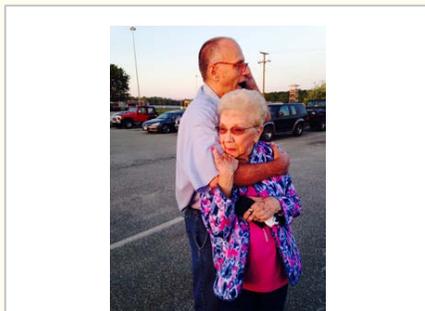




## MICHAEL MCALISTER

### Another Exoneration Involving the Same Rapist Responsible for this Crime



Michael McAlister embracing his mother upon release.

Shortly before 10 p.m. On February 23, 1986, a man wearing a stocking mask walked into the laundry room of the Town & Country apartment complex in Richmond, Virginia and ordered a 22-year-old woman outside at knifepoint. The man attempted to sexually assault the woman, but she escaped after a desperate struggle during which she clawed at the

man's face, breaking off two false fingernails that caught in the stocking mask.

The woman was able to lift the mask just to the bottom eyelid, enabling her to see that he was a white man with a light-colored beard and mustache, high cheekbones and shoulder-length hair. Before she escaped, the woman told police that the mask slid above his eye. The woman said her attacker was wearing a red and white plaid shirt.

The following day, a composite sketch was developed showing an entire face, even though the woman had only had a partial view of her attacker. A Richmond Police Detective saw the sketch and suggested it looked like 29-year-old Michael McAlister, a carpenter with drug and alcohol problems who was known to police because of two arrests for public indecency. McAlister lived with his mother three to four miles from the apartment building where the attack occurred.

On March 3, 1986, the police went to see McAlister, explained that they were investigating a sexual assault at the apartment complex, and asked to take his photograph. McAlister, who was wearing a red, white and blue flannel shirt, agreed to be photographed.

The picture was put into a photographic lineup and the victim identified McAlister as her attacker. McAlister, the only person in the lineup who was wearing a plaid shirt that was partly red and white, was arrested on charges of attempted rape and kidnapping.

Not long afterward, Richmond Police Detective Charles Martin began to have doubts about whether McAlister was the attacker. Martin learned that a police task force was investigating a man named Norman Derr, who was the

<b>State:</b>	Virginia
<b>County:</b>	Richmond City
<b>Most Serious Crime:</b>	Sexual Assault
<b>Additional Convictions:</b>	Kidnapping
<b>Reported Crime Date:</b>	1986
<b>Convicted:</b>	1986
<b>Exonerated:</b>	2015
<b>Sentence:</b>	35 years
<b>Race:</b>	Caucasian
<b>Sex:</b>	Male
<b>Age:</b>	29
<b>Contributing Factors:</b>	Mistaken Witness ID
<b>Did DNA evidence contribute to the exoneration?:</b>	No

primary suspect in several rapes in nearby Henrico County. Martin discovered that the perpetrator in those attacks wore a stocking mask, was armed with a knife and attacked the victims in apartment complexes. Martin also learned that prior to the attack at the Town & Country apartment complex, police investigating Derr had followed him to that very same complex, though no arrest had been made.

Two weeks before McAlister went to trial, Detective Martin showed the victim another photo spread containing the original photograph of McAlister wearing his plaid shirt as well as a photograph of Derr—who looked very similar to McAlister. The victim again identified McAlister as her assailant.

McAlister went to trial on September 24, 1986 and chose to have a judge decide his case without a jury. The victim identified McAlister as her attacker, though she admitted she had only a partial view of her assailant's face. McAlister, his mother and his girlfriend testified that on the day of the attack, McAlister and his girlfriend went to a museum during the afternoon, then he came home where he had dinner with his mother and went to his bedroom around 9 p.m. McAlister's mother said she went to his room around 10:30 p.m. and he was asleep and the television was on.

The trial lasted one day and the judge convicted McAlister of attempted rape and abduction with intent to defile. Prior to sentencing, the prosecutor told the judge that he was concerned that McAlister might be innocent. The judge, the prosecutor later recalled, said that he was not persuaded by the victim's testimony, but believed that McAlister's mother had lied about his alibi. Still, the judge and the prosecutor agreed to allow McAlister to take a polygraph examination. The results, however, were inconclusive and the judge sentenced McAlister to 35 years in prison.

In 1993, after McAlister's appeal was denied, Detective Martin and the prosecutor, Joe Morrissey, appeared at a parole hearing for McAlister. Both testified that they believed that McAlister was innocent. Parole was denied.

In 2002, *Richmond Times-Dispatch* reporter Frank Green wrote about the case, focusing on the striking similarity in appearance of Derr and McAlister. The article quoted Martin as saying, "We felt we had the wrong man." Morrissey, the prosecutor, told the newspaper: "It's the one case out of thousands that has always troubled me. I'm literally shocked that he's still locked up."

That same year, McAlister, with the support of Martin and Morrissey, petitioned Gov. Mark Warner for a pardon. In 2003, Warner denied the petition because, his staff later told Martin, there was no DNA evidence to exonerate McAlister.

In 2004, McAlister was released on parole and was required to register as a sex offender. He fell into depression, began abusing alcohol and was sent back to prison in 2006 for violating terms of his parole.

In January 2015, McAlister was scheduled for release, but the Commonwealth of Virginia filed a petition to keep him imprisoned under the state's civil commitment process as a dangerous sexual predator.

In April 2014, the Mid-Atlantic Innocence Project, which had been investigating McAlister's case, along with Richmond

Commonwealth attorney Michael Herring, petitioned Virginia Gov. Terry McAuliffe for an absolute pardon based on actual innocence.

By that time, the Mid-Atlantic Innocence Project had represented [Jerry Lee Jenkins](#), who was convicted of a rape in Maryland in 1987. Jenkins was exonerated in 2013 after DNA testing of biological evidence from that rape excluded Jenkins and identified Derr as the rapist.

The pardon petition filed on behalf of McAlister listed a litany of crimes linked to Derr: "Derr was a rapacious and violent sexual predator who terrorized Richmond and its surrounding areas in the 1980s until he was stopped in 1988 and sentenced to multiple life sentences for a brutal rape of a Fredericksburg woman. Derr remains in prison to this day, and while he has been serving time, he has been convicted and sentenced to additional life sentences in both Virginia and Maryland for other violent sexual offenses that were linked to him through cold-case DNA testing. He also remains a prime suspect in numerous still-open rape and attempted rape cases in various Virginia jurisdictions."

McAlister's lawyers interviewed three retired Henrico County detectives who provided sworn statements that after the 1986 assault for which McAlister was convicted, they trailed Derr to a laundry room at the same apartment complex. They saw him pull a stock mask over his face and believed he was preparing to assault an undercover female detective who was posing as a resident doing her laundry. Derr fled, however, when another resident arrived to dispose of some trash.

On May 13, Gov. McAuliffe granted McAlister's petition for an absolute pardon after being informed that Derr had confessed to the crime for which McAlister was convicted, and McAlister was released.

"A number of individuals in the law enforcement community... have concluded that this crime was committed by another individual, and that Mr. McAlister should be freed to return to his family and his community," McAuliffe said. "I have reached the same conclusion, and I have acted in accordance with the law."

– *Maurice Possley*

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Posting Date: 5/18/2015

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