Chapter X

Criminal Sexual Conduct, Assault and Battery, Kidnapping, and False Imprisonment

Chapter Overview:

This chapter examines three of the four categories of crimes against the person: sexual offenses, crimes against bodily integrity, and crimes against personal liberty and freedom.

Under the common law, a rape trial was mainly focused on the resistance made by the victim and the victim's past sexual history. The standards of modern law, however, have been affected by various levels of reform. This includes the addition of rape shield laws to protect victims from the exposure of their past sexual behavior as evidence against them in court, as well as various combinations of other provisions which seek to overcome the barriers that have made rape convictions so difficult to obtain. Examples of these are expanded definitions of coercion and sexual intercourse, and a reframing of the marital exemption that made it impossible for husbands to be charged with raping their wives. Rape reform also raised new questions, such as rape trauma syndrome and distinguishing various degrees of rape.

With regard to crimes against bodily integrity, the chapter examines assault and battery, noting the distinctness of the two crimes. While battery involves application of force upon another person, assault is simply an attempted or threatened battery. Both crimes are considered misdemeanors, but there are special categories of aggravated assault and aggravated battery that are considered felonies. Assault also includes special cases like stalking and cyberstalking.

Finally, offenses against a person's liberty and freedom are addressed, which include kidnapping and false imprisonment. The common law of kidnapping addressed the issue of forcing a person from his or her own country. Later kidnapping came to be concerned with transporting of an individual across state lines for some form of ransom. Today, kidnapping statutes vary greatly from state to state. In this chapter of the supplement you will learn about the specifics of Virginia's kidnapping laws and how they are applied in state courts. You will also learn the unique elements of Virginia's laws with regard to assault and battery and various forms of sexual offenses.

I. Common Law Rape

Section Introduction: Originally, rape was considered a violation of a man's property rights over his wife and daughters. At common law, rape trials mainly focused on the sexual history of the victim and on trying to ascertain exactly how much resistance the victim made against the assailant. If the victim was found to have not fought hard enough or to have a questionable sexual past, it became very difficult or impossible to obtain a conviction. If, however, it could be shown that the defendant was indeed guilty of the crime of rape, the defendant was convicted of a felony crime that was punishable by death. In the following Virginia case from 1886 you will see how courts dealt with the issue of rape prior to the reform of rape laws, which would not take begin to take place for nearly another century.

Bailey v. Commonwealth, 82 Va. 107 (1886)

Procedural History: The defense appeals the judgment of the county court of Giles County.

Issue(s): Can a defendant be convicted of rape, upon the sole evidence of the victim, if the circumstances are unfavorable and suspicious?

Facts: The charge is that in the night time the plaintiff in error entered the bed of his fourteen year old step-daughter, which was situated in a room in which three other small children were sleeping, the largest eight or ten years old; that there were no other persons in the house, the wife of the prisoner and the mother of the prosecutrix being absent at a party in the neighborhood, to which, with an older daughter, she had been escorted by her husband, the prisoner; that the prosecutrix forbid the prisoner from getting into bed with her, but made no further resistance; "that the prisoner held her hands, and brought his private parts in contact with her private parts and forced her;" that the children in the room were not awakened, a person living one hundred yards off heard nothing of it, and another neighbor one-fourth of a mile away heard no noise. The mother and older sister returned from the party in the neighborhood that night, and heard nothing of it until, six days afterwards, the prosecutrix told her mother. The magistrate, who issued the warrant, says that the prisoner confessed to him that he had had intercourse with his step-daughter, that she was no kin to him, and he wanted to be first.

Holding: *Affirmed.*

Opinion: LACY, Justice.

The atrocious character of the charge made, and the revolting circumstances attending it, cannot but excite the indignation, and receive the condemnation, of every person. The charge, however, is rape, and it is necessary to consider, under the law and in the light of the decisions, whether that charge is made out by the evidence and sustained by the proofs.

Rape is the having of unlawful carnal knowledge by a man of a woman, forcibly and against her will. Our statute provides that if any person carnally know a female of the age of twelve years or more, against her will, by force, he shall be, at the discretion of the jury, punished by death, or confined in the penitentiary not less than ten nor more than twenty years. In matter of evidence, however, want of chastity may, within recognized limits, be shown as rendering it more probable that she consented.

Wherever there is a carnal connection, and no consent in fact, fraudulently obtained, or otherwise, there is evidently, in the wrongful act itself, all the force which the law demands as an element of the crime. In the ordinary case, when the woman is awake, of mature years, of sound mind, and not in fear, *a failure to oppose the carnal act is consent.* And it has been held that, though she objects verbally, if she makes no outcry and no resistance, she by her conduct consents, and the carnal act is not rape in the man; and that the jury must be satisfied that she resisted the man to the extent of her ability; that the resistance must be up to the point of being overpowered by actual force, or of inability, from loss of strength, longer to resist; or that

resistance is dangerous or absolutely useless; or there must be dread or fear of death; that the will of the woman must oppose the act, and that any inclination favoring it is fatal to the prosecution.

While on the other hand it has been held, that, in this age, to compel a frail woman or girl of fourteen to abandon her reason, and measure all her strength with a robust man, knowing the effect will be to make her present deplorable condition the more wretched, yet not to preserve her virtue, on pain of being otherwise deemed a prostitute, instead of the victim of an outrage, is asking too much of virtue and giving too much to vice. The law requires that the unlawful carnal knowledge shall be against her will. She must resist, and her resistance must not be a mere pretence, but must be in good faith. She must not consent. If she consent before the act, it will not be rape. But as to this consent, we may observe that it must be a consent, not controlled and dominated by fear.

We have not been unmindful in this case of that just observation by Lord Hale, "that it is an accusation easily made, hard to be proved, and still harder to be defended by one ever so innocent." The party injured is legally a competent witness; her credibility was left to the jury upon the circumstances of the case, which concur with her testimony. Whether she be a person of good fame; whether she made complaint of the injury as soon as practicable; whether her person or garments bore token of the offence, and the like; upon these questions the jury has passed in their verdict. There do not seem to be any safe grounds upon which the judgment in this case can be set aside.

The sexual intercourse, under the circumstances of this case, make out a case of rape, and the judgment of the county court of Giles County must be affirmed.

Critical Thinking Questions: According to the opinion of the court regarding the necessary proofs for rape, was the case substantiated by the prosecution? Assuming the opinion is in apparent contradiction to the holding in this case, what were the actions of the "victim" that caused the court to affirm the verdict of the lower court? Do you agree with the "utmost resistance" test in rape cases based on the assertion that such charges are "easily made and difficult to disprove"?

