

VIRGINIA: IN THE GENERAL DISTRICT COURT FOR THE CITY OF CHARLOTTESVILLE

COMMONWEALTH OF VIRGINIA : CASE NO. GC24-125-00

v. :

PATRICK MCNAMARA :

MOTION TO DISMISS

COMES NOW the Commonwealth, by her attorney, and, for her motion to dismiss the above-styled matter, represents as follows:

1. On January 12, 2024, the victim in this matter was running southbound on the Rivanna Trail about one mile from Riverview Park.
2. Sometime between 9:39 AM and 9:43 AM, she was groped, approximately .4 mile from the Rivanna Trail underpass at Free Bridge.
3. At approximately 10:10 AM, the victim was able to flag down Detective Wagner of the Charlottesville Police Department.
4. She told Detective Wagner that she passed a man who was walking by on the trail in the opposite direction. As she passed the man, he turned and reached his right hand out over to the victim and grabbed her buttocks.
5. She described the suspect as a white male with short brown hair and an athletic build, approximately 6'2", possibly 20-30 years old. The suspect was also described as wearing a white puffy jacket with a dark hooded sweatshirt underneath, which was pulled up over his head. The victim indicated she had seen the suspect many times walking the Rivanna Trail while wearing over-the-ear headphones.

6. A Crime-Stoppers tip came in on January 14, 2024, stating that the suspect possibly lived at the Hudson Apartments, which are located in close proximity to the Rivanna Trail at 901 River Road in the City of Charlottesville.
7. On January 16, 2024, the victim was shown a picture by a friend of a white male with a tall, athletic build, wearing a black zip-up hoodie, gray sweatpants, and black shoes. The man in the photo was walking on Locust Ave.
8. The victim confirmed the male in the picture was the suspect who grabbed her buttocks.
9. On January 17, 2024, another friend of the victim called 911, stating that an individual matching the description of the suspect from the Rivanna Trail assault was working out at Iron Will Gym at 1140 River Road.
10. That witness took a picture of the male and sent it to the victim, who confirmed it was the individual that grabbed her.
11. A short time thereafter, detectives learned that the person identified by the victim in the two photographs was the Defendant, Patrick McNamara.
12. Mr. McNamara is a 37-year-old white male, approximately 6'4", 200 lbs., and has short brown hair and an athletic build.
13. Detectives followed up with the victim, and she said that she was "100% positive" Mr. McNamara was the person who grabbed her buttocks on January 12, 2024.
14. On January 18, 2024, a warrant was issued for misdemeanor assault and battery against Mr. McNamara, and he was arrested and served with that warrant. Mr. McNamara's phone was collected by police and taken into evidence. On that same

day, a search warrant was executed at his residence on River Road, and a pair of black sweatpants were recovered.

15. On January 19, 2024, Mr. McNamara came into the lobby of the Charlottesville Police Department and asked for his phone back. He was told a search warrant was being obtained to search his phone, and that if he provided his passcode, it would be helpful in speeding up the forensic download. Mr. McNamara declined to provide his passcode at that time. (He eventually provided his passcode, through his attorney, on March 13, 2024, on condition that the search be limited to geolocation data. Nothing of any evidentiary value was recovered.)

16. Before leaving the lobby, Mr. McNamara stated that “he wasn’t even on the Rivanna Trail” when the assault happened, and that he was on “work calls” that day.

17. In a number of public interviews, Mr. McNamara has stated he was “never” on the trail that day.¹

18. The Charlottesville Police Department obtained a search warrant for the gmail account of Mr. McNamara, which included, but was not limited to, geolocation data.

19. A google geolocation marker indicated that Mr. McNamara was in fact on the Rivanna Trail at the Free Bridge underpass on January 12, 2024, approximately .4 of a mile from the scene of the assault. The google time stamp was 9:37:19 AM.

20. Defense counsel submitted to the Commonwealth key fob evidence of Mr. McNamara accessing his apartment entrance on River Road at approximately

¹ For example, in an article in the Daily Progress published on January 24, 2024, Mr. McNamara is quoted as saying “I do walk the Rivanna Trail often...but not on that day and not on the day before or the day after.”

9:41:14 a.m. The distance from The Rivanna Trail at the Free Bridge underpass to Mr. McNamara's apartment is approximately .2 of a mile.

