

COURT OF APPEALS OF VIRGINIA

Present: Judges Baker, Bray and Overton
Argued at Norfolk, Virginia

MERCEDES CHRISTINA RUSSELL

v. Record No. 1435-94-1
COMMONWEALTH OF VIRGINIA

MEMORANDUM OPINION* BY
JUDGE NELSON T. OVERTON
OCTOBER 10, 1995

FROM THE CIRCUIT COURT OF THE CITY OF VIRGINIA BEACH
Frederick B. Lowe, Judge

Richard C. Clark, Assistant Public Defender
(Office of the Public Defender, on brief), for
appellant.

Robert B. Beasley, Jr., Assistant Attorney General
(James S. Gilmore, III, Attorney General, on
brief), for appellee.

Appellant was convicted of cruelty and injuries to children, Code § 40.1-103, and abduction, Code § 18.2-47. At the bench trial, she was sentenced to five years for each offense, to run concurrently, with two and one half years suspended. Appellant contends that the conviction of both offenses constitutes a violation of the double jeopardy clause. We disagree, and affirm the convictions.

At trial, witnesses testified to instances in which appellant mistreated her children, including, inter alia, placing her daughter in a box in the closet as punishment. Based on this testimony, the court convicted her of both cruelty and abduction.

Appellant asserts that the restraint upon her child was

*Pursuant to Code § 17-116.010 this opinion is not designated for publication.

incidental to the cruelty charge and does not support the abduction conviction. Using a Blockburger analysis, we find the two charges to be separate offenses, the evidence supporting each.

The test set forth in Blockburger is whether each offense requires proof of an additional fact which the other does not. Blockburger v. United States, 284 U.S. 299, 304 (1932). A single act may violate two separate statutes. Id. The conviction of cruelty to children required that the appellant was the custodian of the child and that she endangered the life or the health of the child or did acts that tortured, tormented, beat, or cruelly treated the child. Code § 40.1-103. The abduction conviction required that appellant detained or secreted the child with intent to deprive her of her personal liberty. Code § 18.2-47. Restraint is not required for an offense of cruelty to children; no sort of abuse is required for an offense of abduction.

Because we find the two statutes to require proof of additional facts, and therefore to be two distinct offenses, the double jeopardy clause is not offended. The convictions are affirmed.

Affirmed.