II. Modern Law Rape

Section Introduction: During the 1970s and 1980s, a movement was made to reform rape laws and the treatment of rape cases in courts. Laws were passed to protect the rights of victims and to focus rape cases on the acts of the assailant. Rape shield laws prohibited a victim's sexual history from being raised against them in trial. The common law requirements that a victim promptly report the crime and have corroborating evidence of the event were abandoned. In this section you can see how rape reform affected certain Virginia statutes regarding sexual battery. Also read the case that follows, comparing it to the case above, to see how these changes affected the way rape cases are tried.

Virginia Code § 18.2-61. Rape.
A. If any person has sexual intercourse with a complaining witness, whether or not his or her spouse, or causes a complaining witness, whether or not his or her spouse, to engage in sexual intercourse with any other person and such act is accomplished (i) against the complaining witness's will, by force, threat or intimidation of or against the complaining witness or another person; or (ii) through the use of the complaining witness's mental incapacity or physical helplessness; or (iii) with a child under age 13 as the victim, he or she shall be guilty of rape.

B. A violation of this section shall be punishable, in the discretion of the court or jury, by confinement in a state correctional facility for life or for any term not less than five years; the penalty for a violation of subdivision A (iii), where the offender is more than three years older than the victim, if done in the commission of, or as part of the same course of conduct as, or as part of a common scheme or plan as a violation of (i) subsection A of § 18.2-47 or § 18.2-48, (ii) § 18.2-89, 18.2-90 or 18.2-91, or (iii) § 18.2-51.2, shall include a mandatory minimum term of confinement of 25 years. If the term of confinement imposed for any violation of subdivision A (iii), where the offender is more than three years older than the victim, is for a term less than life imprisonment, the judge shall impose, in addition to any active sentence, a suspended sentence of no less than 40 years. This suspended sentence shall be suspended for the remainder of the defendant's life, subject to revocation by the court.

There shall be a rebuttable presumption that a juvenile over the age of 10 but less than 12, does not possess the physical capacity to commit a violation of this section. In any case deemed appropriate by the court, all or part of any sentence imposed for a violation under this section against a spouse may be suspended upon the defendant's completion of counseling or therapy, if not already provided, in the manner prescribed under § 19.2-218.1 if, after consideration of the views of the complaining witness and such other evidence as may be relevant, the court finds such action will promote maintenance of the family unit and will be in the best interest of the complaining witness.

C. Upon a finding of guilt under this section, when a spouse is the complaining witness in any case tried by the court without a jury, the court, without entering a judgment of guilt, upon motion of the defendant who has not previously had a proceeding against him for violation of this section dismissed pursuant to this subsection and with the consent of the complaining witness and the attorney for the Commonwealth, may defer further proceedings and place the defendant on probation pending completion of counseling or therapy, if not already provided, in the manner prescribed under § 19.2-218.1. If the defendant fails to so complete such counseling or therapy, the court may make final disposition of the case and proceed as otherwise provided. If such counseling is completed as prescribed under § 19.2-218.1, the court may discharge the defendant and dismiss the proceedings against him if, after consideration of the views of the complaining witness and such other evidence as may be relevant, the court finds such action will promote maintenance of the family unit and be in the best interest of the complaining witness.

Virginia Code § 18.2-67.3. Aggravated sexual battery; penalty.
A. An accused shall be guilty of aggravated sexual battery if he or she sexually abuses the complaining witness, and

1. The complaining witness is less than 13 years of age, or

2. The act is accomplished through the use of the complaining witness's mental incapacity or physical helplessness, or
3. The offense is committed by a parent, step-parent, grandparent, or step-grandparent and the complaining witness is at least 13 but less than 18 years of age, or
4. The act is accomplished against the will of the complaining witness by force, threat or intimidation, and
    a. The complaining witness is at least 13 but less than 15 years of age, or
    b. The accused causes serious bodily or mental injury to the complaining witness, or
    c. The accused uses or threatens to use a dangerous weapon.

B. Aggravated sexual battery is a felony punishable by confinement in a state correctional facility for a term of not less than one nor more than 20 years and by a fine of not more than $100,000.

***Sutton v. Commonwealth*, 228 Va. 654, 324 S.E.2d 665 (1985)**

Procedural History: In a joint trial, the trial court, sitting without a jury, convicted Raymond Lee Sutton and Virginia Gray Sutton, his wife, of the rape of Virginia's 15-year-old niece on July 23, 1982. Virginia was convicted as a principal in the second degree. The court sentenced each to confinement in the penitentiary for 30 years. In separate appeals, consolidated for argument, each contends that the evidence is not sufficient to sustain the conviction.

Issue(s): Was there sufficient evidence of an atmosphere of fear created by both the husband and wife such as to intimidate the victim?

Facts: While she was growing up, Beverly often saw her mother's sister, Virginia, and Virginia's husband, Raymond. Beverly visited the Suttons for two weeks in December of 1981. During this visit, Virginia told her that before the Suttons went to Germany, Raymond had sexual intercourse with Beverly's sister who was then living with them. Virginia further stated that it would be good for Beverly to have sexual intercourse with Raymond. Virginia, believing that Beverly thought that all men would beat her because her father did so, suggested that she could overcome her fear by going to bed with Raymond. On each of the two occasions that Virginia brought up the subject, Beverly rejected the suggestion.

About two or three in the morning on Christmas Day, 1981, Raymond and Beverly returned home in his van from his landlady's residence. Parking in the driveway, Raymond began kissing and fondling Beverly and even "got [her] down" on the floor of the vehicle. Beverly begged Raymond to leave her alone, and he finally released her. Beverly said she was scared at the time and was also afraid to tell her father what had happened. The next day Raymond informed Virginia of the incident; Virginia advised Beverly that she should have submitted to Raymond, that it would have helped her.

During the December visit, the Suttons talked to Beverly about getting her away from her father because of his mistreatment of her. In May, after her father had administered another beating, Beverly called the Suttons to report the intolerable situation. In July, after the school session was

over, the Suttons brought Beverly from her father's home in North Carolina to theirs in Newport News. For a week, her older sister also stayed with the Suttons. After her sister left, Raymond tried to get Beverly to go to bed with him. When she refused, he became angry. Subsequently, Raymond and Beverly agreed that, in order to get school clothes and anything she needed, she would have sexual intercourse with him. Her choice was to agree or to return to her father, who would beat her. She did not know where her mother was at that time.