21. That is a general summary of the Commonwealth's case as trial preparations were under way.

22. However, on Monday April 8, 2024, defense counsel submitted a letter to the Charlottesville Police Department requesting that Detectives seek out and secure video from 19 different listed locations. The Commonwealth Attorney's Office was copied on the correspondence.

23. The next morning, on Tuesday, April 9, 2024, the assigned case agent stated that there was already in the possession of the police department video from one of the requested locations, Cosner Brothers Body Shop. The video was requested from the business on January 18, 2024 and collected on January 22, 2024.

24. The individual that collected the video never prepared a supplement documenting its collection. He reviewed the video and told the case agent that nothing of value was captured on it.

25. The video was never turned over to the Commonwealth and therefore this office had no knowledge of its existence until April 9, 2024.

26. Once made aware of its existence, the Commonwealth immediately made a copy of the video and turned it over to defense counsel.

27. The video shows a section of the Rivanna Trail immediately adjacent to Free Bridge. A person that appears to be Mr. McNamara, wearing a black hooded sweatshirt and dark pants, is walking on the Rivanna Trail behind Cosner Brothers and walking under Free Bridge at approximately 09:39:01 (see attached exhibit 1).

28. The victim emerges from the trail under Free Bridge at 09:39:12 AM, which means she must have passed McNamara just prior to emerging from under the bridge (see attached exhibit 2).

29. A second person, very similar in build to Mr. McNamara, wearing the black hooded sweatshirt and other clothing as described by the victim, **but in a white puffy jacket**, enters the section of the Rivanna Trail near Free Bridge at 9:48:47 AM (see attached exhibit 3).

30. There is no longer proof beyond a reasonable doubt to support this prosecution.

WHEREFORE, the Commonwealth respectfully requests that this Honorable Court consider this motion the dismiss the charge against the Defendant.

Respectfully submitted,

COMMONWEALTH OF VIRGINIA
By Counsel



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CERTIFICATE OF SERVICE

This will certify that I have this day served a true copy of the foregoing upon the Defendant, via hand delivery and electronic mail, at the following address:

Rhonda Quagliana, Esquire
310 4th Street NE
P.O. Box 298
Charlottesville, VA 22902
rquagliana@michiehamlett.com

This 11th day of April, 2024.

A handwritten signature in black ink, appearing to read 'WWTg', written over a horizontal line.

William W. Tanner (VSB # 47464)



