

13860

No. \_\_\_\_\_

# Supreme Court of Illinois

Moody

---

vs.

People

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."
- Page 4.
- Motion to quash each of these counts overruled; also, motion in arrest of judgment for same cause.
- Pages 7, 13.
- Motion by Moody for continuance, at same term, of indictment found.
- Pages 2, 13.
- Plea entered and appearance 18th Nov., 1857, and indictment found 10th Nov., 1857. Motion overruled.
- 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.
- Pages 27, 28.
- Motion for new trial overruled.

RECORD. The only evidence connecting Moody with Christiana Davis' leaving  
Page 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.

Moody  
vs  
The People

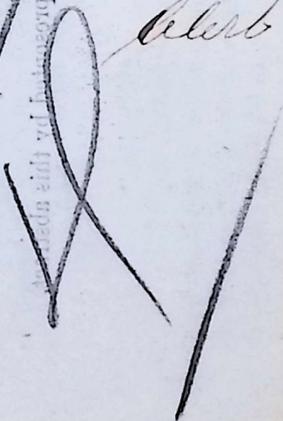
Which instructions of the People the defendant, Moody, objected

to. The Court rendered judgment against defendant, Moody, for all the costs of the proceedings, which defendant, Moody, refused to pay, and which instructions of defendant, and each of them, the Court refused to give, and refused to mark the same "Averred", and would not mark the same "Admitted".

Errors assigned covering the questions presented in this appeal, found jointly, partly with Moody, and sentenced by the Court.

Filed Apr 27 1838

L. Kellogg  
Clerk



# 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.)

Page 3. 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 4. 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  
Page 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."

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"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."

The record shows "defendants' instructions" as follows:

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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.”

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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.

Moody  
vs  
The People

Errors assigned covering the various provisions presented by the defendant joined jointly guilty with Moody and sentenced by the Court. The Court rendered judgment against defendant Moody for all the names the same assigned, and only those damaged and not nullified. joined to give and refused to make the same "New" and would not

Which instructions of the People the defendant Moody objected to

Filed Apr 27 1838

D. Belmont  
Clerk

13860

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

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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.

Mary Moody  
vs

The People

And which instructions of the People the defendant, Moody, objected

Errors assigned covering a direction presented by the defendant found jointly guilty with Moody, and sentenced by the Court.

The Court rendered judgment against defendant, Moody, for all the costs of the proceedings, without joining in the same the other defendants. And which instructions of defendants, and each of them, the Court refused to give, and refused to mark the same "advised," and would not mark the same "referred," and gave only those diminished and as directed.

Filed April 27, 1838

L. A. Leonard  
Clerk