

12590

No. _____

Supreme Court of Illinois

Moody, et al

vs.

People

71641  7

State of Illinois }
County of Cook } SS.
City of Chicago }

Page 1

Pleas before the Honorable
Robert S. Wilson Recorder of the City of Chicago
and presiding Judge of the Recorders Court
of said City at a term thereof begun and
held at the Court House in the City of Chicago
in the County and State aforesaid on the
first Monday of it being the second day of
November in the year of our Lord one thousand
eight hundred and fifty seven and of the
Independence of the United States the eighty second.

Present Hon. Robert S. Wilson Recorder of the City of Chicago
Carlos Haren States Attorney
John L. Wilson Sheriff of Cook County
Attest Philip A. Hogue Clerk of said Court

The Sheriff returned into Court the venire issued
in pursuance of law for a grand jury, returned executed
by summoning the following named persons to wit.

Wm Austin	J. L. Howe	L. G. Cretter
Thomas Hale	Joseph Moore	Leck Madhams
J. B. King	B. C. Howard	Joseph Schlossman
Benjamin Ackley	Charles Keeny	John Whitney
Deliver Walker	E. Platt	B. F. Hayes
Ebenezer Day	Jacob Harris	Robert Bamber
J. M. McComber	L. Morgan	William Thomas
	Spencer Lemming	J. A. Davidson

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who gave their names attendance at this term and were duly sworn in as a grand jury for the body of the City of Chicago in the County of Cook and State of Illinois and the Court having appointed Thos Hale one of their number as foreman and they having received the charge of the Court retire to consider of their presentments.

And afterwards Court on the tenth day of November in the year aforesaid is being one of the days of the November term of said Court the grand jury heretofore empaneled come into Court and among other presentments make the following enclosed a true bill to wit

The People of the State of Illinois
 vs Indictment for Kidnapping
 William Omer Michael Joy
 Mary Moody and William H Reed

which said Indictment is in the words and figures following:

The People
vs } Kidnapping
Brusk et al }

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State of Illinois,
City of Chicago, Cook County } s.s.

Of the November Term
of the Record's Court of the City of Chicago, in said
State and County in the year of our Lord one
thousand eight hundred and fifty seven.

The Grand Jurors chosen, selected and sworn
in and for the City of Chicago, in the County of
Cook, and State of Illinois in the name and
by the authority of the People of the State of Ill-
inois, upon their oaths, present that William Brusk
Michael Fay, Mary Moody and William H Reed late
of said City, on the twentieth day of October in
the year of our Lord one thousand eight hun-
dred and fifty seven in said City of Chicago
in the County and State aforesaid, unlawfully
fraudulently and wickedly without having estab-
lished a claim according to the Laws of the
United States forcibly did steal, take and carry
one Christina Davis of said City County and
State aforesaid the minor child and Daughter
of one

Davis of said City County and
State aforesaid and her the said Christina
Davis did carry transport and convey out of
the said State of Illinois into another State
To wit into the State of Indiana without the
consent of the said Christina Davis and ag-
ainst her will and without the counsel of the
said

Davis the Father of the said
Christina Davis contrary to the statute in such
case made and provided and against the

place and dignity of the same People of the State of Illinois. And the Grand Jurors aforesaid in the name and by the authority aforesaid upon their oath aforesaid do further present that the said William Crush, Michael Jory, Mary Moody and William H Reed, on the same day and year aforesaid and at the City of Chicago aforesaid unlawfully without having established a claim according to the laws of the United States forcibly did take and arrest one Christina Davis, a free white minor child and her the said Christina Davis forcibly carry out of this State to wit. the State of Illinois into another Country to wit. the Province of Canada without the consent of her the said Christina Davis and against her will. contrary to the statutes and against the peace and dignity of the same People of the State of Illinois

To Honor. States Attorney.

Filed Oct 10th 1857.

P. W. Hogue Clerk.

Witnesses

Christina Davis

Charles E. Smith

Elizabeth Smith

H. C. Huntworth

Charles Welch

Robert Alexander

John M. Kennedy

A true Bill - Thos Hall. Foreman of the Grand Jury.

The People of the State Illinois

vs
William Crush, Michael Jory
Mary Moody and William
H Reed.

Indictment for Kid-
napping, in the Record
ers Court Chicago Illinois
Oct Term A. D. 1857.

The Defendants comes and moves the Court to quash the Indictment in the above cause for the following reasons. To wit.

- 5
- 1st The Statute Law of the State of Illinois under which the said Bill of Indictment was found is unconstitutional and void in Law.
 - 2^d The said Indictment is not in the Language of the Statute under which it was said to be found and is therefore bad in not following the Language of the Statute.
 - 3^d The Indictment is uncertain, vague and void in Law.

Authorities ^{referred} ~~referred~~ to support Motion.
N.S. C. D 1846 Page 181 Section 162
Do 159 Sec 56. N.S. 1825 Sec 174. Prigg vs
Commonwealth Pennsylvania 16 Peters 539
People v Scammow 498. 4 Blackford State vs
Roberts 178 Page.

Filed Oct 10th 1857

J A Hayes. Clerk

- 3^d Davis to live a life of Prostitution.
- 4th The Indictment should affirmatively show in what particular the "false pretenses" were made, which it does not do, only by inference.
- 5th The Indictment does not show how it arose, in what manner, nor what acts the Defendants did to constitute the conspiracy charged in the Indictment.
- 6th The Term, "False pretenses and false representations" do not of themselves constitute any crime.
- 7th The Indictment is in other respects informal and insufficient and to which the Def^s should not be compelled to answer.

Authorities cited.

Leading Criminal Cases Vol 1st 295. U. S. Digest Vol 14 P 105. Sec 219 or American Leading Cases Pages 462, 446, 44

Drummond &
For Def^s
Filed Oct 14th 1857. J. A. Hoynes.

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The People of the State of Illinois
 William Bush, Michael Joy,
 Mary Moody and William J. Reed.
 Of the
 Attorney Generals of the Recorder's Court, City of
 Chicago Ills. Indictment for Kidnapping.

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It is remembered that upon the arraignment
of the Defendants in the above entitled cause
and before they were called upon to plead to
the said Indictment the said Defendants by
their counsel moved the Court to quash the
Court in the said Indictment which said
motion was by the Court overruled. Whereupon
the said Defendants by their counsel then
and there excepted to said ruling of the said
Court and there and there asked the said
Court to sign and seal this Bill of exceptions
and make the same a part of the Record in
this cause which is accordingly done.

R. J. Wilson *Recd*
Recorder

said Indictment is not one of those known to
the laws of the State of Illinois.

8 B.D. Chicago 4th 1857 } J. D. Manchester
Of counsel for Defendants
D.A. Hayes Clerk.

Recorders Court of the }
City of Chicago

The People of the State of Illinois }
William Brush Michael boy } Indictment
Mary Moody and Wm. W. Allen } for Kidnapping

City of Chicago

Courtesy of Cook } s.s.

William Brush Michael
boy two of the above named Defendants. being
adversely sworn say that they cannot safely pro-
ceed to trial at present on the above named
Indictment for Kidnapping on account of
the absence of important and material witnesses
for their defense. That said Indictment
was filed with the clerk of the Court on the
10th inst & said Defendants were arraigned
on the 11th inst on the same. That on said 11th
inst subpoenas were issued & placed in the
hands of an officer for the following witness-
es viz - Merwin Grant. Clara Knapp. Mary

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Collamore, Elizabeth Woods, Mrs Embrook, Nathaniel
 Braubert, James Parker, Mary Smith William
 Whitney, Adam Ehrgeht, & Mr & Mrs Lopez, that
 Deponents have been informed and believe that
 said James Parker, Mary Smith, Adam Ehrgeht
 are residents of the City of St Louis in the State
 of Missouri and that said William Whitney
 is a resident of this City & is running a Boat
 on the Canal from this Port to St Louis in
 the capacity of Captain, that he left the Port
 for St Louis some three weeks since & is now
 with his Boat at St Louis as Deponents
 have been informed & believe to be true. Deponents
 further say that they have stated to their
 counsel what they believe they can prove by
 said absent witnesses now in the City of St
 Louis & that their said counsel informs them
 that the testimony of said witnesses is material
 & important to their defense on the trial of
 said Indictment & that they cannot safely
 proceed to said trial without it, which
 they believe to be true. And Deponents
 further say that they believe they will be able
 to prove by said Capt. Wm Whitney that he has
 known Christina Davis the Curson said to
 have been Kidnapped the prosecuting wit-
 ness in this case & upon whose testimony the
 Prosecuting Attorney seeks this conviction,
 for some two years past & that she is a very
 vicious and profligate Person destitute of
 truth & not to be believed under oath & that
 her associates have been of the lowest character.
 And Affiant further say that they be-
 lieve they will be able to prove by the said
 Mary Smith & James Parker that the said

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Christina Davis lived for some time in a House of prostitution on Common St in said City of St Louis. that she was seduced while living in said house, & that she left said house & said city some five or six weeks since and that she is a Girl not worthy of belief under oath.

And Affiants further say that the said Mr & Mrs Soper named as Witnesses for their defence reside at the Town of London, Canada West and are the persons in whose house the said Christina Davis was found by Officer Chas E Smith & brought to this city. That affiants believe they will be able to prove by each Mr & Mrs Soper a state of facts entirely inconsistent with the crime of Kidnapping & also inconsistent with the truth of the statement made by said Christina Davis on her examination before the Police Magistrate.

And Affiants further say that they expect to be able to have a part if not all of the said Person named as Witnesses in this Affiant in this Court at an early day to testify in this cause.

Subscribed & sworn in open Court this 17th day of November 1857. }
 E. A. Wayne }
 Clerk of the Court }
 Wm. Brush }
 Michael ^{his} Joy }
 manag.

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The People of the State of Illinois }
 vs. }
 Mary Moody, impleaded with }
 Wm. Brusk et al. }
 Indictment for
 Kidnapping.
 Nov. Term 1857

State of Illinois
 Cook County } s.s.

Mary Moody one of the
 Defendants in the above Indictment being
 duly sworn doth depose and say that she
 has a good and substantial defense on the
 merits of this cause. That Mr.
 Soper and Soper his wife of London
 in the District of London Comeda West are
 material witnesses for this Dependent on the
 trial of this cause without whose testimony
 she cannot safely proceed to the trial there-
 of. That she expects to prove by said Soper and
 Wife (said witnesses) that this Dependent is not
 guilty either of kidnapping or aiding and
 assisting in kidnapping the said Christina
 Davis and by said Indictment said
 to be kidnapped. That said Christina Davis
 was about 14 years in December 1856. and
 that the said Christina Davis left the city
 of Chicago, County of Cook and also the
 State of Illinois said went through the
 States of Indiana and Michigan to Lon-
 don aforesaid of her own free will and
 accord and that she was not taken or

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conveyed out of this State against her will or
 without her consent. And that the said volun-
 tary trip of said Christina Davis is the same
 charged in said Indictment and supposed
 to constitute the crime of kidnapping: that
 she knows of no persons by whom she could prove
 the same facts who are not indicted with her
 in this cause, or the said Christina Davis who
 on the examination before the committing Court
 denied the facts that this Indictment was found
 at this Term of this Court since which time she
 has been unable to obtain the testimony of
 said witnesses or their attendance in Court
 that the given names of said witnesses are
 unknown to Deponent. That she expects to
 be able to obtain the testimony of said witnesses
 in this cause at the next Term of this Court
 And that this application is not made for
 delay but that justice may be done.