EXHIBIT 1

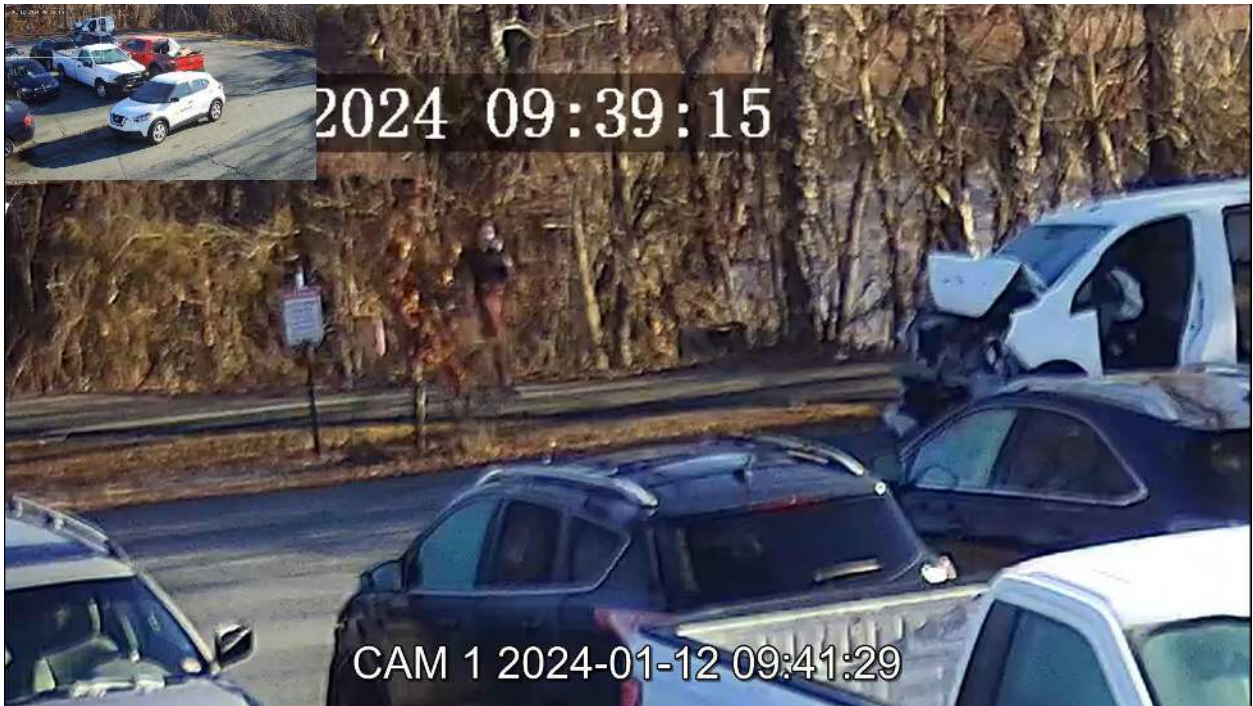


EXHIBIT 2

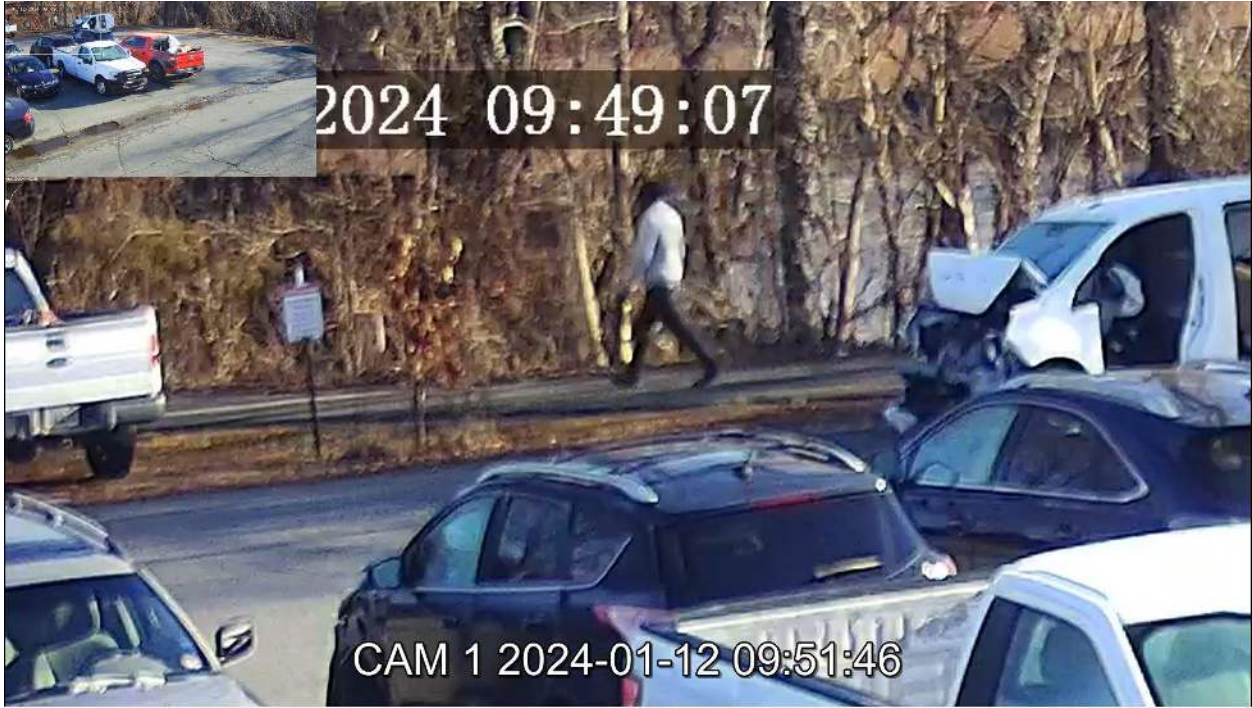


EXHIBIT 3