On July 22, the Suttons took Beverly to get birth control pills for which the Suttons paid. The next night, Beverly went to bed early. Raymond came into her bedroom, waked her, began to talk, and fondled her breasts and vaginal area. She repeatedly begged him to leave her alone, but he would not do so. His voice rose as he became angry. She was frightened when he began to fondle her again. She testified, "I was so scared, I didn't push him away, and I didn't say anything except to please stop." She was afraid that either the Suttons would send her back to North Carolina or Raymond might become so angry that he would beat her. She could not fight him off, she was too scared to move. Raymond forced himself on her. She thought he was "mad" at her and was afraid that he would hit her, so they had sexual intercourse. Their earlier agreement to have sexual relations "never crossed" her mind. She recorded in her diary that she and Raymond "made love" on July 23.

After this first incident, Raymond and Beverly had sexual intercourse a number of times. Beverly said she was afraid not to comply. Virginia expressed the desire to see her husband have intercourse with her niece; accordingly, on two occasions, all three were in the same bed when the act occurred.

Raymond, testifying in his own behalf, admitted that he first had sexual intercourse with her on July 23. Raymond denied ever threatening, assaulting, coercing, or intimidating Beverly. He admitted that he gave her the money to buy birth control pills. He also admitted that he had discussed with Virginia more than once his desire to have sex with Beverly and that on two occasions Virginia was on the bed with him when he was having sexual intercourse with Beverly.

Holding: *Affirmed.*

Opinion: COCHRAN, Justice.

1. *Raymond Lee Sutton.*

Code § 18.2-61 (Repl.Vol.1982), as amended (Acts 1981, c. 397), provides in pertinent part as follows:

> If any person has sexual intercourse with a female or causes a female to engage in sexual intercourse with any person and such act is accomplished (i) against her will, by force, threat or intimidation ..., he or she shall, in the discretion of the court or jury, be punished with confinement in the penitentiary for life or for any term not less than five years.

In substituting the words “sexual intercourse” for “carnally know” the General Assembly made no change in meaning. *See Strawderman v. Commonwealth,* 200 Va. 855, 858, 108 S.E.2d 376, 379 (1959). But the definition of rape was significantly enlarged. Under the statute prior to amendment, it was necessary to prove sexual intercourse against the victim's will “by force.” *See Snyder v. Commonwealth,* 220 Va. 792, 796, 263 S.E.2d 55, 57 (1980); *Jones v. Commonwealth,* 219 Va. 983, 986, 252 S.E.2d 370, 372 (1979). Under the amended statute it is sufficient to prove sexual intercourse against the victim's will “by force, threat or intimidation.”

The trial judge, sitting as the trier of fact, based the convictions on a finding of intimidation. At the conclusion of the trial, he announced his ruling from the bench. After noting how positively Beverly had testified, both on direct examination and cross-examination, the judge made this statement:

> I disagree with defense counsel that there isn't sufficient evidence of intimidation. Certainly, the whole thing reeks with intimidation when the husband and wife in this case knew of the difficulties this child had had over the years and that she was horrified to go back with her parents.

Raymond contends that the evidence is insufficient to prove that he had sexual intercourse with Beverly on July 23 against her will by force, threat, or intimidation. While the record shows that he displayed no weapon and did not verbally threaten Beverly with bodily harm, Beverly testified that Raymond “forced himself” on her and she was too frightened to fight him off. Nevertheless, since the trial court made only a finding of intimidation, we will focus on that aspect of the case.

“Intimidation” is defined as follows in Black's Law Dictionary (5th ed. 1979) at page 737: Unlawful coercion; extortion; duress; putting in fear.

To take, or attempt to take, “by intimidation” means willfully to take, or attempt to take, by putting in fear of bodily harm. Such fear must arise from the willful conduct of the accused, rather than from some mere temperamental timidity of the victim; however, the fear of the victim need not be so great as to result in terror, panic, or hysteria.

It is apparent that the legislative intent, in amending the statute to include a prohibition against sexual intercourse with a woman against her will by threat or intimidation, was to expand the parameters of rape. There is a difference between threat and intimidation. As used in the statute, threat means expression of an intention to do bodily harm. Intimidation may occur without threats. Intimidation, as used in the statute, means putting a victim in fear of bodily harm by exercising such domination and control of her as to overcome her mind and overbear her will. Intimidation may be caused by the imposition of psychological pressure on one who, under the circumstances, is vulnerable and susceptible to such pressure.

Submission through fear to sexual intercourse is not consent. Even under the pre-1981 definition of rape, where the intercourse was induced through fear of a person whom the victim was accustomed to obey, such as a person standing *in loco parentis,* a conviction was affirmed in *Bailey v. Commonwealth,* 82 Va. 107 (1886).

Raymond argues that there is no evidence of intimidation because Beverly had no reasonable apprehension of danger, measured by an objective standard. He says that the law of robbery requires this interpretation of "intimidation" which by analogy should be applied in this case.

In Virginia, robbery is a common-law crime punishable by statute. But Raymond cites no Virginia authority to support his contention that the intimidation required to sustain a robbery conviction must create a reasonable apprehension of danger.

There is no standard of reasonableness expressly provided by Code § 18.2-61. Moreover, the cases from other jurisdictions do not universally hold that in rape cases the fear induced by the defendant's intimidating actions must be judged by an objective standard of reasonableness. *See Salsman v. Com.,* 565 S.W.2d 638, 641 (Ky.Ct.App.1978); *State v. Pierce,* 438 A.2d 247, 252 (Me.1981); *Dinkins v. State,* 92 Nev. 74, 79, 546 P.2d 228, 230 (1976); *State v. Barnette,* 304 N.C. 447, 461, 284 S.E.2d 298, 306 (1981); *Dumer v. State,* 64 Wis.2d 590, 609, 219 N.W.2d 592, 603 (1974).

Raymond concedes on brief that the Commonwealth proved that Beverly "was in fear when she consented to the initial act of intercourse," but he says that her fear arose from her "temperamental timidity" rather than from any act of his which reasonably could be expected to cause fear. We disagree.