Subscribed & sworn to
 before me. Nov 7th 1857.

P. A. Hoynes
 Clerk Rtd

^{her} Mary + Moody
 J mark

Filed Nov 17th 1857. P. A. Hoynes. Clerk

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Be it further remembered that on the 18th day of November A. D. 1857 it being one of the days of the November term of the said Court, the following among other proceedings were had and entered of Record in said Court in this cause to-wit

The People

vs

Michael Joy, William Brush & Mary Moody, { Conspiracy
Kidnapping
and William H. Reed,

This day comes the said People by Carlos Haven States Attorney and the said defendants as well in their own proper person as by their Counsel also come, and they having been ~~permitted~~ furnished with a copy of their Indictment and a list of the Jurors and witnesses and they being duly arraigned and forthwith demanded of and concerning the crime alleged against them in said Indictment how they would answer themselves for plea herein in this behalf severally say that they are not guilty in the manner and form as charged in said Indictment and of this they put themselves upon the Country and the People do the like, and now after being joined between the parties it is ordered by the Court that a Jury come, whereupon come the Jurors of a Jury of good and lawful men to-wit.

L. P. Hommerich	H. G. Martens
A. H. Davidson	L. S. Stevens
E. F. Watkins	H. H. Pratt
W. D. McManus	A. Clin
V. A. Marsh	

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who being duly elected tried and sworn well
and truly to lay the issue joined between the
parties according to the law and the evidence
and they hearing a part of the testimony in this
case and the hour of adjournment having arrived
It is ordered by the Court that the further
consideration of this cause be postponed until
the coming in of the Court tomorrow morning at
eight o'clock

And on the 19th day of November A.D. 1857 the
following among other proceedings were had and
entered of Record in said Court in this cause to-wit

The People

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Michael Soy. William Brink
Mary Moody & William H. Reed

} Kidnapping
} Conspiracy

This day again comes the
said People by Carlos Haven States Attorney and
the said defendants as well in their own proper persons
as by their counsel also come and the jurors aforesaid
also come and they hearing further testimony as well
as the arguments of counsel and instructions of
the Court retire in charge of an Officer of the Court
to consider of their verdict and afterwards come into
Court and say, we of the jury find the several
defendants guilty in the manner and form as charged
in said Indictment and fix the term of their
imprisonment in the Penitentiary of this State

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for William Brink at six years Michael Joy at
four years Mary Moody at four years and
William H. Reed at one year.

Thereupon comes the said counsel of the said
defendants and moves the Court for a new trial,
which said motion was overruled as to all of said
defendants except W. H. Reed

No the jurors in the case of People vs
Brush, Jory, Mrs. Moody & Reed find the
Defendants Guilty. And affix their terms
of service in the Penitentiary as follows.

Williamo Brush at Six Years
Michael Jory at Four Years
Mary Moody at Four Years
Williamo M Reed at One Year.

D. H. Howard. Foreman.

Williamo M Reed

The ^{adv} People }

- Mrs in arrest. and for a
new trial for the reasons following.
- 1st Verdict against evidence.
 - 2nd No intention or guilty knowledge shown
on part of Reed.
 - 3rd Verdict against the Law as laid down by
the Court.

John A Thompson
For Williamo M Reed.

Dated Nov 19th 1857. P. H. Woyne Clerk.

Records Court of the
City of Chicago }

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The People of the State of Illinois

vs
Wm. Brusk et. al.

} Kidnapping

And now comes
the Defendant by his counsel & moves the Court
in arrest of judgment and for a new trial in
this cause for the following reasons. To wit:

First

The Court erred in refusing the Defendants
motions for continuance upon affidavits filed
whereby the Defendants were deprived of the
testimony of Soper & Wife of Andrew Comada
West & the testimony of Mrs. Whitney, James
Parker, Mary Smith & Adam Chasgoth of St
Louis, Missouri.

Second

The Court admitted improper evidence on
the part of the People against the Defendants
and refused to allow proper evidence on
the part of the Defendants offered by them

Third

The Court gave improper instructions
on the part of the People and refused
proper instructions on the part of the Defen-
dants & gave improper qualifications to the
Defendants instructions

Fourth

The verdict was against all the
evidence as to each and every of the said
Defendants

Fifth

There was no evidence to sustain the
charge of Kidnapping against either of the
Defendants.

Sixth

The verdict was against the weight of evidence
as to each of the said Defendants

Seventh. That there was no evidence, whatever against
18 Michael Joy tending to show that he had any
knowledge that the Girl Christine Davis was to
be taken from Chicago at all, or that he aided
in her removal.

Eighth. That upon a joint Indictment against
several parties where the verdict is guilty. the
jury could not fix the term of imprisonment
of one. for fix. two for four each, & one for one
year, no judgment could legally be rendered
on such a verdict.

Ninth. The Indictment is insufficient upon
which to pronounce judgment.

J. B. Manchester and
H. W. Hammond
Of Counsel for Defendants.
P. A. Hogue ck.

Filed Oct 20th 1857.

19 And afterwards took on the twenty third day
of November A D 1857 it being one of the days of
the November term of said Court the following among
other proceedings were had and entered of record in
said Court in this cause to-wit

The People

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vs
Mary Moody impld.
with Michael Joy & William Brink

vs William H Reed

Conspiracy
Kidnapping

This day
again comes the said People by Carlos Warren
States Attorney, and the said defendant as well
in his own proper person as by his counsel also comes
and now neither the said defendant nor his counsel
for his paying anything further why the Judgment
of the Court should not be pronounced against her
on the verdict of guilty heretofore rendered in this case
Therefore it is ~~conordered~~ and adjudged by the

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be it that the said defendant Mary Moody be taken from the Bar of this Court to the Common Jail of Cook County from whence she came and from thence by the Sheriff of Cook County within ten days from the date hereof to the Penitentiary of this State at Alton and be delivered to the Warden or Keeper of said Penitentiary and the said Warden or Keeper is hereby required and commanded to take the body of the said defendant Mary Moody and confine her in said Penitentiary in a safe and secure custody for and during the term of four years from and delivery hereof, one day of said term in solitary confinement and the residue of said term at hard labor and that she thereafter be discharged.

It is further ordered by the Court that the said defendant pay all the costs of these proceedings and that Execution issue therefor.

The People

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Michael Loy mple re
with Mary Moody & William Bush
William H Reed

Kidnapping
conspiracy

This day again come the said People by Carlos Hearn States Attorney and the said defendant as well in his own proper person as by his counsel also comes, and now neither he nor his counsel for him saying anything further why the Judgment of the Court should not be pronounced against him on the verdict of guilty heretofore rendered in this cause.

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Therefore it is ordered and adjudged by the Court that the said Michael Joy be taken from the bar of this Court to the Common Jail of Cook County from whence he came, and from thence by the Sheriff of Cook County within ten days from the date hereof to the Penitentiary of this State at Alton and be delivered to the Warden or Keeper of said Penitentiary and the said Warden or Keeper is hereby required and commanded to take the body of the said Defendant Michael Joy and confine him in said Penitentiary in a safe and secure custody for and during the term of four years from and after the delivery hereof, one day of said term in solitary confinement and the residue of said term at hard labor and that he be thereafter discharged.

And it is further ordered by the Court that the said defendant pay all the costs of these proceedings and that Execution issue therefor.

The People

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William Bush imp^d

with Mary Moody & Michael Joy
complained. *W. H. Reed*

Kidnapping

Conspiracy

This day come

the said People by Carlos Haven States Attorney, and the said defendant as well in his own proper person as by his counsel also comes and now recites the said defendant nor his counsel for him saying

22 anything further why the Judgment of the Court should not be pronounced against him on the verdict of guilty heretofore rendered in this cause.

Therefore it is ordered and adjudged by the Court that the said defendant William Brush be taken from the bar of this Court to the common Jail of Cook County from whence he came and from thence by the Sheriff of Cook County within ten days from the date hereof to the Penitentiary of this State at Alton and be delivered to the Warden or Keeper of said Penitentiary, and the said Warden or Keeper is hereby required and commanded to take the body of the said defendant William Brush and confine him in said Penitentiary in a safe and secure custody for and during the term of six years from and after delivery hereof one day of said term in solitary confinement and the residue of said term at hard labor and that he be thereafter discharged.

It is further ordered by the Court that the said defendant pay all the costs of these proceedings and that Execution issue therefor.

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Be it further remembered that on the 24th day
of November A. D. 1857. came the said defendants
William Bush Michael Joy. & Mary Moody
and of by their Attorney and filed their Bill
of Exceptions which is in the words and figures
following to-wit.

(Bill of
Exceptions)

The People of the State of Illinois,

vs.
William Bush, Michael Joy
Mary Moody & William W. Reed

Recorders Court
of the City of Chicago

Be it remembered

That afterwards on 17th day of November A.D. 1857
at the said November Term of said Court the said
Defendants William Bush and Michael Joy moved
for a continuance of this cause as to them
upon the following affidavit. To wit.

Recorders Court of the
City of Chicago }

The People of the State of Illinois

vs.
William Bush, Michael Joy
Mary Moody & Wm W. Reed

Indictment for
Kidnaping.

City of Chicago

County of Cook } ss.

William Bush, Michael Joy,
two of the above named Defendants, being duly sworn
say that they cannot safely proceed to trial
at present on the above named Indictment for
Kidnaping on account of the absence of important
& material witnesses for their defense. That said
Indictment was filed with the clerk of the
Court on the 10th inst & said Defendants were
arraigned on the 11th inst on the same. That on
said 11th inst Subpoenas were issued & placed
in the hands of one Officer for the following
witnesses viz. Miriam Grant, Clara Orapp, Mary
Collamore, Elizabeth Woods, Mrs. Denbrook, Nathaniel
Grauborn, James Parker, Mary Smith, William

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Whitney, Adam Ehrgey & Mr & Mrs Soper that Depoⁿts have been informed & believe that said James Parker, Mary Smith, Adam Ehrgey, are residents of the City of St Louis in the State of Missouri & that said William Whitney is a resident of this City & is running a Boat on the Canal from this Port to St Louis in the capacity of Captain that he left this Port for St Louis some three weeks since & is now with his boat at St Louis as

Depoⁿts have been informed and believe to be true. Depoⁿts further say that they have stated to their Counsel what they believe they can prove by said Adam Whitney now in the City of St Louis and that their said Counsel informed them that the testimony of said Witness is material and important to their defense on the trial of said Indictments & that they cannot safely proceed to said trial without, which they believe to be true.

