COURT OF APPEALS OF VIRGINIA

Record No. 0828-25-1

RAYVON KERSEY
v.
COMMONWEALTH OF VIRGINIA

Present: Chief Judge Decker, Judges Malveaux and Causey

Opinion Issued September 29, 2026*

FROM THE CIRCUIT COURT OF THE CITY OF NORFOLK
Robert J. Humphreys, Judge Designate[1]

(J. Barry McCracken, Assistant Public Defender, on brief), for appellant.

(Jason S. Miyares,[2] Attorney General; J. Brady Hess, Assistant Attorney General, on brief), for appellee.

MEMORANDUM OPINION
PER CURIAM

Rayvon Kersey appeals his conviction for abduction in violation of Code § 18.2-47. He challenges the sufficiency of the evidence. Kersey also suggests that the trial court erred in denying his motion to set aside the verdict because the restraint used in the abduction was merely incidental to his other offenses. Having examined the briefs and record in this case, the panel unanimously agrees that oral argument is unnecessary because "the facts and legal arguments are adequately presented in the briefs and record, and the decisional process would not be significantly aided by

* This opinion is not designated for publication. *See* Code § 17.1-413(A).

[1] Judge Humphreys is a senior judge of this Court. He took no part in the consideration of this matter.

[2] Jay C. Jones succeeded Jason S. Miyares as Attorney General on January 17, 2026.

oral argument." *See* Code § 17.1-403(ii)(c); Rule 5A:27(c). For the following reasons, the conviction is affirmed.[3]

BACKGROUND[4]

The abduction and related offenses are the result of Kersey's physical attack on his wife, Diana Norfleet, on the afternoon of April 3, 2024. That afternoon, Kersey and Norfleet were alone in the bedroom watching television. While Norfleet and Kersey were talking, he suddenly attacked her. Kersey put his hand around her neck and strangled her until she fell unconscious on the floor. When Norfleet regained consciousness, Kersey was "standing over" her. He called Norfleet a "bitch" and ordered her to sit on the bed. Fearful, Norfleet initially complied, but then she "lunged toward the door" to escape. Kersey blocked her exit and punched her in the jaw. When Norfleet again tried to get out the door, Kersey bit her on the finger.

Afraid of Kersey and what he might do to her, Norfleet delayed contacting the police and reporting the incident for about a week. Norfleet explained that she had left Kersey several times before, and each time she returned he punished her through physical abuse. But about a week after the attack, Norfleet told Kersey she had a doctor's appointment, dropped him off at work, packed her belongings, and went to a domestic violence shelter. Around the same time, she went to the police and also sought medical treatment for injuries she sustained. Based on Norfleet's

[3] Although the notice of appeal included the convictions for strangulation and assault and battery of a family member, Kersey has not assigned any error to the trial court's judgment for those convictions or presented any argument on brief. Accordingly, we limit our analysis to the abduction conviction. *See* Rule 5A:20.

[4] "An appellate court must 'review the evidence in the light most favorable to the Commonwealth, the prevailing party in the trial court . . . .'" *Commonwealth v. Wilkerson*, 304 Va. 92, 100 (2025) (quoting *Commonwealth v. Perkins*, 295 Va. 323, 332 (2018) (per curiam)). In doing so, it "accord[s] the Commonwealth the benefit of all reasonable inferences deducible from the evidence." *Id.* (quoting *Perkins*, 295 Va. at 332).

account, the Commonwealth charged Kersey with abduction, strangulation, and assault and battery of a family member.

At Kersey's bench trial, the Commonwealth presented testimony from Norfleet. Kersey testified in his defense, as did two other witnesses: Steve Johnson, Kersey's co-worker and friend, and Marlene McKinley, Kersey's sister and Johnson's girlfriend.[5]

During his testimony, Kersey explained that he and Norfleet had a slight altercation on April 2, 2024, the night before the alleged offenses. That night, after seeing a text message from another man on Norfleet's phone, the couple began arguing. According to Kersey, during the argument, he grabbed Norfleet's shoulders and held her down on the bed. He denied strangling Norfleet or preventing her from leaving the bedroom. According to Kersey, the following evening, he, Norfleet, Johnson, and McKinley attended a wake together.

Johnson and McKinley testified that no altercation occurred between Kersey and Norfleet on April 3, 2024. Johnson said that he and Kersey worked until about 7:30 p.m. that evening. Norfleet, Kersey, McKinley, and Johnson then attended a wake for Johnson's sister that evening, and they stayed there until around midnight. McKinley said Norfleet was at McKinley's house all day on April 3, 2024, while Kersey and Johnson were at work. According to McKinley, when the group attended the wake together, Norfleet appeared happy and not fearful of Kersey.

After the close of the evidence, the trial court heard arguments on Kersey's motion to strike and denied it. In finding Kersey guilty of abduction, strangulation, and assault and battery of a family member, the trial court credited Norfleet's testimony. The court expressly found that Norfleet was "more credible" than the conflicting witnesses.