Beverly testified to her actual fear when she was awakened by Raymond on July 23. She feared both physical harm from him and the inevitability of further physical abuse from her father if she did not submit. Even if the fear of a victim is to be judged by an objective rather than a subjective standard, which we do not here decide, the evidence is sufficient to show intimidation within the meaning of the statute. Beverly's fear was based on Raymond's repeated attempts to have sexual intercourse with her, the warning voiced by Virginia that she would be returned to her father unless she submitted to Raymond, and her observation of Raymond's violent propensities and anger. Raymond believed her when she said she had been beaten by her father. Raymond testified that the Suttons took her into their home to remove her from her father's physical abuse. Raymond said that he would never have forced her to return to her father against her will but there is no evidence that he so informed her. It is apparent that he was aware of her fear of her father and believed her fear to be reasonable. In the Suttons' home where she sought sanctuary, however, she found herself aggressively importuned by a middle-aged soldier who with his wife exercised custodial control over her.

The evidence shows that an atmosphere of fear was developed and maintained by the Suttons to intimidate this 15-year-old physically handicapped girl and that her fear of bodily harm was reasonable. We hold that the evidence is sufficient to affirm Raymond's conviction of rape.

2. *Virginia Gray Sutton.*

Virginia Sutton was convicted of rape as a principal in the second degree. Principals in the second degree and accessories before the fact may be indicted, tried, convicted, and punished as principals in the first degree. Code § 18.2-18; *Riddick v. Commonwealth,* 226 Va. 244, 248, 308

S.E.2d 117, 119 (1983). To sustain Virginia's conviction as a principal in the second degree, it must be established that the offense was committed by Raymond as principal in the first degree. *See Sult v. Commonwealth,* 221 Va. 915, 918, 275 S.E.2d 608, 609 (1981). But the fact that she is incapable of committing the offense as a principal in the first degree does not absolve her of criminal liability for aiding and abetting Raymond in commission of the offense. *See Adkins v. Commonwealth,* 175 Va. 590, 600-01, 9 S.E.2d 349, 353 (1940).

To establish Virginia as a principal in the second degree, the Commonwealth was required to prove that she was present, either actually or constructively, when the rape was committed. *See Spradlin v. Commonwealth,* 195 Va. 523, 526, 79 S.E.2d 443, 445 (1954); *Foster v. Commonwealth,* 179 Va. 96, 99, 18 S.E.2d 314, 315 (1942). Presence alone, however, is not sufficient to make Virginia a principal in the second degree. It must also be established that she procured, encouraged, countenanced, or approved Raymond's commission of the crime; she must have shared his criminal intent or have committed some overt act in furtherance of the offense. *See Augustine v. Commonwealth,* 226 Va. 120, 124, 306 S.E.2d 886, 888-89 (1983); *Hall v. Commonwealth,* 225 Va. 533, 536, 303 S.E.2d 903, 904 (1983). Virginia Sutton's actions meet these requirements for a principal in the second degree to rape as that crime is now defined by Code § 18.2-61.

During the rape, Virginia was not physically present but was in bed in another room. Nevertheless, her malevolent, intimidating influence on her niece was present and continued unabated. This evidence is sufficient to establish Virginia's constructive presence during the commission of the crime. Long ago, this Court said in *Dull's Case,* 66 Va. (25 Gratt.) 965, 977 (1875), of constructive presence:

> the *presence* need not be a strict, actual, immediate presence, such a presence as would make [the defendant] an eye or ear witness of what passes, but may be a constructive presence. So that if several persons set out together ... upon one common design, be it murder or other felony, or for any other purpose unlawful in itself, and each takes the part assigned him; ... they are all, provided the act be committed, in the eyes of the law, present at it. ... (quoting 1 Russell on Crimes 27 (3d ed. 1845)).

In this case, Virginia and Raymond discussed Raymond's desire to have intercourse with Beverly and Beverly's resistance. They embarked on a common purpose of inducing Beverly by intimidation to submit to Raymond's advances. The evidence also adequately establishes that Virginia shared Raymond's criminal intent and committed overt acts in furtherance of the crime. She and Raymond were determined to have Beverly submit. They knew her fear of her father and could have intended no less than to coerce her submission by their threat to return her to him. Because she procured, encouraged, countenanced, and approved Raymond's having sexual intercourse with Beverly against her will by intimidation, the trial court properly found her guilty of rape as a principal in the second degree.

Accordingly, we will affirm both convictions.

Critical Thinking Question(s): Since the defendant (Raymond) was convicted of rape for the date charged, should he also be guilty of any other counts of rape he committed upon the victim? In other words, can the "threat or intimidation" be seen as "continuing" therefore making him culpable of all criminal acts resulting therefrom? Since the co-defendant (Virginia) was not present at the time of the charged rape yet was found guilty, should she also be guilty of other acts of intercourse with the victim based on the premise just stated? Can a woman be a "principle in the first degree" under current statutes? Under what premise?

III. Assault and Battery

Section Introduction: Assault and battery are two separate offenses against bodily integrity of the victim. However, it is common for these crimes to be referred to together because they are so closely related. When someone is charged with battery, the inherent commission of assault is not punished separately but is instead seen as the first step in the commission of the battery. Where battery involves the use of force against another person, assault is the threat or attempt of such force. Below you will find Virginia statutes addressing the various types of assault and battery, along with Virginia cases to show how these statutes are applied.

Virginia Code § 18.2-57. Assault and battery.

A. Any person who commits a simple assault or assault and battery shall be guilty of a Class 1 misdemeanor, and if the person intentionally selects the person against whom a simple assault is committed because of his race, religious conviction, color or national origin, the penalty upon conviction shall include a term of confinement of at least six months, 30 days of which shall be a mandatory minimum term of confinement.

B. However, if a person intentionally selects the person against whom an assault and battery resulting in bodily injury is committed because of his race, religious conviction, color or national origin, the person shall be guilty of a Class 6 felony, and the penalty upon conviction shall include a term of confinement of at least six months, 30 days of which shall be a mandatory minimum term of confinement.

C. In addition, if any person commits an assault or an assault and battery against another knowing or having reason to know that such other person is a judge, a law-enforcement officer as defined hereinafter, a correctional officer as defined in § 53.1-1, a person employed by the Department of Corrections directly involved in the care, treatment or supervision of inmates in the custody of the Department, a firefighter as defined in § 65.2-102, or a volunteer firefighter or lifesaving or rescue squad member who is a member of a bona fide volunteer fire department or volunteer rescue or emergency medical squad regardless of whether a resolution has been adopted by the governing body of a political subdivision recognizing such firefighters or members as employees, engaged in the performance of his public duties, such person is guilty of a Class 6 felony, and, upon conviction, the sentence of such person shall include a mandatory minimum term of confinement of six months.

Nothing in this subsection shall be construed to affect the right of any person charged with a violation of this section from asserting and presenting evidence in support of any defenses to the charge that may be available under common law.

