

SECONDARY SCHOOL #1 (Kidnapping)

IN THE CIRCUIT COURT OF OHIO COUNTY, WEST VIRGINIA

Plaintiff,	:	
vs.	:	Case No.: 04-231
JACK SMITH,	:	Felony (Kidnapping)
Defendant.	:	

Kidnapping Statute:

West Virginia Code §61-2-14 at section (b) states:

(b) Any person, other than the father or mother, who illegally, or for any unlawful, improper or immoral purpose seizes, takes or secretes a child under sixteen years of age, from the person or persons having lawful charge of such child, shall be guilty of a felony, and, upon conviction thereof, shall be confined in the penitentiary not less than one nor more than ten years.

FACTUAL BACKGROUND

Jack Smith is three years older than Michael Jones, but they are good friends. Michael is a victim of child abuse. His stepfather, Meany Moe, drinks too much and fights a lot with Michael's mother, and often Michael ends up in the middle. When he once tried to protect his mother from his stepfather hitting her, Michael was punched by Meany. Meany often hits Michael, and Michael was very unhappy living with his mother and Meany in Wheeling.

One day, Jack told Michael that he was taking his old van and moving to Tennessee, to share an apartment with another friend who said he could get Jack a job at the Walmart in Nashville. Because Jack wanted a singing career, he thought he could work at Walmart to make some money to pursue his dream.

Michael helped Jack load up his old van, because Jack was going to leave early the next morning. Without Jack knowing it, Michael took one of his sets of keys. Early in the morning, before Jack got in the van, Michael hid on the floor of the van, and covered himself with a blanket that Jack had packed the day before. Without noticing Michael in the back, Jack set off out of Wheeling, across the bridge into Ohio, on his way to

Tennessee.

After Jack got across the bridge, Michael popped out from his hiding place and told Jack he was running away from home, and that he wanted to go with Jack to Tennessee. Jack agreed, knowing how Michael was treated at home.

When the boys got to Tennessee, Jack called Michael's mother and stepfather (because Michael wouldn't) to tell them that Michael was okay and was with him. The parents demanded that Jack bring Michael back immediately. Jack said he couldn't do that, and hung up. Michael's parents contacted the police. Several days later, Jack's car was traced to the home of Jack's friend, where he and Michael were staying. The police arrested Jack, and took Michael home. Jack was taken to jail in Tennessee, and EXTRADITED to West Virginia on a charge of kidnapping.

He is now back in Wheeling standing trial at the State Court house in Wheeling on a felony indictment of "kidnapping". If Jack is convicted, he may go to prison for many years.

TRANSCRIPT OF TRIAL

BAILIFF: All rise. This Court is now in session.

JUDGE: Please be seated. Ladies, and Gentlemen, this is an indictment alleging that Mr. Smith is guilty of Kidnapping. Remember, an indictment is just a charge of wrongful conduct. It is not proof of wrongful conduct. A person in the United States is presumed to be innocent unless proven guilty beyond a reasonable doubt, and the fact that a person is indicted is not to be considered by you as any evidence of wrongdoing.

The first part of the case is VOIR DIRE, which means to "speak the truth". It is the process by which we pick a jury. We have to find an impartial jury that swears to make their decision not on any prejudices, or preconceived notions, but solely on the evidence as it comes in the case. Do you think you, as prospective jurors, can do that?

JURORS: Yes Judge.

JUDGE: Now, in any criminal trial, the State has the burden of proving the defendant guilty beyond a reasonable doubt. A GUILTY VERDICT is a finding by the jury that the defendant is guilty as charged. The Court will give you a VERDICT FORM upon

which you can write your decision at the end of the trial. In any criminal trial, because the State has to prove the defendant guilty, the State will go first. You will first hear the OPENING STATEMENT of the Prosecuting Attorney. You will then hear the opening statement of the defendant's attorney. Then the State will call its WITNESSES. Then the defendant will call its witnesses. Then you will hear CLOSING ARGUMENTS from the State and from the defense, and then, and only then, will the Court instruct you on the LAW of the case, and you will be asked then and only then to deliberate together to determine if the defendant is guilty as charged in the indictment. Is the Prosecution ready to proceed?

PROSECUTING
ATTORNEY:

Yes, Your Honor.

JUDGE:

Is the Defense ready to proceed?

SMITH'S
LAWYER:

Yes, Your Honor.

JUDGE:

Okay, Prosecuting Attorney, you may proceed.

PROSECUTING
ATTORNEY:

Ladies and Gentlemen of the Jury, in the opening statement, it is my duty to tell you what the evidence will be. I'll tell you what we will prove. We will prove that Mr. Smith is an adult. He is 18 years old. He took Michael Jones from his parents' house in Wheeling, secreted him from his parents, and took him to Tennessee. He even called Michael's parents and told them he wasn't bringing Michael back. That is kidnapping and we will be asking you at the end of this case to find Mr. Smith guilty.

JUDGE:

Thank you. Now defense counsel may give their opening statement.