Kersey made a motion to set aside the verdict, arguing that any detention in the alleged abduction was merely incidental to the crimes of strangulation and assault and battery. The trial

[5] The three witnesses had prior felony convictions.

court denied the motion. Kersey was sentenced to ten years and twelve months of imprisonment with four years suspended.

ANALYSIS

I. Sufficiency of the Evidence

Kersey contends that the evidence was insufficient to support his abduction conviction because the Commonwealth failed to prove he detained Norfleet through force or intimidation.

In evaluating his claim, we are guided by well-established law. "The judgment of the trial court, sitting without a jury, is 'entitled to the same weight as a jury verdict.'" *Commonwealth v. Perkins*, 295 Va. 323, 327 (2018) (per curiam) (quoting *Cole v. Commonwealth*, 294 Va. 342, 361 (2017)). "When an appellate court reviews the sufficiency of the evidence underlying a criminal conviction, its role is a limited one." *Commonwealth v. Garrick*, 303 Va. 176, 182 (2024). "The judgment of the trial court is presumed correct and will not be disturbed unless it is 'plainly wrong or without evidence to support it.'" *Pijor v. Commonwealth*, 294 Va. 502, 512 (2017) (quoting Code § 8.01-680); *see Cuffee v. Commonwealth*, ___ Va. ___, ___ (Apr. 16, 2026). Consequently, "it is not for this [C]ourt to say that the evidence does or does not establish [the defendant's] guilt beyond a reasonable doubt because as an original proposition it might have reached a different conclusion." *Commonwealth v. Barney*, 302 Va. 84, 97 (2023) (alterations in original) (quoting *Cobb v. Commonwealth*, 152 Va. 941, 953 (1929)).

"The only 'relevant question'" for this Court on review "is, after reviewing the evidence in the light most favorable to the prosecution, whether any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *Id.* (quoting *Sullivan v. Commonwealth*, 280 Va. 672, 676 (2010)). If the record supports the conviction, "the reviewing court is not permitted to substitute its own judgment . . . , even if its opinion might differ from

the conclusions reached by the trier of fact." *Commonwealth v. Richerson*, ___ Va. ___, ___ (Apr. 23, 2026) (quoting *Garrick*, 303 Va. at 182).

Accordingly, the appellate court reviewing sufficiency of the evidence considers the record in the light most favorable to the Commonwealth, the prevailing party at trial, and affords it the benefit of all inferences reasonably drawn from the evidence. *Garrick*, 303 Va. at 182. "An appellate court may neither find facts nor draw inferences that favor the losing party that the factfinder did not." *Id.*

A person commits an abduction if, "by force, intimidation or deception, and without legal justification or excuse, [he] seizes, takes, transports, detains or secretes another person with the intent to deprive such other person of h[er] personal liberty." Code § 18.2-47(A); *see Brown v. Commonwealth*, 74 Va. App. 721, 730 (2022).[6] Under the statute, "a defendant 'detains' a victim by having that victim 'remain in a certain location, or even in a certain position[,]' through the use of force, intimidation, or deception." *Commonwealth v. Herring*, 288 Va. 59, 74 (2014) (quoting *Burton v. Commonwealth*, 281 Va. 622, 628 (2011)). "Intimidation is defined as '[u]nlawful coercion; extortion; duress; putting in fear.'" *Brown*, 74 Va. App. at 731 (alteration in original) (quoting *Bivins v. Commonwealth*, 19 Va. App. 750, 752 (1995)). "[A] victim suffers fear of bodily harm in the abduction context if the defendant imposes 'psychological pressure on [the victim] who, under the circumstances, is vulnerable and susceptible to such pressure.'" *Id.* at 732 (second alteration in original) (quoting *Sutton v. Commonwealth*, 228 Va. 654, 663 (1985)) (noting that the Commonwealth need not prove the defendant expressly threatened to do bodily harm).

[6] Virginia's abduction statute "effectively combines the common law offenses of kidnapping, abduction, and false imprisonment 'into one statutory felony.'" *Clanton v. Commonwealth*, 53 Va. App. 561, 567 (2009) (en banc) (quoting *Walker v. Commonwealth*, 47 Va. App 114, 120 (2005), *aff'd*, 272 Va. 511 (2006)).

Relying on his own evidence, Kersey claims that the Commonwealth failed to prove that he committed abduction. But, in finding Kersey guilty, the trial court expressly credited Norfleet's testimony and did not credit Kersey's version of events. *See Rodriguez v. Commonwealth*, 85 Va. App. 664, 695 (2025) ("[D]etermining the credibility of the witnesses and the weight afforded [their] testimony . . . are matters left to the trier of fact, who has the ability to hear and see them as they testify." (alterations in original) (quoting *Raspberry v. Commonwealth*, 71 Va. App. 19, 29 (2019))); *Edelstein v. Commonwealth*, 83 Va. App. 345, 359-60 (2025) ("[I]n its role of judging witness credibility, the fact finder is entitled to disbelieve the self-serving testimony of the accused and to conclude that the accused is lying to conceal his guilt." (quoting *Maust v. Commonwealth*, 77 Va. App. 687, 703 (2023) (en banc))).

