



**3.2 Motion to Dismiss Based on Accord and Satisfaction**

VIRGINIA:

IN THE \_\_\_\_\_ COURT FOR THE [CITY] [COUNTY] OF \_\_\_\_\_  
COMMONWEALTH OF VIRGINIA

v. CASE NO. \_\_\_\_\_

[Defendant's name],

Defendant.

**MOTION TO DISMISS BASED ON ACCORD AND SATISFACTION**

The Defendant, [Defendant's name], by counsel, moves for a dismissal upon an accord and satisfaction on the following basis:

1. The Defendant was charged with [Offense] by the complaining witness, [Victim's name], said incident having allegedly taken place on [Date].

2. Since the filing of the complaint, issuance of an arrest warrant, and arrest of the Defendant, the parties have reached an agreement for a release of [Defendant's name] based on an accord and satisfaction with [Victim's name] on terms and conditions which the parties have memorialized in an affidavit and agreement of release based on accord and satisfaction.

WHEREFORE, under the provisions of section 19.2-151 of the Virginia Code, the defendant moves for dismissal of the charge of [Offense] against [him] [her] on the grounds of accord and satisfaction.

Respectfully submitted,

[Defendant's name]  
By Counsel

COUNSEL:

\_\_\_\_\_  
[Name of Attorney]  
Virginia State Bar No. \_\_\_\_\_  
[Name of Firm]  
[Address]  
[City, State, and Zip Code]  
[Telephone Number]  
[Fax Number]  
[Email Address]

CERTIFICATE

I hereby certify that a true and accurate copy of the foregoing was [hand-delivered] [sent by first-class mail postage prepaid] to [name and address of Commonwealth's Attorney] on \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
[Attorney's name]



**3.3 Motion to Dismiss—Statute of Limitations**

VIRGINIA:

IN THE \_\_\_\_\_ COURT FOR THE [CITY] [COUNTY] OF \_\_\_\_\_  
COMMONWEALTH OF VIRGINIA

v. CASE NO. \_\_\_\_\_

[Defendant's name],

Defendant.

**MOTION TO DISMISS**

The Defendant, [Defendant's name], by counsel, respectfully moves the court to dismiss the proceeding against [him] [her] on the following basis:

[1. That the charge is barred by the statute of limitations set forth in section 19.2-8 of the Virginia Code, and

2. That there is no evidence against the Defendant, save [his] [her] own testimony, which testimony is immunized under section 19.2-270.]

Respectfully submitted,

[Defendant's name]  
By Counsel

COUNSEL:

\_\_\_\_\_  
[Name of Attorney]  
Virginia State Bar No. \_\_\_\_\_  
[Name of Firm]  
[Address]  
[City, State, and Zip Code]  
[Telephone Number]  
[Fax Number]  
[Email Address]

CERTIFICATE

I hereby certify that a true and accurate copy of the foregoing was [hand-delivered] [sent by first-class mail postage prepaid] to [name and address of Commonwealth's Attorney] on \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
[Attorney's name]



### 3.4 *Motion to Dismiss—Not a Lesser Included Offense*

VIRGINIA:

IN THE \_\_\_\_\_ COURT FOR THE [CITY] [COUNTY] OF \_\_\_\_\_

COMMONWEALTH OF VIRGINIA

v.

CASE NO. \_\_\_\_\_

[Defendant's name],

Defendant.

#### **MOTION TO DISMISS**

COMES NOW the Defendant, [Defendant's name], by counsel, and moves to dismiss the above-captioned case. As grounds therefore, the Defendant states that **(As an example of facts to be submitted to the court:)** [on [date of offense], [he] [she] was charged with driving under the influence of alcohol (DUI). This charge was never amended. On [date of district court trial], the Defendant pled not guilty to DUI and was tried and found guilty of improper driving. It is submitted that the finding constitutes a finding of “not guilty” on the charge of driving under the influence, but the conviction for improper driving is void, because improper driving is a lesser-included offense of reckless driving, pursuant to section 46.2-869 of the Virginia Code, and reckless driving is not a lesser-included offense to driving under the influence. *Hundley v. Commonwealth*, 193 Va. 449, 69 S.E.2d 336 (1952). An accused cannot be convicted of a crime that has not been charged, unless the crime is a lesser-included offense of the crime charged. Consequently, the conviction must be dismissed. *See Lowe v. Commonwealth*, 33 Va. App. 583, 535 S.E.2d 689 (2000), *overruled on other grounds by Edwards v. Commonwealth*, 41 Va. App. 752; 589 S.E.2d 444 (2003).]

Respectfully submitted,

[Defendant's name]

By Counsel

COUNSEL:

\_\_\_\_\_  
[Name of Attorney]  
Virginia State Bar No. \_\_\_\_\_  
[Name of Firm]  
[Address]  
[City, State, and Zip Code]  
[Telephone Number]  
[Fax Number]  
[Email Address]

CERTIFICATE

I hereby certify that a true and accurate copy of the foregoing was [hand delivered] [sent by first-class mail postage prepaid] to [name and address of Commonwealth's Attorney] on \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
[Attorney's name]