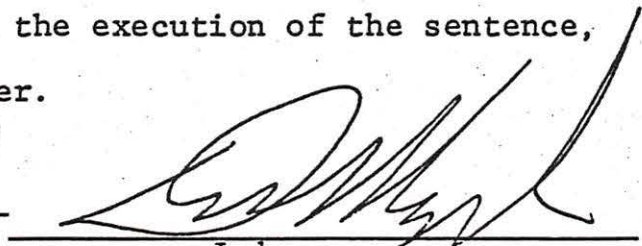
case was continued by the Defendant or because of the Defendant's absence or because of his change of counsel. After argument, the Court overruled the Defendant's motion stating from personal knowledge and review of the record that the delay was at the insistence of or to the prejudice of the Defendant.

At the conclusion of the Commonwealth's evidence, the Defendant moved to strike the Commonwealth's evidence on the grounds that the Commonwealth had failed to (a) sufficiently prove the Defendant was the driver of the vehicle; and (b) the Commonwealth's evidence failed to establish that the Defendant had driven on July 25th as opposed to July 26, 1981. Defendant also renewed his motion pursuant to §19.2-243. After overruling these defense motions, Defendant presented his evidence and the Commonwealth offered rebuttal. At the conclusion of all evidence, the Defendant renewed the same motions heretofore stated. The Court overruled these motions and instructed the jury.


After arguments of counsel, the jury retired to consider their verdict and after deliberation, returned the verdict as reflected in the Final Order.

After sentencing, the Defendant in accordance with the jury's verdict, the Court heard defense counsel renew the motions as heretofore stated, which were again overruled. Defendant then advised the Court of his desire and intention to seek an appeal conviction to the Supreme Court of Virginia, whereupon the Court suspended the execution of the sentence, as reflected in the Final Order.

  
James W. Osborne  
Counsel for Defendant

  
Judge

Date: 7/18/83

  
Duward H. Scott, Jr.  
Acting Commonwealth's Attorney



# STATEMENT OF FACTS

Officer E. E. Matheney of the Clifton Forge, Virginia, Police Department, caused a felony warrant of arrest to be issued charging that "on or about July 26, 1981, around 7:10 a.m." that Nelson Alexander Godfrey, "did unlawfully and feloniously operate a motor vehicle upon the public highway after being declared a [sic.] habitual offender in violation of §46.1-387.8, Code of Virginia." The warrant was issued August 3, 1981, and executed August 21, 1958 [sic.] (1981). The warrant of arrest is made a part hereof as Exhibit "A";

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\*

On Defendant's Motion, a trial date of January 18, 1983, was established by Order of the Honorable Duncan M. Byrd, Jr. This Order is made a part of the record as Exhibit "E".

*D*  
\* *MEMORANDUM OF JULY 7, 1982 TO NELSON A. GODFREY, THE CASE WAS SET FOR TRIAL ON AUGUST 24, 1982 AT 9:30 A.M. (EXHIBIT L)*

The Defendant subpoenaed two witnesses for January 18th, namely Ricky Ayers and Delphine Godfrey, both of 1410A Vines Street, Charlottesville, Virginia, and both were served with subpoenas. The subpoenas collectively are made a part of the record as Exhibit "F".

A jury was empaneled on January 18th and said witnesses were called by the bailiff. The Defendant proffered to the Court that the two missing witnesses, Ricky Ayers and Delphine Godfrey, were indispensable to the Defendant's case and stated that the Defendant could not proceed without their presence. Whereupon, the Court directed the Clerk to issue a capias for the trial date of February 16 at 9:00 a.m. The Court prepared an order January 18, 1983, which is made a part of the record as Exhibit "G".

The two witnesses, Delphine Godfrey and Ricky Ayers, were served with the capias and posted bond. The capias and Conditions of Release and Recognizance for each are collectively made a part of the record as Exhibit "H". On February 16, 1983, both Delphine Godfrey and Ricky Ayers appeared as witnesses at the trial. After Defendant's trial, both were found in contempt for their failure to appear on January 18, 1983, sentenced to thirty days in jail, which sentences were suspended. Copies of both these Orders are made a part of the record as Exhibits "I" and "J".