DEFENSE
ATTORNEY:

Now, ladies and gentlemen, the State says it will prove that Mr. Smith is guilty but I want to tell you what I think the evidence will show. The evidence will show that no crime was committed in West Virginia. Mr. Smith didn't even know that Michael was in

his car when he drove across that bridge into Ohio. If he committed any crime in keeping him away from his parents after that, it was not a crime that can be tried in West Virginia, because it did not occur in West Virginia. And the evidence will show why he kept him away from his stepfather, Meany Moe. Meany Moe is a meany. The evidence will show that beyond a doubt. But the evidence will not show that my client is guilty of anything, let alone beyond a reasonable doubt.

JUDGE: You may call your first witness, Prosecuting Attorney.

PROSECUTING
ATTORNEY: I call Mr. Meany Moe.

CLERK: Do you swear to tell the truth, the whole truth, and nothing but the truth?

MEANY
MOE: I do.

PROSECUTING
ATTORNEY: Please state your name.

MEANY
MOE: My name is Meany Moe.

PROSECUTING
ATTORNEY: Mr. Moe, are you the stepfather of young Michael Jones?

MEANY
MOE: Yes, I raised him like my own.

PROSECUTING
ATTORNEY: Did you give permission to Defendant Smith to take your son to Tennessee?

MEANY
MOE: No I didn't, he didn't git no permission from me to go to Tennessee.

PROSECUTING
ATTORNEY: Did your son tell you he was going with Smith to Tennessee?

MEANY MOE: No, he didn't mention that the last time I talked to the boy.

PROSECUTING ATTORNEY: How did you find out that he was in Tennessee?

MEANY MOE: Why Mr. Smith done told me.

SMITH'S LAWYER: Objection, HEARSAY!

JUDGE: It is an admission of the defendant, as such, it is an exception to the hearsay rule, and it may be answered. You may proceed, counsel.

PROSECUTING ATTORNEY: How did he tell you?

MEANY MOE: Well he done called me up he did. Just like that. Called me up, said he had Michael with him. Wasn't coming home. I said git that boy home. And he said I can't do that sir. Who's he calling sir, I'd like to know.

PROSECUTING ATTORNEY: No further questions.

JUDGE: Do you have any questions, counselor?

SMITH'S LAWYER: Yes, I do, Your Honor.

CROSS EXAMINATION

SMITH'S LAWYER: You said your son didn't mention he was going to Tennessee when you last talked to him. When was that, Mr. Moe?

MEANY MOE: Oh, 'bout three weeks ago.

SMITH'S LAWYER: You haven't talked to your son for three weeks?

MEANY MOE: No, but I raised that boy like my own.

SMITH'S

LAWYER: Do you have any other children Mr. Moe?

MEANY MOE: Got two by another marriage. Don't see them much anymore 'cause of the protective order.

SMITH'S
LAWYER: What protective order is that sir?

PROSECUTING
ATTORNEY: Objection, irrelevant.

JUDGE: Sustained.

MEANY MOE: Judge in Ohio said I beat my boys, so he done issued an order-says I can't go around them.

SMITH'S
LAWYER: Sir, did you ever beat Michael?

MEANY MOE: I deny that on a stack of bibles!

SMITH'S
LAWYER: Just answer the question, Mr. Moe.

MEANY MOE: No, sir, I did not.

SMITH'S
LAWYER: Do you think maybe Michael ran away on his own to get away from you?

MEANY MOE: Now why would he want to do that?

SMITH'S
LAWYER: No further questions, Mr. Moe.

JUDGE: Call your next witness, Prosecutor.

PROSECUTING
ATTORNEY: Officer Bernie Fife.

CLERK: Do you swear to tell the truth, the whole truth and nothing but the truth?

OFFICER

FIFE: I do.

PROSECUTING

ATTORNEY: Please state your name.

OFFICER

FIFE: Officer Bernie Fife.

PROSECUTING

ATTORNEY: Did you investigate this matter as a kidnapping case?

OFFICER FIFE:

Yes. I met the defendant and Michael at the airport when they were flown back to West Virginia from Tennessee. On the way back, I took a statement from the defendant. He said the boy came with him. Said he didn't want to be with his father. Said they drove down in defendant's old van. He just admitted to the crime right there.

SMITH'S

LAWYER: Objection!

JUDGE:

Sustained. Officer Fife, please refrain from drawing conclusions or opinions, just state the facts.

OFFICER FIFE:

Yes, sir.

PROSECUTING

ATTORNEY: Now, so you say Smith admitted that he drove the boy down in his van.

OFFICER FIFE:

Yes, sir, he did, and the van was brought back by one of our deputies. I inspected the van. It looked to me that the defendant hid the boy in the back under some old blankets.

SMITH'S

LAWYER: Objection, again.

JUDGE:

Now, Officer Fife, I told you to please refrain from drawing conclusions or opinions, just state the facts.

OFFICER FIFE:

Yes, sir.

PROSECUTING
ATTORNEY:

No further questions. You may inquire, Counselor.