And Depoⁿts further say that they believe they will be able to prove by said Capt. W^m Whitney that he has known Christina Davis the Person said to have been kidnapped & the prosecuting witness in this case (I upon whose testimony the Prosecuting Attorney seeks their conviction) for some two years past & that she is a very vicious and profligate Person devoid of truth & not to be believed under oath and that her associate have been of the lowest character.

And Depoⁿts further say that they believe they will be able to prove by the said Mary Smith & James Parker that the said Christina Davis lived for some time in a house of Prostitution on Common St in said City of St Louis that she was seduced while living in said House & that she left said House & said City some

five or six weeks since & that she is a Girl not wor-
thy of belief under oath.

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And Affiants further say that the said Mr &
Mrs Sofer named as Witnesses for their defense
reside at the Town of London. Canada that and
are the Persons in whose House the said Christina
Davis was found by Officer Chas E Smith & brought
to this City. That Affiants believe they will be able
to prove by said Mr & Mrs Sofer a state of facts
entirely inconsistent with the crime of Kidnapping
and also inconsistent with the truth of the sta-
tement made by said Christina Davis on her
examination before the Police Magistrate.

And Affiants further say that they expect to be
able to have a part if not all of the said Persons
named as Witnesses in this Affidavit in this Court
at an early day to testify in this cause.

Subscribed & sworn in open
Court this 17th day of November
1857.

J. H. Hoynes. Clerk R. C.

Wm. Bush
Michael ^{for} J. H. Hoynes
mark of J

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the said charge for conspiracy being more. say
that the witnesses named in the foregoing affidavits
in the matter of the Indictment for Kidnaping
are equally important for their defense upon the
trial of this Indictment for conspiracy & that they
cannot safely proceed to said trial without this
testimony.

Subscribed & sworn to in open
Court this 17 of November 1857
P. W. Gwynne
Ch. J. C.

Wm. Crusk
Michael J. Joy
marks

Filed November 17 1857 P. W. Gwynne Clerk

Which motion the Court overruled to which holding
of the Court the said William Crusk & Michael
Joy excepted and now excepts. That on 17th
of November A. D. 1857 in the said November
Term of said Court the said Defendant Mary
Moody move for a continuance of this cause
to be upon the following affidavits. To wit.

The People of the State of Illinois. Recorder Court
vs } Indictment for
Mary Moody. impleaded with } Kidnaping
Mrs Crusk. et. al. } Nov Term 1857.

State of Illinois
Cook County } ss.

Mary Moody one of the De-
fendants in the above Indictment being duly sworn
doth depose and say that she has to good and
substantial defense by the merits of this cause
That Mr. Super and Super

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his wife of London in the District of London Canada
 that are material witnesses for this Deponent on the
 trial of this cause without whose testimony she cannot
 safely proceed to the trial thereof. That she expects to
 prove by said J. Crife (said witness) that
 this Deponent is not guilty either of kidnapping
 or aiding and assisting in kidnapping the said
 Christina Davis in and by said indictment said
 to be kidnapped, that said Christina Davis was
 about 14 years in December 1856 and that the said
 Christina Davis left the City of Chicago, County
 of Cook, and also the State of Illinois and
 went through the State of Indiana & Michigan
 to London aforesaid of her own free will and
 accord and that she was not taken or con-
 veyed out of this State against her will or with-
 out her consent, and that the said voluntary
 trip of said Christina Davis is the same char-
 ged in said indictment and supposed to con-
 stitute the crime of kidnapping - that she
 knows of no person by whom she saw from the
 same facts who are not indicted with her in
 this case, or the said Christina Davis who on
 the examination before the committing Court dis-
 avowed the facts that the indictment was found
 at this Term of this Court, since which time
 she has been unable to obtain the testimony of
 said witnesses or their attendance in Court
 that the given names of said witnesses are
 unknown to Deponent that she expects to
 be able to obtain the testimony of said wit-
 nesses in this Court at the next Term of this
 Court and that this application is not
 made for delay but that justice may be done

Subscribed & sworn to before
me Nov 17th 1857.
P. A. Hoynes
Clerk R. C.

Mary + Woody
marks

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Which motion the Court overruled to which ruling
of the Court the same Mary Woody accepted and
now accepts. and afterwards testified, on the 18th day
of November A D 1857 at said Courtroom the
jury was impanelled to try the issued joint hear-
ing. Christina Davis a witness called and sworn
on the part of the People testified that she was 14 years
old. That some time ago, how long she could
tell, early in the morning while it was a little dark
she came to this City from St Louis by the cars. she
met the Defendant William Brush at the Depot
& Brush asked her where she was going. she said
she wanted to go to a private House. Brush said
he would take her to a private House and said
come into my Hack. I got in. he drove off. no one
else was in the Hack. We drove to an alley.
The Hack stopped. He told me to get out & come
into an alley. I went into the alley with him.
he pulled up my Dress. he put his hand under
my dress on my knees. Told me to "shut up"
put his hand on my mouth. A Girl put her
head out of a window nearby. He. Brush left
me and ran to the Street. I followed him to
the Street not knowing where to go. he told me
to get into the Hack & he would now take
me to a good place. I got into the Hack because
I did not know where to go to or where I was
& he drove to the Depot again. another Man
got on to the Hack & they drove to some office
or a place they called an office. and told me

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*There is another nice little
girl for you -

they would take me to a good place. Michael
for the Diff. ship came & told me not to go with
Bill Boush & he & J. J. would take me to a good
place. They then drove back to the Depot. Michael
J. J. told me that they would take me to Mrs
Moody, a bad house, where I could stay until
we could get a better place. I consented to go
& work until I could find a better place. Mike
got on to the Hack & Bill Boush got in & they
drove to Mrs Moody. Mike called Mrs Moody
up. she said who is there? Mike replied Mike J. J.
& said here is a little girl most free. keep her un-
til I get a better place. Mrs Moody said to me
go in the dining Room & I went in. Mrs Moody
J. J. & Boush had a talk in the Hall that I did not
hear, then all went in the Parlor the Boush stayed
a few minutes in the Parlor with Mrs Moody &
then went away. I stayed at Mrs Moody's that
day and night at Mrs Moody's. I saw a man
at Mrs Moody's that night that she called Capt.
Grant. Mrs Moody talked to Mr Grant about
going up stairs with me & wanted I should ask
Capt Grant to go up. I did not ask him.
Capt Grant asked me whether I was now up
stairs & I told him "No". Another man came &
Mrs Moody wanted I should go up stairs
with him. I refused to go. Mrs Moody said you
must. now if you don't go up stairs I will
throw you out doors into the dark. Lizzy Smith
heard this. she made me go up stairs. I went
up stairs with the man into the middle room.
The man got into bed & I got in too but
were undressed. He tried to do something to
me but could not. The bed came down. can't
say how long we were there. Lizzy came for me.

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and said she. Mrs Moody wants you to come
down stairs. Mother Moody said I ought to get
my money first. I came down stairs and this
Mam. the one who went to bed with me was
called Nate. a Mack driver. stayed with a big
fat girl. Before I went up Mrs Moody told
me to get my money. before I went to bed. I slept
that night with Lizzie Smith. I scrubbed all
day for Mrs Moody till afternoon. then went
to Mrs Conleys and scrubbed there. stayed there
until Monday. It was Friday morning I went
to Mrs Moody's & left Saturday afternoon. Mrs
Moody gave me a couple of books & a picture of
Nate to take up to the room with the Mam Nate
I saw two officers at Mrs Conleys on Monday.
Mrs Moody came with them. Mrs Moody took
me to Mrs Conleys on Saturday. and after the
officers went away Mike Joy came and said some-
thing about the Police. and that they would put
me in Reform School. and he knew where was a
good place in the Country. Saw Joy & Gill Trudo
on Sunday at Mrs Moody's. after the officers had
been to Mrs Conleys Lizzie Smith came to Mrs Con-
leys and said she would bring me to a good
place. I left Mrs Conleys Baby with her little child
& went with Lizzie & she took me to a washwoman's
about 4 o'clock. He went first to Mrs Moody's
she gave me a shawl and told me to go in the
Country till the fees was over. Lizzie & little Char-
ley went for a Mack. don't know how long
I was at the washwoman's. it was after dark
Lizzie and Charley came back & Lizzie said. Chris-
tina come. Collier Reed was driving a Mack
The Defendant At Reed pointing him out is
the Mam. They took me to another house & there

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come with a Mack. Sissy myself and little Char-
 ley got into the Mack and they took me to a
 stable. Polaris Red got off & Bill Brusk got in
 and said "God damn" there is a policeman's drive.
 The Mack was drove into a dark street & was
 drove around until I got to sleep. Polaris Red
 and Charley went for a Carriage they drove up to
 the Mack. Bill Brusk took hold of my arm &
 put me into the carriage. Polaris Red was gone
 for Bill Brusk's coat. Bill and little Charley
 and me were in the carriage. covered Carriage
 and one Horse. I did not know where I was or
 where I was going. Bill Brusk drove down State
 Street to a place called the shades. there was
 benches. Bards and I was around there. Bill &
 I stayed there that night. he thought the Car
 was there. they did not. and the next morning
 we walked a good ways & there where I was that
 Bill got a wagon for \$2. there went to a Station
 Charley came up that night and brought Brusk-
 es, trunk and things. Bill and I got into
 the Car. I did not know where I was or where
 I was going. Charley was there at the time,
 and we went to Detroit. there got into the
 Car and got Breakfast. we went to a House
 opposite Detroit. Brusk went back immediately to
 Detroit. I stayed 3 days and Bill Brusk went
 back to Detroit. saw him in the afternoon and
 brought me a pair of shoes. but went back to
 Detroit that night. Bill Brusk then came over
 and took me back to Detroit. and left me
 there until he came back from Chicago. Bill
 then returned and said he the Police got me.
 but they could not hurt him. if they got me (the
 witness they would put me in the Work House.

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and told me I must go further. I told him I would not go any further. the Car was just going. he took me by the arm into the Car. I asked Bill where we were going: he said to New London. we must to New London. to a Mrs. Sapers I did not know any body there. he told me to be a good girl and stay there he only stayed until the Car was out. that day. Mr. Smith brought me back to Chicago.

Cross examination.