D. In addition, if any person commits a battery against another knowing or having reason to know that such other person is a full-time or part-time teacher, principal, assistant principal, or guidance counselor of any public or private elementary or secondary school and is engaged in the performance of his duties as such, he shall be guilty of a Class 1 misdemeanor and the sentence of such person upon conviction shall include a sentence of 15 days in jail, two days of which shall be a mandatory minimum term of confinement. However, if the offense is committed by use of a firearm or other weapon prohibited on school property pursuant to § 18.2-308.1, the person shall serve a mandatory minimum sentence of confinement of six months.

Virginia Code § 18.2-57.2. Assault and battery against a family or household member; penalty.

A. Any person who commits an assault and battery against a family or household member is guilty of a Class 1 misdemeanor.

B. Upon a conviction for assault and battery against a family or household member, where it is alleged in the warrant, information, or indictment on which a person is convicted, that such person has been previously convicted of two offenses against a family or household member of (i) assault and battery against a family or household member in violation of this section, (ii) malicious wounding in violation of § 18.2-51, (iii) aggravated malicious wounding in violation of § 18.2-51.2, (iv) malicious bodily injury by means of a substance in violation of § 18.2-52, or (v) an offense under the law of any other jurisdiction which has the same elements of any of the above offenses, in any combination, all of which occurred within a period of 20 years, and each of which occurred on a different date, such person is guilty of a Class 6 felony.

C. Whenever a warrant for a violation of this section is issued, the magistrate shall issue an emergency protective order as authorized by § 16.1-253.4, except if the defendant is a minor, an emergency protective order shall not be required.

Virginia Code § 18.2-51. Shooting, stabbing, etc., with intent to maim, kill, etc.

If any person maliciously shoot, stab, cut, or wound any person or by any means cause him bodily injury, with the intent to maim, disfigure, disable, or kill, he shall, except where it is otherwise provided, be guilty of a Class 3 felony. If such act be done unlawfully but not maliciously, with the intent aforesaid, the offender shall be guilty of a Class 6 felony.

Virginia Code § 18.2-51.1. Malicious bodily injury to law-enforcement officers, firefighters, search and rescue personnel, or emergency medical service providers; penalty; lesser-included offense.

If any person maliciously causes bodily injury to another by any means including the means set out in § 18.2-52, with intent to maim, disfigure, disable or kill, and knowing or having reason to know that such other person is a law-enforcement officer, as defined hereinafter, firefighter, as defined in § 65.2-102, search and rescue personnel as defined hereinafter, or emergency medical services personnel, as defined in § 32.1-111.1 engaged in the performance of his public duties as a law-enforcement officer, firefighter, search and rescue personnel, or emergency medical services personnel, such person shall be guilty of a felony punishable by imprisonment for a period of not less than five years nor more than 30 years and, subject to subsection (g) of § 18.2-

10, a fine of not more than $100,000. Upon conviction, the sentence of such person shall include a mandatory minimum term of imprisonment of two years.

If any person unlawfully, but not maliciously, with the intent aforesaid, causes bodily injury to another by any means, knowing or having reason to know such other person is a law-enforcement officer, firefighter, as defined in § 65.2-102, search and rescue personnel, or emergency medical services personnel, engaged in the performance of his public duties as a law-enforcement officer, firefighter, search and rescue personnel, or emergency medical services personnel, he shall be guilty of a Class 6 felony, and upon conviction, the sentence of such person shall include a mandatory minimum term of imprisonment of one year.

Nothing in this section shall be construed to affect the right of any person charged with a violation of this section from asserting and presenting evidence in support of any defenses to the charge that may be available under common law.

Virginia Code § 18.2-51.2. Aggravated malicious wounding; penalty.
A. If any person maliciously shoots, stabs, cuts or wounds any other person, or by any means causes bodily injury, with the intent to maim, disfigure, disable or kill, he shall be guilty of a Class 2 felony if the victim is thereby severely injured and is caused to suffer permanent and significant physical impairment.

B. If any person maliciously shoots, stabs, cuts or wounds any other woman who is pregnant, or by any other means causes bodily injury, with the intent to maim, disfigure, disable or kill the pregnant woman or to cause the involuntary termination of her pregnancy, he shall be guilty of a Class 2 felony if the victim is thereby severely injured and is caused to suffer permanent and significant physical impairment.

C. For purposes of this section, the involuntary termination of a woman's pregnancy shall be deemed a severe injury and a permanent and significant physical impairment.

Virginia Code § 18.2-51.4. Maiming, etc., of another resulting from driving while intoxicated.
A. Any person who, as a result of driving while intoxicated in violation of § 18.2-266 or any local ordinance substantially similar thereto in a manner so gross, wanton and culpable as to show a reckless disregard for human life, unintentionally causes the serious bodily injury of another person resulting in permanent and significant physical impairment shall be guilty of a Class 6 felony. The driver's license of any person convicted under this section shall be revoked pursuant to subsection B of § 46.2-391.

B. The provisions of Article 2 (§ 18.2-266 et seq.) of Chapter 7 of Title 18.2 shall apply, mutatis mutandis, upon arrest for a violation of this section.

Virginia Code § 18.2-60.3. Stalking; penalty.
A. Any person, except a law-enforcement officer, as defined in § 9.1-101, and acting in the performance of his official duties, and a registered private investigator, as defined in § 9.1-138, who is regulated in accordance with § 9.1-139 and acting in the course of his legitimate business,

who on more than one occasion engages in conduct directed at another person with the intent to place, or when he knows or reasonably should know that the conduct places that other person in reasonable fear of death, criminal sexual assault, or bodily injury to that other person or to that other person's family or household member is guilty of a Class 1 misdemeanor.

B. A third or subsequent conviction occurring within five years of a conviction for an offense under this section or for a similar offense under the law of any other jurisdiction shall be a Class 6 felony.

C. A person may be convicted under this section irrespective of the jurisdiction or jurisdictions within the Commonwealth wherein the conduct described in subsection A occurred, if the person engaged in that conduct on at least one occasion in the jurisdiction where the person is tried. Evidence of any such conduct that occurred outside the Commonwealth may be admissible, if relevant, in any prosecution under this section provided that the prosecution is based upon conduct occurring within the Commonwealth.

D. Upon finding a person guilty under this section, the court shall, in addition to the sentence imposed, issue an order prohibiting contact between the defendant and the victim or the victim's family or household member.