The record, viewed under the proper legal standard, demonstrates the evidence proved the requisite element of detention through force or intimidation. Norfleet testified that after Kersey strangled her, she lost consciousness. She said that when she awoke, Kersey stood above her "like a gorilla" and he said, "B-i-t-c-h, sit on the bed and shut up." He was "yelling and screaming." Afraid for her safety, Kersey initially complied. A reasonable trier of fact could find from this evidence that Kersey used intimidation to have Norfleet remain in the bedroom. *See Brown*, 74 Va. App. at 732-33 (noting that "[t]he abduction statute does not contain a temporal requirement," so a victim "can be detained" or transported "even if only for the briefest of moments").

As a result, we hold that the evidence supports the trial court's judgment finding Kersey guilty of abduction.

II. Incidental Detention Doctrine

Kersey alternatively suggests that the trial court erred in denying his motion to set aside the verdict because any force or intimidation used to detain Norfleet was merely incidental to the other offenses.

So as it relates to abduction, "the General Assembly 'did not intend to make the kind of restraint which is an intrinsic element of crimes such as rape, robbery, and assault a criminal act, punishable as a separate offense.'" *Vay v. Commonwealth*, 67 Va. App. 236, 250 (2017) (quoting *Hoyt v. Commonwealth*, 44 Va. App. 489, 492 (2004)). "[F]or abduction to be punishable as a separate offense, the detention must be 'separate and apart from, and not merely incidental to, the restraint employed in the commission of the other crime.'" *Id.* (quoting *Brown v. Commonwealth*, 230 Va. 310, 314 (1985)). Kersey claims that in his case "the crimes of assault and strangulation were simultaneous with the limited and incidental detention" involved in any abduction.

"[W]hether the detention established by the evidence is 'the kind of restraint which is an intrinsic element of crimes such as rape, robbery, and assault,' is a question of law to be determined by the court." *Swezey v. Commonwealth*, 77 Va. App. 809, 815 (2023) (alteration in original) (quoting *Lawlor v. Commonwealth*, 285 Va. 187, 229 (2013)). Consequently, we review this overarching issue de novo. "However, because no two crimes are exactly alike, determining whether an abduction is incidental necessarily requires consideration of the historical facts of each case." *Vay*, 67 Va. App. at 253 (quoting *Hoyt*, 44 Va. App. at 496 n.4). So we defer to findings of historical fact that have support in the record. *See id.*

"[W]hen abduction is charged alongside an offense for which detention is an intrinsic element" the "*only* issue . . . is whether any detention exceeded the minimum necessary to complete the required elements of the other offense" or offenses. *Swezey*, 77 Va. App. at 816 (quoting *Lawlor*, 285 Va. at 225). In conducting this analysis, a court may consider the length of the detention, the timing of the abduction and the other crimes, the connection between the abduction and the other crimes, and the additional danger to the victim caused by the detention. *Wiggins v. Commonwealth*, 47 Va. App. 173, 183 (2005).

The question in this case is whether Kersey detained Norfleet only to the extent necessary to strangle and assault and batter her. *See* Code §§ 18.2-51.6 (strangulation) and -57.2 (assault and battery of a family member). Norfleet testified that Kersey attacked her suddenly by grabbing her around the neck. The pressure that he applied caused her to lose consciousness. With these acts, the crime of strangulation was complete.

As noted above, after Norfleet regained consciousness, Kersey stood above her, cursed her, and ordered her to sit on the bed. Norfleet complied out of fear of Kersey. In this way, Kersey committed acts sufficient to sustain a conviction for abduction.

While she initially remained on the bed as ordered, Norfleet decided to attempt escape, and she lunged for the door. When she did so, however, Kersey both punched and bit her. Either act could have supported the assault and battery conviction.

As a result, the detention of Norfleet in the abduction was separate from, and not incidental to or inherent in, the preceding strangulation and assault and battery offenses. *See Epps v. Commonwealth*, 66 Va. App. 393, 403 (2016) (noting that although the evidence proved a "temporal connection" between the assault and battery and the abduction, the two offenses "did not occur simultaneously"), *aff'd*, 293 Va. 403 (2017). Accordingly, the trial court did not err in denying Kersey's motion to set aside the abduction conviction.

CONCLUSION

The evidence was sufficient to prove that Kersey used force or intimidation to detain Norfleet. In addition, the use of such force or intimidation was more than the minimum necessary to accomplish the other offenses. The conviction is therefore affirmed.

Affirmed.