

COURT OF APPEALS OF VIRGINIA

Present: Chief Judge Fitzpatrick, Judge Annunziata and
Senior Judge Duff
Argued at Alexandria, Virginia

MAURICIO MORENO

v. Record No. 2237-98-4

COMMONWEALTH OF VIRGINIA

MEMORANDUM OPINION* BY
JUDGE CHARLES H. DUFF
MAY 23, 2000

FROM THE CIRCUIT COURT OF THE CITY OF ALEXANDRIA
Richard J. Jamborsky, Judge Designate

Gary H. Smith for appellant.

Richard B. Smith, Senior Assistant Attorney
General (Mark L. Earley, Attorney General, on
brief), for appellee.

The trial judge convicted appellant of abduction. On appeal, appellant contends that the evidence was insufficient as a matter of law to support his conviction because the evidence failed to prove that he possessed the specific intent to deprive the victim of her personal liberty or to withhold or conceal her from another person or authority entitled to her charge. For the reasons that follow, we affirm appellant's conviction.

"On appeal, 'we review the evidence in the light most favorable to the Commonwealth, granting to it all reasonable

* Pursuant to Code § 17.1-413, recodifying Code § 17-116.010, this opinion is not designated for publication.

inferences fairly deducible therefrom.'" Archer v. Commonwealth, 26 Va. App. 1, 11, 492 S.E.2d 826, 831 (1997) (citation omitted).

So viewed, the evidence proved that on January 22, 1998, as Yessenia Ruiz, the ten-year-old victim, walked to her school bus stop on Four Mile Road in Alexandria, Virginia, she noticed appellant walking towards her. Appellant, who was a stranger to the victim, grabbed the victim by her wrist and "started pulling towards" her. Appellant then said, "Look, a pretty girl." The victim told appellant to let her go, but he did not. The victim then kicked appellant's leg and he released her. The victim ran to her bus stop across the street, where her friend, Ruth Villegas, was waiting. Appellant did not pursue the victim.

Villegas testified that she saw appellant grab the victim. She stated that when appellant did so, she saw the victim "kicking away" from him.

Code § 18.2-47 provides that a person shall be guilty of abduction if he or she "by force, intimidation or deception, and without legal justification or excuse, seizes, takes, transports, detains or secretes the person of another, with the intent to deprive such other person of [her] personal liberty or to withhold or conceal [her] from any person"

"The question of [appellant's] intent must be determined from the outward manifestation of his actions leading to usual and natural results, under the peculiar facts and circumstances disclosed.

This determination presents a factual question which lies peculiarly within the province of the [fact finder]." "The [fact finder] may consider the conduct of the person involved and all the circumstances revealed by the evidence." Indeed, "[t]he specific intent in the person's mind may, and often must, be inferred from that person's conduct and statements."

Hughes v. Commonwealth, 18 Va. App. 510, 519-20, 446 S.E.2d 451, 457 (1994) (citations omitted).

In Scott v. Commonwealth, 228 Va. 519, 323 S.E.2d 572 (1984), the Supreme Court held that "the physical detention of a person, with the intent to deprive him of his personal liberty, by force, intimidation, or deception, without any asportation of the victim . . . is sufficient to support a conviction of abduction." Id. at 526, 323 S.E.2d at 576. In Simms v. Commonwealth, 2 Va. App. 614, 346 S.E.2d 734 (1986), we found that "abduction was established as a fact once the Commonwealth proved that [the defendant] had deprived the victim of her liberty by threats of violence and use of force." Id. at 618, 346 S.E.2d at 736.

In this case, based upon the testimony of the victim and Villegas, it was reasonable for the fact finder to conclude that because the victim had to resort to force after her earlier verbal attempt to gain her freedom failed that appellant intended to deprive the victim of her personal liberty. "The [fact finder] was entitled to infer that appellant intended the natural and probable consequences of his actions"

Humbert v. Commonwealth, 29 Va. App. 783, 786 n.1, 514 S.E.2d 804, 806 n.1 (1999). In addition, the fact finder could reasonably conclude that the victim's resistance, coupled with the witnesses at the bus stop across the street, deterred appellant from continuing the abduction.

Appellant's reliance upon Johnson v. Commonwealth, 221 Va. 872, 275 S.E.2d 592 (1981), in support of his argument is misplaced. In Johnson, the Supreme Court reversed appellant's abduction conviction because the evidence did not support a finding that the defendant either intended to defile the victim or deprive her of her personal liberty. Rather, the evidence was consistent with an intent to persuade her to engage in consensual sexual intercourse. See id. at 879, 275 S.E.2d at 596-97. Johnson is distinguishable from the facts of the present case. In this case, no evidence showed that appellant intended to kiss the victim or sexually assault her in any manner. Moreover, in this case, unlike Johnson, appellant did not immediately release the victim upon the first sign of resistance. Rather, when the victim told appellant to let her go, he refused, and it was not until after she had kicked him that he finally let her go.

For these reasons, we affirm appellant's conviction.

Affirmed.