I must first to St. Louis. and a Canal Boat to Peoria. the Boat was sold there and I got on to a Steam Boat to go the rest of the way with the Engineer. I hated that fellow. he was such a mean fellow. another fellow took me to a House in St. Louis. I must with a fellow on the Canal Boat first can't tell what Boat or what is the Captain's name. when we got to Peoria. must on the Steam Boat. I must to work on the Boat. a fellow there said he would be my friend. At St. Louis I must to a House near the River. a Brick House. I did not like that place. I stayed there that night. and must away the next morning. slept alone that night. Mrs. my sister next day on the Street said asked her where she lived. she did not say much of any thing. another gentleman took me to this house he was an engineer. I stayed at the Brick House one night. I must to the Car that day for my clothes. got them & passed myself up to Chicago. when I got to Chicago I lived first with a Negro Woman a few days. I asked my sister what her husband's name was: she said Sam. Will

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I must from the washroom to work in a family in Endings Place until my sister came up after me and I must to St Louis with her. I stayed with my sister and at another place Mrs McCall she kept a Boarding House and had two children. I was Darning Rooms and I had to have a Dollar a week. he did not pay me. I don't know how long I was there. My sister gave me money to get back with Mr DeLong as I know. She paid for it. Don't know who I lived with near the river lived with a gentleman's family a Doctor. When I came in from St Louis I did not want to go to my Father. I knew how to go there. Was some acquainted on the South side. knew the way to my Father. was raised here in Chicago. I was 3 years old. was born in New York. Father was unkind to me. whipped me and almost killed me that was the reason I did not want to go home (my Mother is dead no married a step mother to me). There was no place I had in mind to go when I came to Chicago. it was not quite day light. Did not know Brush boy or Moody. they saw us before the time I met Brush at the Depot. Mike Joy told me when we were going to Mrs Moody's I was going to a bad House. I said I would go there & work till I got a better place. I heard from Lizzy. one of the girls at Mrs Moody's. that Joy was going to take me to a Bad House but the North side Mike Joy said he was going to take me to a bad House. I said I would go there & work until I got a better place. I did not tell Joy that I wanted to lead that kind of a life. I don't know Captain Cromwell. Do not know

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as I would know him if I saw him. Think I would
 n. Mother Moody said I ought to ask him to
 go up stairs with me. but I did not. he asked
 me whether I was not up stairs and I told him
 "No" I did tell Mrs Moody and the other Gills
 that I was going with him. but that was not the
 truth. a gentleman on the Car gave me a
 card and said when he saw me in Chicago
 he would know me. I told Mrs Moody & the
 Gills that I had been with Dr. Parker in St
 Louis. that may not be the truth. when I first
 saw Bill Brush I was all alone and had
 a bundle a little shawl with clothes rapped
 in it. I did not go up stairs at Mrs Moody's
 during the day with any man. the evening of
 the night I was there was the first and only time
 I ever went up Mrs Moody came with the Pol-
 ice to Mrs Cordup and I told the Police all about
 it. Saw Bolivar Reed on the Mack and when
 the Carriage came up to the Mack. went with
 Bill Brush and little Charley in the Carriage
 with one horse and one seat in it. I slept at
 the shades alone.

Did not you and Biff Brush sleep together
 at the shades?

The witness hesitated and cried. is directed by
 the Court to answer and said-

We did sleep together at the shades. I
 may have said Billy Brush was not to
 blame. I liked Billy pretty well. he gave
 me all the money he had. he said he would
 put me into a school. I said if he would
 keep me in school I would go. when I was
 in the Carriage I did not try to get out
 because it was noise. I did not know where

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was. Billy put me in a good House at New
 London. Did not know where I was to go. I
 got into the Hack by myself. I was willing to
 go with Bill from the Shades next morning
 because I did not know where I was or what to
 go. Mrs Moody gave me a Dress. I stated to
 the washerwoman that I wanted to go away, be-
 cause the Police were going to take me in the
 Reform School. I could say whether I told the
 washerwoman or Lizzie Smith, that I wanted to
 go away from Chicago. They changed me from
 the Hack to the Cuggy in a dark Street. I was
 not willing. Collier had said "you shut up"
 Mrs Moody gave me a shawl and Bonnet
 and told me to be a good Girl and stay away
 until the Judge was over I went home with Lizzie
 to the washerwoman's. The Hack started from
 the corner of Jefferson and New Tenth Streets
 about a half Block from the Door.

Mrs Connely from.

Mrs Moody came to my
 House and arranged with me to take the little
 Girl on Saturday. When Mrs Moody brought her
 there she said she did want her at her house
 on Sunday. The little Girl came and stayed
 till Monday. Mrs Policeman and Mrs Moody
 came to my house on Monday and had a
 talk with the little Girl. something was said
 about Reform School by some one. The Police-
 man told me to take care of her until they
 called for her. little Girl stayed until half
 past five Monday did not miss her until
 after she was gone. I went over to Mrs Moody's
 she said she had not seen her since and

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told the Captains of the match. Mrs Moody said she did not know where she was. This is the same day children were burnt in the fire at Dr Egans.

Mrs Halliwell sworn for the People.

Is a washerwoman. Lives on Jefferson Street near Van Buren. Knows Mrs Moody. Christened Davis by sight. The same day the fire at Dr Egans she came to my house about 8 in the morning with a girl with the name of Lizzy.

Lizzy said she wanted her to play there until she called for her. When some men came in, that boarded at my house she ran behind the Door. I asked her what was the matter. She said she was afraid the Police were coming after her she cried and said she wanted to get away from the Police. said she left Mrs Connely's child and ran away with Lizzy. she said a good friend was going to take her in the country. she said Mrs Moody acted a Mother to her in giving her clothes and a good many things.

Cross examined.

Christened Davis said she wanted to get away from the Police. she said a good friend was coming for her & they were going away in a Wagon and Cuggy. That Man was going to take her away from the City. she said Cuggy

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Robert Anderson. Policeman sworn for the People.

Am a Policeman. said he received information on the 28 September about a girl being at Mrs Moody's he and Lieutenant Kennedy went on 28 Sept at Mrs Moody's to see about it Mrs Moody told me the girl was at Mrs Connely's Mrs Moody then went with us to Mrs Connely's saw the girl Christina Davis. said she had come up from St Louis and that a Hackman met her at the Depot and took her to Mrs Moody's. Did not name Grush would not tell me much in the presence of Mrs Moody was afraid of her. I told Lieutenant Kennedy to take Mrs Moody away and then she told me all

Elizabeth Smith sworn for the People.

Lived at Mrs Moody's. Knows Christina Davis. Michael Joy. and Bill Grush came with her to Mrs Moody's Mike Joy said they had another little girl for her. Mrs Moody took her in. Bill and Mike came again in the afternoon. stayed a short time and left. In the evening Captain Grant came there Mrs Moody told Captain Grant she had another nice little girl. Grant asked the little

She had another little
girl for her

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Girl to go up stairs. she said she was tired and
 had rode all night from St Louis and did
 not want to. after waiting a while a Hack driver came
 there about mid O'clock. Mrs Moody wanted the
 little Girl to go up stairs with Nate she did not
 want to go. Mrs Moody said she must. she sat
 down on the stairs and cried. Mrs Moody told
 her, Christina, she would throw her out doors
 in the dark if she would not go up stairs with
 Nate. Christina cried. Mrs Moody said she
 must. gave her 2 loaves & a Pitcher. Mrs Moody gave
 her two (2) Loaves & a Pitcher of water and she
 went up stairs with Nate. Mrs Moody told her
 to get her money before he staid with her. they
 had been up about three quarters of an hour,
 when Mrs Moody sent me up to see whether
 Christina got her money. I told Christina Mrs
 Moody wanted her. Christina got up dressed
 and went down. Mrs Moody asked Christina
 if she got her money. she said no. Mrs Moody
 sent her back again to get it. Nate refused
 to pay. Christina slept with me that night
 and Clara Snapp staid with Nate. Mrs Moody
 told me not to say to anything that I saw
 nor of age and they could not make me swear
 to the truth. Told me to say that Christina did
 not stay over night in her house. (William Mike
 came on Sunday. Mrs Moody sent me for her
 to Mrs Conley. Christina came over and
 when she saw them turned and went away
 I took Christina from Mrs Conley to the
 washroom by Mrs Moody's directions. she
 told me to take her where the Police would not
 get her. Mr Reed was there at Mrs Moody's
 when I went after Christina. he went after

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Mrs Moody wanted me to
tell what was not true
me to tell that the little girl did
not stay with her mother.

a Hack and was to meet us on the corner of
Jefferson and Van Curn Sts. he was not
there when Christina and I got there and we
went to the washroom. Miss Christina and
went to look for the Hack. The Hack came.
Christina, little Charley and myself got into
the Hack and Mr Reed drove down to the stable
Bill Grush got into the Hack and Reed got
off. they then drove up and down Lake Street
until the buggy came, when the buggy came
Reed was with it. Grush got in the buggy with
the little Charley helped Christina in. They
got in and they drove off.

Cross Examination.

I was somewhere years ago
last May. Was boarding at Mrs Moody's. I
paid Mrs Moody for staying there one half
I made. the little girl Christina said she had
played with a gentleman in St Louis. said he had
seduced her that he was a gambler. when she
came to Mrs Moody she was lonely and dirty
Mrs Moody said she would be taken up. if
the little girl stayed there and that as long as
she could not stay with company she did
not want her there. The evening Christina went
away. Mrs Moody said she would give
Christina a check if she would go away
and stay away until after the fuss was over
Christina stayed at the washroom until
the Hack driver came for her. The Hack dri-
ver came up to Mrs Moody's house after her.
before they went to the washroom Mrs Moody

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told me about the Macknew and sent me with
 the Mack. Charley drove. Mr Reed was up to the
 House after the Girl. Mr Reed was up to Mrs
 Moody's house. said they would go and get a
 Mack. little Charley helped Christina in the Cuggy
 Creek was in the Cuggy when she got in. while
 Christina got into the Mack she told the driver
 to go and get Bill Creek. for she wanted to
 go with him. while my drove up Lake Street
 Reed was after the Cuggy. I love Mr Moody
 a little. don't know whether love or hate is
 the most. have not conversed with any one
 about this case much Mr Miller the Prosecutor
 and Mr Smith the witness. talked to me most
 about it. told them both what I was going to in-
 ear to. saw them both after some one told me
 that if I did not tell the truth, I would go to
 jail. I did not want to go to jail. I did not
 go back to Mrs Moody after the examination
 only for 2 or 3 days. Mrs Moody and I had
 a quarrel about some matter about the House
 I have been at my business about 3 months and
 in that time in 4 House of prostitution. The
 first time I saw Bill Reed was after the little
 Girl was at the Macknew. Charley and I
 went with Christina to the Macknew. Charley
 told the little girl to stay there. Charley and I
 went to find the Carriage. we went and found
 Reed with the Carriage and this was the first
 time I saw him. Mrs Moody took out Dolly
 and thirty two cents from Christina all the
 money she had when she came there.

Charles Walsh sworn for the People.

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On the 29th of September last. I saw Bill Brush and the little girl, Davis walking on the track at the Galumet Station. had no conversation with Brush. Brush asked me if I was going to Chicago and requested me not to mention I had seen him or hers. It was between 10 and 11 O'Clock on Saturday. I think it was Saturday is now the 29th.