At the trial, a jury was empaneled. As reflected in the Final Order entered February 22, 1983, a copy of which is made a part of the record as Exhibit "K".

After the jury was empaneled and before opening



statements, the Defendant moved the Court to dismiss the case against the Defendant on the grounds that the Defendant had not been afforded a speedy trial as provided under §19.2-243 of the Code of Virginia. After argument, the Court overruled the Defendant's motion. *ml*

At the conclusion of the Commonwealth's evidence, the Defendant moved to strike the Commonwealth's evidence on

-2- 88-

*\* stating from personal knowledge and  
review of the record that such motion the delay was  
at the instance of or to the detriment of the defendant*

Appellant makes the following assignment of error:

(1) The Court erred in failing to quash the indictment and dismiss the same, on account of the failure of the Commonwealth to afford the Defendant a speedy trial and to try him within the time permitted under §19.2-243 of the Code of Virginia and, specifically, within nine months from the time of his preliminary hearing February 22, 1982.



- Q. Is that correct?
- A. Yes.
- Q. And back when this offense was supposed..You know why you are here...
- A. Right.
- Q. When this offense was supposed to have occurred, were you living in Charlottesville?
- A. Yes, I was living in Charlottesville.
- Q. And were you living at the same address you are now living?
- A. No - Albemarle County.
- Q. How long have you been living at the address that you are living at now?
- A. About two to three years, I reckon.
- Q. And where did you move from?
- A. Country Green.
- Q. Country Green? And that's in the County?
- A. In the County.
- Q. Albemarle County?
- A. Albemarle County.
- Q. Alright, tell the jury - On the occasion that this offense was supposed to have occurred where you were and what you were doing?
- A. I was coming out here to pick Nelson up early in the morning.
- Q. Why?
- A. To help..for him to help me move.
- Q. Why were you moving?
- A. On account I was getting throwed out..you know, put out.
- Q. Alright and what time did you..you got up at what time that morning, do you remember?

A. I got up right early - about 5:00 I reckon.

Q. And why was it important that you get back to Charlottesville?

A. On account of I had to get out - I didn't want my furniture sitting out - trying to hide the embarrassment of having my furniture set out in the yard.

Q. Alright and how is it that you were going to have Mr. Godfrey come to help you?

A. By coming up here in my car to pick him up.

Q. Had he offered to help you?

A. Yeah.

Q. Move?

A. Yeah.

Q. And so you came over here sometime early that morning?

A. Yeah - early that morning.

Q. And you drove your own vehicle?

A. Yeah.

Q. Where did you go - in Clifton Forge?

A. From Clifton Forge you mean?

Q. Where did you go when you got to Clifton Forge?

A. To his house.

Q. And what did you do?

A. Picked him up. I walked on in through the front door - I knocked.

Q. Alright and did you find Mr. Godfrey at home?

A. Yeah, he was there.

Q. And do you have any idea what time that was?

A. I didn't have a watch on - I didn't pay no mind - just went up and spoke to him, you know.



- Q. Now, when you left Charlottesville, did you come directly to Clifton Forge and Mr. Godfrey's house?
- A. Yeah.
- Q. Did you stop?
- A. No, nowhere along the way.
- Q. And then how long did you stay at Mr. Godfrey's house? Just tell the jury how long you stayed there and what you did?
- A. Fifteen minutes at the most.
- Q. And then what did you do?
- A. Said we had to go - you know.
- Q. Alright and went straight on back to Charlottesville?
- A. Right.
- Q. Who went with you?
- A. Me by myself.
- Q. And was Mr. Godfrey with you?
- A. When I came back to Charlottesville, yeah.
- Q. When you came over, you were by yourself. When you went back, Mr. Godfrey went with you, right?
- A. Right.
- Q. Did anybody else go back with you?
- A. No.
- Q. Alright and do you know what time you got back to Charlottesville?
- A. It was about 8:30 - quarter til 9:00, I reckon.
- Q. And where did you go when you got to Charlottesville?
- A. I had to start moving right away.