E. The Department of Corrections, sheriff or regional jail director shall give notice prior to the release from a state correctional facility or a local or regional jail of any person incarcerated upon conviction of a violation of this section, to any victim of the offense who, in writing, requests notice, or to any person designated in writing by the victim. The notice shall be given at least fifteen days prior to release of a person sentenced to a term of incarceration of more than thirty days or, if the person was sentenced to a term of incarceration of at least forty-eight hours but no more than thirty days, twenty-four hours prior to release. If the person escapes, notice shall be given as soon as practicable following the escape. The victim shall keep the Department of Corrections, sheriff or regional jail director informed of the current mailing address and telephone number of the person named in the writing submitted to receive notice.

All information relating to any person who receives or may receive notice under this subsection shall remain confidential and shall not be made available to the person convicted of violating this section.

***Morris v. Commonwealth*, 269 Va. 127, 607 S.E.2d 110 (2005)**

Procedural History: In a two-count indictment, Donovan Payne Morris (Morris) was charged with possession of a firearm, to-wit, a flare pistol, after having been convicted of a felony, and with brandishing a firearm. In a bench trial, Morris was convicted of both offenses and sentenced to five years' imprisonment with three years suspended on the possession charge and to twelve months on the brandishing charge.

One of the judges of the Court of Appeals denied Morris's petition for appeal. *Morris v. Commonwealth*, Record No. 3395-02-4 (August 5, 2003). For the reasons assigned in that order,

a three-judge panel of the Court of Appeals also denied Morris an appeal. *Morris v. Commonwealth*, Record No. 3395-02-4 (October 30, 2003). We awarded Morris this appeal.

Issue(s): Does the crime of brandishing a firearm require the defendant to actually handle the firearm in the presence of the victims?

Holding: *Affirmed.*

Facts: The record establishes that Morris has a string of nine felony convictions dating back to 1977. With respect to the present offenses, the evidence shows that on June 20, 2002, Peter Molina, an engraver of tombstones, was working in an Alexandria cemetery accompanied by his wife, who was his business partner. Morris appeared on the scene, dragging a bicycle and smelling of alcohol. He sat on a tombstone, staring at Molina and his wife, cursing and mumbling. After about five minutes, Morris looked at Molina's wife and said, "I'd like that." When Molina asked Morris what he had said, Morris stood up, "raised up his shirt," and "showed [Molina] this gun he had in his waistband."

Because Molina did not know "what the situation was or what the situation could be," he became "worried about" his wife's safety and decided he "needed to get her out of there." They got into their truck and, as they were leaving the cemetery, they encountered Officer Vincent Omundson of the Alexandria Police Department. Molina told Officer Omundson "there was a man back there with a gun in his waistband." Omundson, armed with a shotgun, found Morris sitting on "a stump or a bucket," drinking beer. When Omundson told Morris to put down his drink and raise his hands, Morris responded by reaching under his shirt, pulling out the flare gun, and throwing it into some grass about twenty-five feet away. After some resistance from Morris, Omundson arrested him and retrieved the flare gun. One "fired round" of ammunition was found in the flare gun and three "loaded rounds" were found on Morris's person.

Opinion: CARRICO, Senior Justice.

As noted *supra*, Morris was charged with pointing, holding, or brandishing a firearm in such a manner as to reasonably induce fear in the mind of another, pursuant to Code § 18.2-282. Morris argues "[t]here was insufficient evidence that [he] pointed, held or brandished the firearm, and there was insufficient evidence that there was reasonable fear in the mind of Peter Molina."

Morris says that although Peter Molina saw the flare gun in Morris's waistband, he never testified that he was in fear of the gun. Morris asserts that Molina, solely out of concern for his wife, insisted that they should leave the area where Morris was sitting. Indeed, Morris states, Molina indicated in his testimony that he "may have stayed where he was had his wife not been there."

Morris says further that he "never touched the gun in the presence" of Molina or his wife and there is no evidence that "he pointed the flare gun." Hence, Morris concludes, the evidence is insufficient to support a conviction for brandishing a firearm.

We disagree with Morris. “Brandish” means “to exhibit or expose in an ostentatious, shameless, or aggressive manner.” *Webster's Third New International Dictionary*, 268 (1993). When Morris looked at Ms. Molina, said “[he'd] like that,” and then pulled up his shirt to uncover the flare gun, he exhibited or exposed the weapon in a shameless or aggressive manner. And Morris brandished the weapon in such a manner as to reasonably induce fear in the mind of Peter Molina. Although Molina may not have said he was in fear for his own safety, he stated unequivocally that he feared for the safety of his wife, and that is sufficient to prove the “induced fear” element of a conviction for brandishing a firearm under Code § 18.2-282.

Finding no error in the judgment of the Court of Appeals, we will affirm the judgment.

Critical Thinking Question(s): Did the court use an “objective” or “subjective” analysis of the victim’s fear? Is it necessary for there to be any history of violence or ill-will between the defendant and victim to substantiate the charge of “assault”? Why does the court insist on holding someone culpable for assault prior to any harm being inflicted? What are the public safety concerns? Should the court not just have convicted the defendant of felon with a firearm?

***Harper v. Commonwealth*, 196 Va. 723, 85 S.E.2d 249 (1955)**

Procedural History: Defendant was convicted in the Circuit Court of Buckingham County, Joel W. Flood, J., of committing an assault and battery and he brings error.

Issue(s): Is provocation by the victim a defense to assault and battery?

Facts: The facts as stated by the Commonwealth and the defendant differ considerably. According to the Commonwealth, on July 4, 1953, the accused and his wife went in an automobile to the back of Charles Spencer's store at Buckingham Court House for the purpose of buying ice. Richard Throckmorton, an employee of Charles Spencer, was in charge of selling and delivering ice from the rear of a truck which protruded from the entrance to a shed into a vacant space where customers would drive their motor vehicles down to the shed and park close to the rear end of the truck. Several minutes before the accused arrived on the scene Frank E. Webb and Will Llewellyn each had purchased ice from Throckmorton. Webb was chipping his ice on fish in his motor vehicle and Llewellyn was talking to him. The accused got out of his automobile, walked a few steps to the ice truck, ordered and paid for 100 lbs. of ice, which he requested to be divided into two pieces of 50 lbs. each.