H. C. Wentworth sworn for the People.

I am Ticket Agent for Michigan Central R. R. Co at this Depot in the City and have been for 5 or 6 years. Geo Gillicus had a pass for Gillicus Brush for Detroit don't recollect as he made any statement when I gave him the pass. after I gave him the pass. he, Brush and myself walked down towards the train. which was about going out. one or the other of them told me, Brush had some trouble about a girl and that Brush was going to take her to his mother. The pass was issued to Detroit Brush wrote me from Detroit for a pass back.

Lieutenant Kennedy sworn for the People.

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Went with Alexander to see the Girl taking to Mrs Moody by Mike Joy. Learned that she left Mrs Moody and gone to Mrs Connely. Mrs Moody went with us to Mrs Connely. The Girl did not seem to be inclined to talk much in presence of Mrs Moody. The Girl had a conversation with Alexander. Arrived between 1 and 2 O'Clock on the September 28th. There is only one Alley between Mrs Moody's and Mrs Connely's

Charles E Smith sworn for the People.

I am a Policeman. I went to Canada after Christina Davis about 3 weeks ago. Found her with a family with the name of Baker at London. O. N. I had conversation with Mr Reid. shortly ^{after} the Girl went away. he told me he could find the Girl if he could see Crusk. I took him in to see Crusk. he had an interview with Crusk and told me he could find out nothing where she was. he also said he got a pass for all Crusk on the Michigan Central R. R. The Mich Cen RR runs through Indiana, Michigan, Canada is not a part of the State of Illinois.

Defence.

Clara Snapp woman on the part of the Defence.

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Knows Christina Davis saw her at Mrs Moody the morning she came there. about 10 minutes after she came into the house. I did not hear what passed between her and Moody she was Lousy and dirty. we cleaned her up and Mrs Moody gave her a new dress when she came she had on an old pair of Gaiters a dress skirt a sack and an old Bonnet and had on no stockings. skirts or Chinias. she said some thing during the day she had been seduced by one Parker a Gambler and mounted to board. she knew the House was a House of prostitution. she had lived in a House of prostitution in St Louis. Mrs Moody told her not to tell her any lies. stated to her. that if she had never known her. she did not want her. That she would feed and clothe her and she could go to School with her little girl if she wanted to stay. she was up stairs with Nate as welling for any other Woman I ever saw. did not cry or object to going after they were up the bed full down. she said she asked for her money and the man said. she was no use to him and he would not pay. when she came down she did not cry but was cheerful and laughed about the bed coming down she said that Parker got his pants all bloody when he first had connection with her. that he took her from a house of prostitution to his Room and seduced her.

Cross Examination.

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I stayed with Nate. after Christina came down. Nate told me he could not stay with Christina. I was in the back Parlor lying on the sofa. when she went up with Nate. I don't believe Christina had ever been stayed with. there was a girl there they called Big Lib.

Elizabeth Brooke sworn for the Defense.

That he reduced her in his
room and got the sheets
all bloody.

Knows Christina Davis. was at Mrs Moody when she came there. she was dirty and lousy. heard her say she just came from a house of prostitution from St Louis. That she had been reduced by a gambler with the name of Parker and wanted to follow that sort of life. she did not cry when she went up stairs with Nate. she was full of gum. when she went up and when she came down. I did not hear Mrs Moody tell her she would throw our doors if she would not go up. I first saw her 10 minutes after she came in. Clara Knapp had striped her and was washing her. she had on an old pair of clippers.

Cross Examination.

I have been up before the Court a good many times. can't say how many. have been in Fredwell have been a

46 prostitute 5 years. Lived in a good many con-
cans. Lived once with Mrs Roffely on the
"Souds" left there before they were taken down.
Lived at a Dance House on River St. came
from Sutton has now living at home on the
farm. Mrs Moody sent for me to testify. came
a week ago. now staying at Moody's

Mr. Milliken sworn for the Defense.

Was the examining Magistrate in this
matter. The little Girl's testimony was substan-
tially the same as now except that she keeps
swearing positively that she slept alone at the
Shades.

Cross Ex.

The substance of the evidence before
me was the same as to day. she was under a
state of great excitement when she was exam-
ined before me. cried a great deal. it was with
great difficulty that she was examined

Mr. Timigaw sworn for the Defense.

Saw Christina Davis at Mrs Moody's she
was talking to Captain Brown, said she was
seduced by a Man with the name of Parker
in St Louis, a Gambler.

Cross Examined.

She was at Mrs Moody's

before. have been there 2 or 3 times since. Mary
stayed with my mother there until that kind of
house when I am a maid to.

47

Priscilla Moody sworn for the Defense.

Mary Moody is my Mother, was present when
Christine Davis came to Mother's. Cousin did
not come in. Mother did not want to take the
girl, but when Joy said she was cold and
hungry. Mother said she might come in &
stay until she could get a better place and
12 years old.

This was all the evidence introduced before
the jury in the trial of this cause.

The jury after hearing the arguments of coun-
sel and instructions of the court, returned a
verdict of guilty as to all the Defendants.

The Defendants thereupon entered their motion
in arrest of judgment and for a new trial
harris and filed the following reasons and
affidavits in support of said motions, to wit:

Recorders Court of the City of Chicago

The People of the State of Illinois

or
Wm. Bush et al

} Kidnapping

And now come
the Defendants by this counsel & move the Court

in arrest of judgment and for a new trial in this case, for the following reasons. First.

First

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The Court erred in refusing the Defendants motions for continuance upon affidavits filed whereby the Defendants were deprived of the testimony of Soper & Wife of London, Comelia West and the testimony of Mr. Whitney, James Parker, Mary Smith and Adam Ehrhardt of St Louis Mission.

Second.

The Court admitted improper evidence on the part of the People against the Defendants and refused to allow proper evidence on the part of the Defendants offered by them.

Third.

The Court gave improper instructions on the part of the People and refused proper instructions on the part of the Defendants & gave improper qualifications to the Defendants instructions.

Fourth.

The Verdict was against all the evidence as to each and every of the said Defendants.

Fifth

There was no evidence to sustain the charge of kidnapping against either of the Defendants.

Sixth

The Verdict was against the weight of evidence as to each of the said Defendants.

Seventh

That there was no evidence whatever against Michael J. Tindry to show that he had any knowledge that the Girl Christina Davis was to be taken from Chicago at all, or that he aided in her removal.

Eighth

That upon a joint indictment against several parties, where the verdict is guilty, the Jury could not fix the term of imprisonment of one for fit. two for four each, & one for one year. No judgment could legally be rendered on such a verdict.

Charles The Indictment is insufficient upon which to
pronounced judgment.

49 Filed Oct 20th 1857 P. J. Manchester and
M. M. Drummonds
Of Counsel for Defendants.
P. A. Hogue Clerk

William H. Rud
The People }
advs

1st Mo in arrest, and for a
new trial for the reasons following.

2^d Verdict against evidence
His intention or guilty knowledge shown
on part of Rud.

3^d Verdict against the Law as laid down
by the Court.

John O. Thompson for
William H. Rud.
Filed Oct 19th 1857 P. A. Hogue. CK.

Instructions for the People.

- 1 Kidnapping is the forcible abduction or stealing
of a Man Woman or Child from his or her own
Country and sending or taking him or her into
another.
- 2 To constitute a forcible abduction or stealing
of a person within the meaning of the Statute
it is not necessary that actual physical force or

violence to used upon the Person Kidnapped. But if
will to sufficient, if to accomplish the removal. the
mind of the Person was operated upon by the Defend-
ants. by falsely exciting his fear by threats, fraud,
or other unlawful and undue influences, amount-
ing substantially to a coercion of the will. So
that if such means had not been resorted to or
employed, it would have required force to effect
of the removal

3rd In determining the guilt or innocence of the
Defts on this Indictment the Jury should take
into consideration the condition of the Girl Christ-
ina Davis - her age, education, and state of
mind at the time, the representations and con-
duct of the several defendants towards her
the effect of those representations and that conduct
upon her. the object of the Defendants in effec-
ting her removal from the State - and all
the circumstances surrounding the case as detail-
ed in evidence -

4th An accessory, is he or she who stands by
and aids, abets or assists, or who not being
present aiding, abetting or assisting hath advis-
ed and encouraged the perpetration of the
crime. He or she who thus aids, abets or
assists, advises or encourages shall be deemed
and considered as principals and punished
accordingly.

The Jury have the right to acquit one or more of the Defendants notwithstanding they find the others guilty.

In estimating the guilt or innocence of William M. Reed the Jury should give him all the rights and benefits he would be entitled to if he had a separate trial. ~~From the other~~ Defendants, and if he were upon trial alone disconnected from the other Defendants.

Defendants instructions

If the Jury believe the Britains Christina Davis has sworn willfully false, in any one particular they may exclude her whole testimony from the case.

That the Jury are the judges of the Evidence and as such have a right to discredit witnesses from either contradictory statements made on the witness stand, this general appearance on the stand or after having been contradicted in their statements by a preponderance of witnesses.

If the Jury have a reasonable doubt of the guilt of the Defendants from the evidence or either of them they will find a verdict of not guilty as such Defendants.

2^d

That if the Jury believe from the evidence that at the time the Defendants took the Britains Christina Davis from Chicago and then to Indiana or Canada that the said Christina Davis knew she was going away from Chicago to some place to be provided by said British and that she went voluntarily, willingly and freely they should find the Defendants.

not guilty. although they should further believe
from the evidence that said Christina Pariston
was not fourteen years old and did not know
where she was about to go.

2^d This instruction given with this qualification

51 Unless the jury should believe that to accom-
plish the removal the mind of the girl was
intentionally operated upon by the Defendants
by falsely exciting her fears, by threats, fraud
or other unlawful and undue influences amount-
ing substantially to a coercion of the will, so that
if such means had not been resorted to or
employed it would have required force to
effect the removal.

3^d That to constitute the crime of Kidnapping
under the first count in this indictment the
taking must be a forcible abduction, or stealing
of a Man Woman or Child from his or her
own Country and sending or taking him or
her into another, and that no persuasion by
which a person may be induced to leave his or
her own country and suffer him or herself to
be sent or taken to another, will constitute the
offense

By Court.

The above instructions is given
with this qualification.

Unless the jury should
believe that to accomplish the removal the mind
of the girl was intentionally operated upon, by
the Defendants by falsely exciting her fears, by
threats, fraud, or other unlawful and undue

influence amounting substantially to a coercion
of the will, so that if such means had not been
resorted to or employed it would have required
force to effect the removal.