Q. And was anybody else in Charlottesville that you know, other than Mr. Godfrey's daughter?

A. I knew his sister.

Q. But did his daughter..Did Mr. Godfrey's daughter see him when he came back with you?

A. Yes.

Q. And did yall drive straight back from Clifton Forge?

A. Straight on back. I stopped at one rest area. It's been a long time you know.

Q. When you picked Mr. Godfrey..When did you bring Mr. Godfrey back then? Did you bring him back to Clifton Forge after you had moved?

A. Yeah, I brought him back that Sunday.

Q. That Sunday? And he stayed with you?

A. Yes.

MR. SCOTT: Your Honor, I am going to object. He's leading him all around the post. I ask that he not lead the witness.

Q. Alright, where did he stay in Charlottesville?

A. At my house.

Q. Alright and how did he get back to Clifton Forge?

A. I brought him.

Q. Did anybody else come?

A. No.

Q. During the time that he was there, did you come back to Clifton Forge or did he just spend the night and come back when you finally finished up your moving?

A. Yes.

Q. You know whether Mr. Godfrey has a job?



A. I am his daughter.

Q. How old are you?

A. 23

Q. Now where do you live, Delphine?

A. I live in Charlottesville.

Q. And how long have you lived there?

A. I have lived there about  $7\frac{1}{2}$  years.

Q. Alright, and Mr. Ayers there is your fiance? The young man that just left?

A. Yeah.

Q. Now you know..you heard about this charge that has been placed against your father for driving a vehicle here in Clifton Forge?

A. Yes, sir.

Q. And I take it you knew about that right after it happened?

A. Yes.

Q. You heard about it right after he was charged; is that right?

A. Yes.

Q. Now at the time of this were you living in Charlottesville? You were living in Charlottesville since you have been living there  $7\frac{1}{2}$  years?

A. Yes.

Q. And you...since you heard about it right after, do you know where your father was when this was supposed to have occurred?

A. He was in Charlottesville.

Q. Alright and would you tell the jury in your own words just in the way you would tell this - where you were and where your father was and how you know he was in Charlottesville rather than in Clifton Forge.

A. O.K. Well I was moving. I was moving from Country Greene to Vine Street that morning. My boy friend came up here. I guess he left about 5:30 - quarter til 6:00. He came up here and picked my father up to come down and help us move cause that day we was getting set out. He came to help us move. Then we moved - then my father stayed all night and we brought him back the next day.

Q. Alright did you bring him back on Sunday?

A. We brought him back on Sunday.

Q. Or Saturday?

A. No, we brought him back on Sunday.

Q. And do you recall what time they got to Charlottesville?

A. They got there about - it was between 8:30 and quarter til 9:00.

Q. Now have you driven - have you driven from Charlottesville to Clifton Forge on a regular basis?

A. No - No.

Q. Have you ever driven it?

A. I have driven half.

Q. Half?

A. Half of the way.

Q. Alright, do you know how long - approximately how long it takes you?

A. It takes about - let me see - we drove this morning. It takes about... it takes about, I guess, about an hour and 45 minutes.

Q. About an hour and...

A. Maybe more than that - according to how fast you are going.

Q. Sure, but ordinarily it would take you an hour and a half to 1 hr. 45 minutes?



A. Yes, according to...

Q. That is without stopping?

A. Without stopping.

Q. O. K. and on the day this offence..your father was supposed to have been driving, he got to Charlottesville you say at 8:30 - quarter til 9:00?

A. Sure did.

Q. Alright. In whose car did he arrive?

A. He was with my boyfriend, Ricky.

Q. And whose car?

A. Ricky's car.

Q. Alright now were there other children in Charlottesville?

A. Uh huh. It was me and my two sisters.

Q. O.K.

A. Was down there because they were helping me pack - pack up my stuff - they was down there..

Q. Alright and you know that this is the day that this offence is supposed to have occurred?

A. Yes, this is the day.

Q. Whatever day?

A. Whatever day it was. Well, I moved on the 26th of July - that's when I moved.

Q. Alright. O.K. you know..How many children at home?

A. My kids?

Q. No, how many of your brothers and sisters live at home with your father?

A. Three.