When Throckmorton attempted to cut the first 50 lbs. the ice did not break evenly. The accused told Throckmorton that the first piece of ice offered him did not weigh 50 lbs. Throckmorton agreed and said: ‘I will give you the other in the other piece.’ The accused replied if it was not 50 lbs. he was not going to pay for it. Llewellyn raised the ice with the tongs and said that it did weigh 50 lbs. A brief argument as to the weight of the ice ensued between him and the accused. However, the accused, being satisfied by the assurance of Throckmorton that he would make up the difference, carried the ice to his automobile, placed it in the trunk, and returned to the shed for the remainder of his ice. As he did so, Llewellyn asked him how much ice he wanted anyway; to which the accused replied that it was none of Llewellyn's business, he was not buying ice from him, he was buying it from the ‘boy’; to which Llewellyn replied: ‘You don't have to be

so smart about it.' The accused replied he would get as smart as he wanted to and repeated the remark to Webb who had said something about the ice.

The three witnesses for the Commonwealth, Frank E. Webb, Will Llewellyn and Richard Throckmorton, testified that the second piece of ice fell or was knocked from the truck to the ground. Frank E. Webb then said to the accused: 'If you hadn't talked so smart and run off your mouth so much you wouldn't have dirt on your ice.' The accused continued to 'jaw' about the ice. Finally, Webb told Throckmorton: 'If he keeps on fussing about the ice give him his money back or give him another piece' and let him go; whereupon, the accused 'swung' the ice tongs at Webb. Throckmorton 'hollered' to the accused to put the ice tongs down, they were not his. The wife of the accused got out of the automobile and came to the scene. She persuaded her husband to surrender the tongs and he either gave them to her or to Throckmorton. The accused then went to the back of his automobile, got a metal pipe wrench, fourteen to eighteen inches long, and holding the same in both hands over his head ran towards Webb. As he brought the wrench down on Webb's head Llewellyn shoved him, thereby deflecting the blow. However, the wrench struck and cut a gash on the right side of Webb's neck and inflicted a minor bruise on his shoulder. Webb testified that when he saw the accused running at him with the wrench in his hands he yelled and 'hit at him and did everything I could to protect myself. Will Llewellyn was standing there by me. He deflected the lick. If he hadn't I guess it would have killed me. . . . (About) that time Mr. Taylor, the Deputy Sheriff came down.'

The testimony of the accused and his wife is substantially as follows:

As the accused reached down to pick up his second piece of ice Webb said: 'If you want that ice you had better get it and get on away from here'; to which the accused replied: 'I don't have to do that either because I'm not buying the ice from you.' He saw Webb run his right hand in his pocket and 'pulled out a knife and held his hand down by his side and started walking towards me and said to Throckmorton: 'Give him his money and let him get on away from here.' Just like that. I backed up. About that time Will said: 'Give me the ice tongs'. So I said: 'I'm going to give you nothing.' So he spoke up again and said: 'Give him the ice hooks, you are not going to carry those ice hooks from here. They are another man's hooks.' About that time his wife came up and he gave the ice hooks to her and as he was backing up to the rear of his car Webb, Llewellyn and a third man followed him. Webb stepped out in front of the other two and called him 'You smart son of a bitch.' 'I taken out this wrench and I hit him because he was coming up so close on me and I knew if he was up on me like that he was going to cut me up. . . . When I hit him he stepped back and about that time the deputy sheriff was there. . . . He (the deputy sheriff) ran up to me and told me to give him the wrench. I told him that I would provided that he take the wrench from me and make the rest of them get back off me. That is why I didn't give him the wrench, because he was taking what I had and letting the rest of them go. They could do anything they wanted to me. . . . But he was no protection, he was going to keep me from doing anything to them.'

The three witnesses for the Commonwealth denied that Webb had a knife in his hand or that they or any of them followed the accused from the rear of the truck to the back of his automobile.

Holding: *Affirmed.*

Opinion: HUDGINS, Chief Justice.

Harold Harper, the accused, was indicted under the maiming act, Code section 18-70, tried, found guilty of committing assault and battery upon Frank E. Webb, and sentenced to confinement in jail for twelve months.

We find no error in the refusal of the trial court to set aside the verdict as it is well settled in this jurisdiction that where the evidence is sufficiently conflicting to create a reasonable difference of opinion, the verdict of the jury must be accepted by the trial court as well as by this Court.

The accused's second contention is that there is no evidence to support the following instruction granted on request of the Commonwealth:

> 'The Court instructs the jury that words alone, no matter how grievous or insulting, are never justification for an assault by force or violence.'

It is true, as claimed by the accused, that none of the witnesses for the Commonwealth testified that profane or insulting language was used before the beginning of the affray, but both the accused and his wife testified that Webb called the accused 'a smart son of a bitch' and the wife added '. . . and that is when Harold struck him.' This phrase is usually regarded as grossly insulting, but the use of it does not justify or excuse an accused in making an assault by force or violence upon his adversary. This testimony fully justified the court in giving the instruction.

In order to justify an accused in striking another with a deadly weapon, as the accused admits he did in this case, a threatening attitude alone affords no justification. The adversary must have made some overt act indicative of imminent danger to the accused at the time. *Stoneman v. Commonwealth*, 25 Gratt. (66 Va.) 887; *Berkeley v. Commonwealth*, 88 Va. 1017, 14 S.E. 916.

This principle is stated in Davis' Criminal Law, pp. 353 and 354, as follows: 'An assault is an attempt or offer, with force and violence, to do some bodily hurt to another, whether from wantonness or malice, by means calculated to produce the end if carried into execution; as by striking at him with a stick or other weapon, or without a weapon, though he be not struck, or even by raising up the arm or a cane in a menacing manner, by throwing a bottle of glass with an intent to strike, by leveling a gun at another within a distance from which, supposing it to be loaded, the contents might injure, or any similar act accompanied with circumstances denoting an intention coupled *with a present ability*, of using actual violence against the person of another. But no words whatever, be they ever so provoking, can amount to an assault; * * *.' (Italics supplied).

We find no reversible error in the record and affirm the judgment.

Critical Thinking Question(s): Why are "words alone" never sufficient to raise to the level of provocation that justifies self-defense? Would the outcome be different if the words from the victim(s) were threatening and the defendant believed they had the ability to carry out such

threats? How about if the victim(s) made threatening remarks, and although not raising any harmful instruments, did in fact possess items that could be used in an impending assault?

IV. Kidnapping & False Imprisonment

Section Introduction: The crime of kidnapping originally addressed the abduction of a person for the purpose of forcibly sending them to another state or country. Over time, kidnapping laws evolved to include a wider variety of acts and today statutes on kidnapping vary widely from state to state, but include the basic element that the perpetrator forcibly move the victim to a different location. False imprisonment, on the other hand, requires only that the defendant forcibly restrain the victim and does not involve any specific movement. In this section you will find the specific statutes that Virginia uses to define these crimes, as well as a case in which they are applied.