5th

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Although the jury should believe from the evi-
dence that the Defendant Grubb met the Wit-
ness Christina Davis at the Depot on his return
to Chicago from St Louis and took her into
his Hack promising to take her to a place to
work and attempted to take liberties with her
person in an alley and out of the Hack and
that said Witness returned to the Hack and
was taken from there to the office and then
again to the Depot and that there the Defend-
ant Joy joined them and told the Witness
Davis not to go with the Defendant Grubb
but to go with him and he would get her a
place and then told her he would take her
to the defendant Moody and that it was
a house of ill fame and that she consented
to go and did go to defendant Moody's
and there stated to Defendant Moody that
she had staid with him and wanted to
lead that life (whether the jury believe that state-
ment true or false) and that, either with or
without the request or threats of Defendant Moody
she Davis went to bed with a Man (not a
Defendant) and the next day was sent to
Mrs Connolly a respectable place that she was
there visited by the Police who talked to her
of putting her in the Reform School and that
said Davis desired to avoid going to the said
School and was willing to go with the Defendant

53

Brush to such place as Defendant Brush should
 provide for her some where away from Chicago
 and that the Defendants Moody sent the witness
 Lizzie Smith to get the witness Davis ready to
 go and that said Davis and Lizzie did
 voluntarily get into the Hack driven by Defend-
 ant Reed and that the witness Davis wanted
 the Hack driven to where Defendant Brush
 was and wanted him to go with her and
 that Defendant Brush did ride with her
 until Reed and one Charley brought the
 buggy and that witness Davis and Defr
 Brush got in and was to the shade-staid
 over night together in the same bed and
 next next morning to the Rail Road and
 thence to Indiana and Canada together.
 this is not evidence from which the Jury can
 find the Defendants guilty of forcibly abduc-
 ting or stealing said witness Davis from this
 State (her own Country) and sending or tak-
 ing her into another or of forcibly stealing
 taking or carrying her in this State and
 carrying her into another State or Territory
 or with intent to take her out of this State
 without having established a claim accord-
 ing to the laws of the United States and they
 should find the Defendants not guilty.

Refused.
 R. S. Milero.

As the giving of which instructions on the
 part of the People, and the refusal and qual-
 ifications of instructions on the part of the

54
defence. the Defendants at the time excepted
and now except and the said motions in
arrest of judgment and for new trial coming
on for hearing ^{the Court} overruled. the said motions
in arrest of judgment and for a new trial,
as to, Brush Jory and Moody each of them, to
which, rulings of the Court, the Defendants
at the time excepted and now except and took
the motions as the Rule under advisement. the
Court thereupon rendered judgment against
the said Defendants Brush Jory and Moody
to, which ruling and judgment of the Court
the Defendants then excepted and now except
and pray that this their Bill of Exceptions
may be signed and sealed and made a
part of the Record of this Court. which is done
accordingly.

H. S. Philson ^{Ex Officio}
Recorder

State of Illinois }
Cook County }
City of Chicago } ss

I Philip A. Hogue, Clerk of the
Recorder's Court in and for the City of Chicago in
the County and State aforesaid do hereby certify that
the foregoing is a full true and correct copy of all
the papers now on file in my Office and of the proceedings
entered of Record in this case.

Witness my hand and the Seal of our
said Court at Chicago this third day
of December A. D. 1857

Philip A. Hogue
Clerk



State of Illinois
Cook County S.S.

I do hereby certify that
the within Record contains in my
opinion a true history of the proceedings
on the trial of the within entitled Cause

Carlos Haven

States Atty
of the 7th Judicial Ct.

William Brush

Chicago. Dec 4th 1857-

And the said Defendants, ~~William Brush~~
~~Michael Loy~~ ^{assigns} ~~and Mary Moody~~ ~~and~~
~~of them~~ assigns for error the following -

- First - The Court erred in refusing to quash the indictment
return and in overruling defendants Motion to quash -
- Second - ~~The Court erred in overruling the Motion of defendants~~
Brush ~~and Loy~~ ^{or a} ~~for Continuance~~ -
- Third - The Court erred in overruling the Motion of Defendant
Moody for Continuance -
- Fourth - The Court erred in overruling the defendants Motion
in arrest of Judgment -
- Fifth - The Verdict was against the Law & the Evidence
there being no sufficient evidence to sustain it under the Law -
- Sixth - The Verdict was against all evidence -
- Seventh - The Court erred in giving each and every instructions
given on the part of the People -
- Eighth - The Court erred in giving qualifications to two
of the Instructions asked by the defendants, and in this
refusal to give those instructions as asked without qualifications
Ninth - The Court erred in refusing instructions asked by the defendants
Tenth - The Court erred in overruling defendants Motion for New Trial -
- Eleventh - The Court erred in rendering judgment against the defendants,

And pray that for said Errors the said judgment be reversed -

12

The Court erred in rendering judgment against
Moody for all the costs, damages & interest
for P.L.F. in error

13 The Court erred in not making the
instructions "given" or "refused"

14 The Court erred in rendering
a Verdict and several judgments
and against Moody for
all the costs without joining
therein the other defendants
jointly indicted, tried
and convicted with and
Moody.

Edmund Skinner
for plaintiff in Error
Moody.

John Rush
Michael Boy &
Mary Moody
vs. E. Error
The People of the State
of Illinois -

To Henderson Court Clerk
County Ill -

Filed April 1st 1858
L. Leland
clerk
per T. W.

Supreme Court
Attowatun 1838.

1 Mary Moody

ⁱⁿ
The People

The errors are
assigned by Moody only, and I
trust the Court will see from
the record that she is legally enti-
-tled to a reversal of the judgment
against her.

I do not care to argue upon
the insufficiency of the indictments,
or the allegations therein are
not proved as against Moody:-
that she forcibly stole and
conveyed the ~~same~~ girl, Davis,
to Indiana or to Canada.

Under the law, as it now stands,
she may assign for error the
refusal of the Court to grant
a new trial.

See Resolves 1838, 1216. Orke

1. There was the evidence sufficient
to satisfy the reasonable and unpre-
judiced mind, beyond all reasona-
-ble doubt, that Moody was guilty
of kidnapping Davis?

The evidence tending to ^{connect} ~~connect~~
her with the departure of Davis,

2

is copied into the abstract and if there is any other thing in the evidence tending to identify her with the removal, it can exist only in the general fact that she knew in some manner, the other defendants.

The evidence in no manner shows a common design including Moody, of getting Davis out of the State, nor is there a particle of evidence showing that Moody even knew that Davis was going out of the State of Illinois. Moody wanted Davis to go away from her house, and get her another place. She wanted her to go to the country and stay away until the "fuss" was over. But in no manner is another State, or Country named, or alluded to in any thing connected with the words or actions of Moody, in reference to Davis. There is no discussion, word, or action of Moody

~~of Moody~~ ~~person~~ connecting
 her with Davis going to Canada,
 or any place out of Illinois.
 There is no conference shown
 between her and the other defen-
 -dants or to Moody leaving
 Illinois nor subsequent appro-
 -val of her departure from
 the State. The most that does
 appear as to her is that she
 desired the absence, for the
 time being, of Davis.
 Moody did not see yet-
 necessarily or wholly resulting
 in Davis leaving Illinois.
 Is it reasonable to suppo-
 -se that the object of Moody,
 -obtaining the temporary
 absence of Davis - would
 have been accomplished by
 Davis going to the County -
 to Rock Island, Illinois,
 Peoria, Springfield or
 any other place ~~in~~ away
 from Chicago; and is there
 any thing in the testimony against

her inconsistent with the
 supposition, that Davis was
 not from Chicago was all
 Moody saw, let us intend.
 Is there no other hypothesis
 than her guilt, - consistent
 with the testimony against
 her? The rule is, that if
 the evidence does not
 exclude every reasonable
 hypothesis of innocence
 of the crime alleged, the party
 charged must be acquitted.
 Or if the facts may exist -
 and the accused be innocent
 consistent with known
 actions and events, then
 the accused must be acqui-
 -tted. Now, can any one
 say, that the facts are not
 consistent with an intention
 only of Davis going to the
 country - to any portion
 of Illinois convenient, away
 from Chicago - away from
 the police - away from the

8
Scene of supposed difficulty.
It is to be born in mind that
there is no proof that Moody
knew of an intention of Davis,
or the other defendants to go
out of Illinois, nor that
Moody participated in the
act of Davis going to Canada,
or leaving Illinois.

Now, what unprejudiced
mind can find beyond all
reasonable doubt, that Moody
aided in removing Davis
out of Illinois - knowing
the intention and purpose
of her removal to another
State or Country?

It seems to me too clear
for question, that the evidence
against her may all be true,
and still Moody have had
no intention or purpose
of Davis going beyond the
limits of Illinois; and, if so,
her conviction was wrong
and this Court ought so to
say.

6

It is also apparent from the entire evidence, that there was no force, in fact, resorted to by any one, and no act of Moody indicating coercion of the will of ~~Sam~~ Davis. How, then, can we justify in the language of the ~~State~~ Statute and of the indictment of "forcibly" taking Davis out of the State? To labor these facts is useless, when the mind cannot ~~hold~~ or would not, in an ordinary case, hesitate as to their insufficiency to commit of crime the consequence of which is loss of liberty.

I urge the special attention of the Court to the shadowy and unsubstantiated character of the evidence against Moody touching the material point in issue.

2 The Court should have granted Moody a continuance, and a refusal in this case ~~was~~ is sanctioned by no precedent within the bounds of my experience. Seven days after indictment ~~not~~ found the motion was made and overruled!!—

No time given to obtain the testimony by the attendance of the witnesses, or deposition. That the evidence was material and the affidavits sufficient none can question. Why, then, was Moody denied that opportunity of defense accorded to the meanest of civilized Society, every where and in all ages when and where justice is fairly administered.

It will not do to say, Moody was a vile woman and without the pale of legal protection.

The law knows no such distinction in its administration.

3

The Court erred in the qualification of the two of Moody's instructions which the Court gave. Without the qualification the law, under the facts, was clearly and correctly stated, and the qualification on how far fetched and how the direct effect of giving importance to a peculiar view of Jones, as used in a Criminal Matter, and to soften the scruples of a jury.

There is no evidence showing the girl a mere child. Without judgment, knowledge of the world and habits of individual action and self control. She was ~~then~~ about fourteen years of age - had lived in St Louis - associated ^{with} all classes in some capacity - good & bad - directed her own course and actions and travelled alone from city to city. She had some pretensions to womanhood and notion of her capacity for the world.

9

She had been long before driven
 from home in Chicago by her
 unnatural parents, or had
 voluntarily left them and
~~followed~~ ^{followed} her own will; followed
 the suggestions of her own will;
 and on her return to Chicago
 from St Louis, she declined to
 return to, or seek the protection
 of her parents, though she had
 full opportunity of so doing.
 See her testimony ~~and page~~
 cross examination.

Can it then be said, that she
 had no will, or capacity of
 volition and action. It may all
 be true, that one without the
 capacity of individual action
 directed by mental ~~direction~~
 power, could, in contemplati-
 on of law, be forcibly taken
 or removed without physic
al force; but it cannot be
 that one having such power
 and quality, can be forcibly taken
 by, in the language of the revolu
tion to defendant's instructions given,

by operating upon the mind
 "by fraud or other unlawful
 and undue influences," and
 without any degree of force, or
 demonstration, or threats of
force. This Court would be
 inclined to smile at the propo-
 - sition, coming from an intelli-
 - gent lawyer, that one who
 had by ~~strategy~~ strategy, by
 false color, by fraud, or
 undue influence, caused,
 effected, or procured
 another, having capacity of
 self control, ~~to~~ in accordance
 with present choice, or inclina-
 - tion, though under a mistake
 - in state of facts, ^{to} leave ~~to~~ this
 state, is guilty of kidnapping
 - of "forcibly" stealing, or stealing
 and taking such person to
 another state, or country.
 Actual force, or its equivalent,
 demonstration and fear of
 bodily harm, where the person
 has capacity of choice and
 volition, of self control, must

11 be essential to make up the
"forcible" stealing, arresting
and taking, required by the
Statute to constitute Kidnapping.

It cannot be sufficient to
abuse or prove a coercing,
persuading, prevailing
by false representations, or
by undue influences, the
person to leave the State.

Such Statutes are always strictly
construed and enforced accord-
-ing to their letter, and contr-
-olled only by the object and
purpose of the enactment,
as derived from the evil
to be remedied or wrong to
be avoided. This Statute was
made to remedy the evil of
arresting and taking into
another jurisdiction persons
for punishment or to labor
them, without sanction of
the Federal laws in such cases
made, and to prevent the
stealing, per force, of persons
for such or other purposes.

And was not designed to
~~reach~~ ~~cases~~ never cases of
 removal without force, in law,
 and by undue influence.

If I am not correct, ~~then~~
 one who by any sort of color,
deception or fraudulent
promise sets in motion
 and procures another to
 go into another State, is guilty
 of Kidnapping and liable to its
 penalty. It will may be true,
 that without undue influence,
false and fraudulent expedi-
 ents, the person would not
 have voluntarily left the State,
 nor without active force, and
 still that she did leave of present
free will and choice. Where
 then, could the forcible stealing,
carrying and holding of the State
 be found ~~to be found~~, in such
 case, without an extraordinary
 drift upon the imagination.
 The Court should have given
 these two instructions without the
 qualification annexed to them.

4

The record shows, so far as
can be ascertained from it,
that the defendants four insti-
-tutions asked for by defendants
excepting the two qualified,
were refused. They one
headed "defendants' instructions,"
of which two one shown to ~~be~~
have been given or qualified,
and the others refused.

This appears by the word
"Refused" at the end of
these instructions. There ~~is~~
one no words in the margin of
given or refused, and the
word Refused, at the end, there-
fore, must be taken to refer
to the foregoing, or these insti-
-tutions, not otherwise shown
to have been disposed of.

This clearly appears from the
record, and I cannot see
how the court ^{can} otherwise treat
this word "Refused" at the end
of defendants' instructions. And
these instructions being clear

low, there can be no alterna-
-tive with the Court, but to ~~reverse~~
reverse the judgment or to
mouldy who complain.

It may be that the first three
of defendants instructions were
given, or intended to be given,
and that the word "Refused" was
intended to refer to the next
proceeding instruction. And,
if the Court should so hold,
then I insist that this instruc-
-tion should have been given.
This instruction states correctly
evidence adduced, ~~is~~ and
is predicated upon the hypoth-
-eses, that the jury find such to
be the facts of the case,
and upon such ~~hypotheses~~
hypotheses declares the law,
namely: that such facts do
not establish the crime charg-
-ed. If the facts supposed were
found by the jury to be the facts
of the case, they could not find
the defendants guilty, and the
Court should have so instructed.

13-

I do not wish to labor this point, for the Court will see at a glance, the right of defence to the instruction, leaving to the jury to determine upon the facts supposed.

But; aside from the points upon instructions already made, I insist that the judgment must be reversed because it cannot be determined from the record whether Plaintiff - the People's - instructions were given or not. The Note declares that the Court shall write on the margin of instructions the word given or refused, & that the Court may approve or disapprove them, and that the instructions shall be taken by the jury in their retirement and be by them returned into Court with their Verdict. Now this law has two main purposes, to enable the jury to see

and know in their deliberations, what instructions they were to set upon as the law, and to decide certainly as to ~~how~~ how the Court determined the law of the case, — that parties may have a certain record for correction if error in the Court, and as a rule is mandatory and imperative. "The law is so written," and must be obeyed. ##

I mean, substantively it must appear what instructions were given and what refused.

I do not insist, that in the margin of each instruction the word must be written, but that the instructions must clearly indicate, by the use of the word given, or the word refused, what one held law and what not law.

Now, in this record it does appear that two of defendants' instructions were given with modification, and that the

This question was decided, that is, that the note ~~was~~ is not directory, but mandatory, at Mr. Johnson's opinion filed.

17 Volonte were refused; but
it does not appear which
of, or whether ~~for~~ the People's
instructions were given
or refused. The uncertainty
appearing especially as to
the People, and, perhaps ~~as~~ as
to the first three of dependents
instructions in this case, is
just what the Statute was made
to ~~be~~ avoid, and can the Court
decline ~~fail~~ to give this Statute effect?
This Court is in the same
uncertainty upon this head,
as to what instructions were
given and what refused as
I am, and by enforcing the
Statute will ~~be~~ avoid the evil
intended to be cured.
People's Statute 8 & 23.

5

Three dependents ^{were} jointly
indicted and jointly tried
and found guilty. Let the Court
render a separate judgment—

18

against Moody one of the
three, for all the costs of
the prosecution and convic-
tion against her
separately and singly.

The effect of this separate
judgment is, that Moody
must pay all the costs of
the prosecution of the three,
made by all and each of
them, and this too without
any liability to her of the
other defendants, and witho-
ut any recourse against
against them or either
of them for reimbursement
as to the costs by them made.
Costs one made by each
as the word shows, and a
judgment is rendered aga-
-inst Moody singly for all
the costs. By this judgment
she is concluded and must
pay it, while in force, witho-
ut any means of redress,
for by the judgment she is concluded.

19

It is plain, that the judgment for costs should have been against all jointly indicted tried and found guilty; and then the estate of all ~~was~~ would have been ~~been~~ bound jointly, and Moody paying the plain judgment would have had her remedy against the others for ~~contribution~~ contribution, - would have had her action, as in case of one paying off a joint liability of several. This is just as clear as words can make it, and I submit that it is ever of which Moody has a right to complain.

I submit to the Court the foregoing five points, as requiring from this Court a reversal of the conviction of Moody. And I may say, that aside from the unfortunate circumstances of the case - the vile character of Moody

20 - the impulses and passions
of our nature, and the
force and silent power of
public sentiment, heightened
and excited against the vulgar
and vicious, - no one
would seriously and avowedly
contend that Moody was
legally convicted of the crime
charged. The evidence being
wholly insufficient, as against
Moody, to make out the crime
charged against her, upon this
ground alone many vote
a reversal of the judgment
as to her, and such a view
by this Court could in no
manner affect the conviction
of the other defendants who
were proved to have acted in
the removal of Davis from
this State. This woman has
suffered severely in the peniten-
tory, - has had time for repen-
tance - is not wholly debased
and without humane notions
leading to reflection and reform,

and may it not be hoped that
in the justice if not mercy, of
the law she may have opport-
-unity of leading a better life.

I need not remind this
Court of the divine rule
that it is fatal that many
I know this Court will judiciously
administer the law in this
case, and vice versa the
conviction of Moody, if the
record does not show a
strictly legal conviction.

So Edmund D. Skinner
for Moody

Pl The Court will see, that the charac-
-ter of the evidence, & covers the
setting forth very more in
the abstract than applies to
Moody and is necessary to
the questions raised by her.

4

Mary Moody

The Probate

Assistant

for Moody

Filed May 17th 1838

Leland
Coler

STATE OF ILLINOIS, } ss. The People of the State of Illinois,
SUPREME COURT,

To the Sheriff of the County of

La Salle

Greeting :

Because, In the record and proceedings, and also in the rendition of the judgment of a plea which was in the *Recorder Court of the City of Chicago* of *Cook* County, before the Judge thereof, between *The People of the State of Illinois*

plaintiff, and *Mary Moody, Michael Joy & William Brush*

defendants, it is said that manifest error hath intervened, to the injury of the said

~~Plaintiff~~ Defendants

as we are informed by *their* complaint, the record and proceedings of which said judgment we have caused to be brought into our Supreme Court of the State of Illinois, at Ottawa, before the Justices thereof, to correct the errors in the same, in due form and manner, according to law; Therefore, We Command You, That by good and lawful men of your County, you give notice to the said

Washington Bushnell States Attorney in & for the ninth Judicial Circuit of the State of Illinois

that *he* be and appear before the Justices of our said Supreme Court, at the next term of said Court, to be holden at Ottawa, in said State, on the first Tuesday after the third Monday in April next, to hear the records and proceedings aforesaid, and the errors assigned, if *he* shall see fit; and further to do and receive what said Court shall order in this behalf; and have you then there the names of those by whom you shall give the said *Washington Bushnell attorney as aforesaid* notice, together with this writ.

Witness, The Hon. JOHN D. CATON, Chief Justice of our said Court, and the Seal thereof, at Ottawa, this *1st* day of *April* in the Year of Our Lord One Thousand Eight Hundred and Fifty-*eight*

S. Deland
Clerk of the Supreme Court.
by J. B. Rice Deputy

³ Mary Moody Votter

vs 3-119

The People

Sei fee

Served by reading the within
 writ to Washington Bushnell
 This 2nd day of April 1888

\$7. 17^{cts} .65
 1 mile 15^{cts}
 \$.65

W. S. Waterman & Co
 Attorneys at Law

Filed April 2, 1888
 S. Leland
 Clerk

Clerk of the Supreme Court

and Eighty One Thousand Eight Hundred
 Year of Our Lord One Thousand Eight Hundred
 in the
 of our said Court and the seal thereof at Ottawa
 Ottawa, The Hon. JOHN D. CULOM, Chief Justice

notice together with this writ

you are hereby notified that the same has been filed in the Court of the said County of the said State of New York and that the same is now on file in the Court of the said County of the said State of New York and that the same is now on file in the Court of the said County of the said State of New York

Concedo



returning

to the Clerk of the Court

RETURN TO THE
CLERK OF THE COURT

STATE OF ILLINOIS, }
SUPREME COURT, } ss.