Virginia Code § 18.2-47. Abduction and kidnapping defined; punishment.
A. Any person, who, by force, intimidation or deception, and without legal justification or excuse, seizes, takes, transports, detains or secretes the person of another, with the intent to deprive such other person of his personal liberty or to withhold or conceal him from any person, authority or institution lawfully entitled to his charge, shall be deemed guilty of "abduction"; but the provisions of this section shall not apply to any law-enforcement officer in the performance of his duty. The terms "abduction" and "kidnapping" shall be synonymous in this Code. Abduction for which no punishment is otherwise prescribed shall be punished as a Class 5 felony.

B. If such offense is committed by the parent of the person abducted and punishable as contempt of court in any proceeding then pending, the offense shall be a Class 1 misdemeanor in addition to being punishable as contempt of court. However, such offense, if committed by the parent of the person abducted and punishable as contempt of court in any proceeding then pending and the person abducted is removed from the Commonwealth by the abducting parent, shall be a Class 6 felony in addition to being punishable as contempt of court.

Virginia Code § 18.2-48. Abduction with intent to extort money or for immoral purpose.
Abduction (i) with the intent to extort money or pecuniary benefit, (ii) of any person with intent to defile such person, or (iii) of any child under sixteen years of age for the purpose of concubinage or prostitution, shall be a Class 2 felony. If the sentence imposed for a violation of (ii) or (iii) includes a term of confinement less than life imprisonment, the judge shall impose, in addition to any active sentence, a suspended sentence of no less than 40 years. This suspended sentence shall be suspended for the remainder of the defendant's life subject to revocation by the court.

Barnett v. Commonwealth, 216 Va. 200, 217 S.E.2d 828 (1975)

Procedural History: Defendant was convicted in the Circuit Court, City of Norfolk, of abduction and rape and he appealed.

Issue(s): What constitutes abduction?

Facts: Melvin Lander Barnett was indicted for abduction and rape and, having waived a jury trial, was convicted by the court below and sentenced to serve eight years in the penitentiary for each offense. On this appeal he questions the sufficiency of the evidence to support the convictions.

On June 9, 1974, at approximately 11 p.m., the victim, age seventeen, and her husband, age eighteen, were walking and pushing their bicycles, en route to the home of the husband's mother. At that time a male operating a tan colored automobile pulled up and asked them for directions to a certain location. A short time later the same car, driven by the same single occupant, returned and stopped approximately a foot or two from the couple. The driver told the victim to get in the car or he would shoot. Neither she nor her husband saw a gun but, as they started to walk on, they heard a 'click'. Believing this to be the sound of a gun they stopped and the husband told his wife she had better do what the man said. The driver unlocked the rear door of his vehicle, the victim got in, and the car was driven off. About two blocks away, in the same residential section, the driver stopped the car, climbed into the back seat and raped the girl.

Approximately two weeks after the incident the husband saw a tan-colored 1963 Galaxie automobile with a man in it whom he thought was the one who had abducted and raped his wife. This car had its left taillight out, as had the car driven by the man on June 9th. The husband noted the license number of the car and called the police. Thereafter the defendant, Melvin Lander Barnett, age nineteen, was arrested and identified by the victim and her husband as the man who had abducted and raped her.

Holding: *Affirmed.*

Opinion: HARRISON, Justice.

Upon trial the defendant denied his guilt and attempted by the testimony of various members of his family and friends to establish an alibi for his whereabouts at 11 p.m. on June 9, 1974. The trial court rejected the alibi and concluded that the evidence established the guilt of the defendant beyond a reasonable doubt.

Defendant … says that the evidence is insufficient to establish the offense of abduction. The evidence of the couple was that the defendant told the wife to get in or he would shoot. When the victim walked away, they heard a 'click'. The husband said that he thought the man had a gun and told his wife, 'you'd better do what he says.' The wife testified that she got into defendant's car '(b)ecause, I didn't have any other choice'. The defendant's threat to shoot was a sufficient show of force to frighten the victim and to cause her to believe that she would be killed if she did not accede to his demands. Whether the click, which both the girl and her husband heard, was made by a gun or simulated in some other way by defendant is immaterial because both parties thought that it was a gun, and both thought that the defendant was capable of, and had the means of, carrying out his threat to shoot. The evidence was sufficient for the trial court to have found that the victim was abducted by force and against her will.

In the instant case the victim was abducted on a public street in the nighttime by a threat that she either get in defendant's car with him or he would shoot. Immediately after she got into the vehicle it was placed in motion. She found it impossible to escape for that reason and for the further reason, she testified, that she was still under the belief that he had a weapon and was capable of carrying out his threat to shoot. She testified that as soon as the defendant stopped his car after abducting her he jumped into the back seat on top of her, pushed her down, held her wrists so she could not get her hands free, and ripped off her pants when she would not take them off at his command. The rape then occurred.

The victim said that she tried to get defendant's hands from around her neck but 'he kept holding me down with his hand around my throat area', and that he applied pressure on her throat. She said that she never had a chance to escape from the car because immediately after the car stopped defendant jumped in the back seat and put his hand over her mouth. She said that she was too scared to scream, and that she tried to cross her legs but because of his position on top of her she could not move them. She said that she did get one hand free and tried to push defendant off and that he told her, 'if I didn't keep still, he'd kill me.' The husband testified that immediately after the rape he noticed that his wife's 'wrists were red like.'

Clearly the trial judge found from the evidence in this case that the victim reasonably believed that resistance beyond that which she offered would have been useless and would have possibly resulted in serious bodily injury to her. It is further noted that in addition to the testimony given by the victim, the evidence shows that she immediately made complaint of the attack and gave information to the police.

The evidence given by the victim of her forcible abduction was fully corroborated by the testimony of her husband. The trial court saw and heard the witnesses testify and by its judgment resolved any conflicts in the evidence against the defendant. We must view the testimony in the light most favorable to the Commonwealth, granting all reasonable inferences clearly deducible therefrom. When so viewed we cannot say that the judgment of the lower court is plainly wrong or without evidence to support it. Affirmed.

Critical Thinking Questions: Would the defendant be convicted of abduction/kidnapping if he merely pulled the victim into a garage 20 feet away and committed the rape therein? How does the conviction for abduction affect the outcome of the case as it pertains to sentencing? Doesn't every case of rape involve some sort of abduction or, at least, unlawful restraint? What constitutes the difference between abduction and restraint?