To the Clerk of the *Records*

The People of the State of Illinois,
of the City of Chicago
Court for the County

Greeting:

Because, In the record and proceedings, as also in the rendition of the judgment of a plea which was in the *Records of the City of Chicago* Court of Cook - County, before the Judge thereof, between
The People of the State of Illinois

plaintiffs and *Mary Moody, Michael J. & William Brush*

defendants; it is said manifest error hath intervened, to the injury of the aforesaid *Defendants*

as we are informed by *their* complaint — and we being willing that error should be corrected, if any there be, in due form and manner, and that justice be done to the parties aforesaid, command you that if judgment thereof be given, you distinctly and openly, without delay, send to our Justices of the Supreme Court the record and proceedings of the plaint aforesaid, with all things touching the same, under your seal, so that we may have the same before our Justices aforesaid at Ottawa, in the County of La Salle, on the first Tuesday after the third Monday in April next, that the record and proceedings, being inspected, we may cause to be done therein, to correct the error, what of right ought to be done according to law.

Witness, The Hon. John D. Caton, Chief Justice of our said Court, and the Seal thereof, at Ottawa, this *1st* day of *April* — in the Year of Our Lord one thousand eight hundred and fifty-eight.

S. Leland

Clerk of the Supreme Court.

J. B. Rice Deputy

Mary Moody & others
vs

The People Writ of Error

Filed April 1858
L. Leland
CLK



IN THE COURT OF THE
SUPREME COURT,
STATE OF ILLINOIS,

vs
The People of the State of Illinois,

Appearing:

Mary Moody & others, Plaintiffs,
vs
The People of the State of Illinois, Defendants.

Entered in the Court's Office

State of Illinois, Supreme Court
3rd Grant Division
Mary Moody et al }
as }
The People of }

And now come
the said People, by W Bushnell
their Atty, and so far as
relates to the assignment
of Error ~~in~~ the part of said
Mary Moody, says, that
there is no Error, nor manner
of Error in said record
or proceedings, and therefore
prays, that said judgment
against said Mary Moody
be affirmed.

W Bushnell
State Atty

Moody & Co
vs
The People

Joinder in Error

Filed May 17th 1838

W. L. Leland

Clk

Bushnell
for Pto

STATE OF ILLINOIS, SUPREME COURT,

THIRD GRAND DIVISION,

APRIL TERM, A. D. 1858.

MARY MOODY *vs.* THE PEOPLE.

ABSTRACT OF THE RECORD.

RECORD.

THE indictment is for kidnapping. (See 56th section of criminal code.)

The 1st count charges, that Mary Moody, (with three others named,) on the 13th day of October, 1857, at the city of Chicago, &c., "unlawfully, fraudulently and wickedly, without having established a claim according to the laws of the United States, forcibly did steal, take and arrest one Christiana Davis," &c., "a minor child of one Davis, of said county, city and state," "and her, the said Christiana Davis, did carry, transport and convey out of the state of Illinois into another state, to wit, into the state of Indiana, without the consent of the said Christiana Davis and against her will, and without the consent of the said Davis, the father of the said Christiana Davis," &c.

Page 3.

The second count charges, that Mary Moody, (with three others,) on the same day and year and at the place aforesaid, "unlawfully, without having established a claim according to the laws of the United States, forcibly did take and arrest one Christiana Davis, a free white minor child, and her, the said Christiana Davis, forcibly carry out of this state, to wit, the state of Illinois, into another country, to wit, the province of Canada, without the consent of her, the said Christiana Davis, and against her will."

Pages 7, 18.

Motion to quash each of these counts overruled; also, motion in arrest of judgment for same cause.

Pages 2, 18.

Motion by Moody for continuance, at same term, of indictment found. Plea entered and appearance 18th Nov., 1857, and indictment found 10th Nov., 1857. Motion overruled.

Pages 27, 28

The affidavit of Moody, made *seven* days after indictment found, states, that she can prove by two witnesses named, who live in London, in the district of London, Canada West, that affiant is not guilty of the charge; and that Christiana Davis, of her own free consent and without any force or coercion of affiant, and of her own accord, left Chicago and went through Indiana and Michigan to Canada; that said Christiana Davis was 14 years old in December, 1856; that said Christiana so left Chicago and went to London, Canada, of her own choice and free will, and that this is the same matter charged as kidnapping in the indictment; that she knows of no other witness by whom she can prove the same facts except the said Christiana and the other defendants with affiant indicted; that said Christiana, on the examination, denied the above facts; that she has not had time to obtain the attendance or testimony of said witnesses, &c.; that she has a meritorious defence, and expects to be able to prove, by said witnesses named, the facts stated, if reasonable time for that purpose is allowed her, &c.

Motion for new trial overruled.

RECORD. The only evidence connecting Moody with Christiana Davis' leaving
Pag 31. Chicago is contained in the following: "We went first to Mrs. Moody's. She gave me a shawl and told me to go in the country till the fuss was over."

Page 36. "Mrs. Moody gave me a shawl and bonnet and told me to be a good girl and stay away till the fuss b'ew over. I went then with Lizzie to the washerwoman's."

Page 39. "I took Christiana from Mrs. Connely's to the washerwoman's, by Mrs. Moody's directions. She told me to take her where the police would not get her."

Page 40. "Mrs. Moody said she would be taken up if the little girl stayed there," and "she did not want her there."

"The evening Christiana went away Mrs. Moody said she would give Christiana a shawl if she would go away and stay away until after the fuss was over."

The record shows the following instructions for the people:

Pages 49, 50 "To constitute the forcible abduction or stealing of a person within the meaning of the statute, it is not necessary that virtual physical force or violence be used upon the person kidnapped. But it will be sufficient, if to accomplish the removal, the mind of the person was operated upon by the defendants, by falsely exciting her fears, by threats, fraud, or other unlawful and undue influences, amounting substantially to a coercion of the will, so that if such means had not been resorted to or employed, it would have required force to effect the removal."

"3. In determining the guilt or innocence of the defendants in this indictment, the jury should take into consideration the condition of the girl Christiana Davis—her age, education and state of mind at the time—the representations and conduct of the several defendants towards her—the effect of those representations and that conduct upon her—the object of the defendants in effecting her removal from the state, and all the circumstances surrounding the case as detailed in evidence."

Pages 50, 51 The record shows "defendants' instructions" as follows:
52, 53.

"If the jury believe the witness, Christiana Davis, has sworn wilfully false in any one particular, they may exclude her whole testimony from the case."

"That the jury are the judges of the evidence, and as such have a right to discredit witnesses from either contradictory statements made on the witness stand, their general appearance on the stand, or after having been contradicted in their statements, or a preponderance of witnesses."

"If the jury have a reasonable doubt of the guilt of the defendants from the evidence, or either of them, they will find a verdict of not guilty, or to such defendant."

The defendants asked the two instructions following, which the Court refused to give as asked, but gave as qualified.

"That if the jury believe from the evidence, that at the time the defendant, Brush, took the witness, Christiana Davis, from Chicago and then to Indiana or Canada; that the said Christiana Davis knew she was going away from Chicago to some place to be provided by said Brush, and that she went voluntarily, willingly and freely, they should find the defendants not guilty, although they should further believe from the evidence, that said Christiana Davis was not then fourteen years old, and did not know where she was about to go."

This instruction given with this qualification :

"Unless the jury should believe that, to accomplish the removal, the mind of the girl was intentionally operated upon by the defendants, by falsely exciting her fears, by threats, fraud or other unlawful and undue influences, amounting substantially to a coercion of the will, so that if such means had not been resorted to or employed it would have required force to effect the removal."

"That, to constitute the crime of kidnapping under the first count in this indictment, the taking must be a forcible abduction or stealing of a man, woman, or child from his or her own country and sending or taking him or her into another, and that no persuasion by which a person may be induced to leave his or her own country and suffer him or herself to be sent or taken to another, will constitute the offence."

By the Court :

"The above instruction is given with this qualification."

The qualification is the same as to preceding instruction.

"Although the jury should believe from the evidence, that the defendant, *Brush*, met the witness, *Christiana Davis*, at the *depot*, on her return to Chicago from St. Louis, and took her into his hack, promising to take her to a place to work, and attempted to take liberties with her person in an alley, and out of the hack; and that said witness returned to the hack and was taken from there to the office and then again to the *depot*; and that there the defendant, *Joy*, joined them and told the witness, *Davis*, not to go with the defendant, *Brush*, but to go with him and he would get her a place, and then told her he would take her to defendant, *Moody's*; and that it was a house of *ill-fame*; and that she consented to go and did go to defendant, *Moody's*, and there stated to defendant, *Moody*, that she had staid with men and wanted to lead that life, (whether the jury believe that statement true or false,) and that either with or without the request or threats of defendant, *Moody*, she, *Davis*, went to bed with a man, (not a defendant,) and the next day was sent to *Mrs. Connely's*, a respectable place; that she was there visited by the police, who talked to her of putting her in the *Reform School*; and that said *Davis* desired to avoid going to the said school, and was willing to go with defendant, *Brush*, to such place as defendant, *Brush*, should provide for her somewhere away from Chicago; and that the defendant, *Moody*, sent the witness, *Lizzie Smith*, to get the witness, *Davis*, ready to go; and that said *Davis* and *Lizzie* did voluntarily get into the hack, driven by defendant, *Reed*; and that the witness, *Davis*, wanted the hack driven where defendant, *Brush*, was, and wanted him to go with her; and that defendant, *Brush*, did ride with her until *Reed* and one *Charley* brought the buggy; and that witness, *Davis*, and defendant, *Brush*, got in and went to the *Shades*, staid over night together in the same bed and went the next morning to the railroad, and thence to *Indiana* and *Canada* together. This is not evidence from which the jury can find the defendants guilty of forcible abduction or stealing said witness, *Davis*, from this State, (her own country,) and sending or taking her into another, or of forcibly stealing, taking, or arresting her in this state, and carrying her into another state or territory, or with intent to take her out of this state, without having established a claim according to the laws of the United States, and in such case they should find the defendants not guilty."

"Refused."

RECORD. Which instructions of the People the defendant, Moody, objected to, &c.

And which instructions of defendants, and each of them, the Court refused to give, and refused to mark the same "*given*," and would not mark the same "refused," and gave only those qualified, and as qualified.

Pages 19, 20 The Court rendered judgment against defendant, Moody, for all the costs of the proceeding, without joining in the same the other defendants found jointly guilty with Moody, and sentenced by the Court.

Errors assigned covering the questions presented by this abstract.

4-119

Mary Moody
vs
The People

under

Which instructions of the People the defendant, Moody, objected

And which instructions of defendant and each against the Court.

mark the same "replied" and gave only those distinguished, and as distinguished.

Errors assigned cover the directions presented by this applicant.

joined jointly, jointly with Moody, and sentenced by the Court.

costs of the proceeding without joining in the same the other defendant.

rewards The Court rendered judgment against defendant, Moody, for the

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Filed Apr 27 1858

L. Sedgwick
Clerk

May 17th 1858
Plaintiff -

Mary Moody et al

4 vs

The People

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Piper

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