CROSS EXAMINATION

SMITH'S
LAWYER:

Now, sir, did you ask the defendant when he first learned Michael was in the van?

OFFICER FIFE:

Well, no, I didn't have to. He told me he drove him to Tennessee.

SMITH'S
LAWYER:

But you can't tell the jury that the defendant told you he knew Michael was in the van when he left West Virginia?

OFFICER
FIFE:

No, but I inspected that van. He hid him under some old blankets. Sorry, Judge.

SMITH'S
LAWYER:

Please answer the question, Officer Fife. Did Mr. Smith tell you he hid him under the blankets, or is that something you just figured out all on your own?

OFFICER FIFE:

I figured that one out all on my own. I got ten years on the force, you know.

SMITH'S
LAWYER:

Yes, I know. No further questions.

PROSECUTING
ATTORNEY:

Your Honor, the State rests.

JUDGE:

Counsel for Mr. Smith, are you ready to proceed?

SMITH'S
LAWYER:

Yes, Your Honor.

JUDGE:

Call your first witness.

SMITH'S
LAWYER:

I call Michael Jones.

CLERK:

Do you swear to tell the truth, the whole truth and nothing but the truth?

MICHAEL
JONES:

I do.

SMITH'S
LAWYER:

Please state your name.

MICHAEL
JONES:

Michael Jones.

SMITH'S
LAWYER:

Michael, how did you get in the van?

MICHAEL
JONES:

I took the key the night before. I hid on my own in the van. I didn't want Jack to know I was running away with him until it was too late.

SMITH'S
LAWYER:

When did you let Jack know you were in the van?

MICHAEL
JONES:

Oh, we were about two miles into Ohio, just before the Mall out there.

SMITH'S
LAWYER:

What did Jack say?

MICHAEL
JONES:

“What the heck!” (he didn't say heck, but I better just use heck right now). He said, “What the heck you doing back there?” And I said, “Jack, you're my only friend, I'm coming with you. I'll get a job with you and help you pay for your new apartment.”

SMITH'S
LAWYER:

So you drove all the way to Tennessee?

MICHAEL
JONES:

All the way, and then Jack thought I should call my parents to let them know I was okay, but I didn't want to do it, so Jack did it for me. I know I shouldn't have done it, but I was trying to get away from my stepdad, Meany Moe.

SMITH'S
LAWYER: You are telling this jury, you didn't plan this with Jack, and as far as you know, Jack didn't even know you were in the car until you got to Ohio?

MICHAEL
JONES: That's the truth.

SMITH'S
LAWYER: Thank you.

JUDGE: Any cross examination from the Prosecuting Attorney?

PROSECUTING
ATTORNEY: No, Your Honor.

JUDGE: You may step down Mr. Jones. Now the jury is excused while we take up any motions. Any motions, counsel? (Jury normally leaves the room in a real trial – but they won't now)

SMITH'S
LAWYER: Yes, Your Honor, I would move to dismiss the case because Meany Moe is the only parent who testified, and Meany Moe is not the natural parent, and there has been no showing that he has "lawful charge" of Michael to begin with.

PROSECUTING
ATTORNEY: Well, Your Honor, I think the jury heard enough to know Jack Smith kept Michael Jones away from both parents, so I don't think the fact that Mrs. Moe did not testify should cause you to decide the case AS A MATTER OF LAW.

JUDGE: Okay. For now, I will deny the defense Motion, but will reconsider in post trial, if necessary. Now, you will hear CLOSING ARGUMENTS, first from the Prosecuting Attorney.

PROSECUTING
ATTORNEY: Ladies and Gentlemen of the jury, the State has proven beyond a reasonable doubt that the defendant, Jack Smith, is guilty of kidnapping Michael Jones. You heard testimony from Officer Fife who found blankets in the back of his van and to whom Jack admitted that he drove Michael to Tennessee. You heard

testimony from Mr. Moe that he did not give Defendant Smith permission to take Michael to Tennessee. Mr. Moe also testified that Mr. Smith told him he refused to return Michael to West Virginia. Based on these facts, you should find the Defendant GUILTY of kidnapping Michael Jones.

SMITH'S
LAWYER:

Ladies and gentlemen, the State has not proven that Mr. Smith kidnapped Michael Jones. Michael Jones admitted that he hid in his friend Jack Smith's van, unbeknownst to Mr. Smith, and that Mr. Smith was not aware of Michael's presence until after they had crossed the bridge and left West Virginia. Perhaps he was attempting to run away from his stepfather, Meany Moe, because he feared additional beatings. The State has failed to prove that Meany Moe is even a lawful guardian of Michael Jones. The truth is, the State has failed to prove their case beyond a reasonable doubt. You should find the defendant innocent of the crime of Kidnapping. Thanks you for your attention to this matter.

JUDGE:

Now it's time for the Charge to the Jury: the Jury is instructed that the crime of kidnapping is defined in West Virginia as:

(b) Any person, other than the father or mother, who illegally, or for any unlawful, improper or immoral purpose seizes, takes or secretes a child under sixteen years of age, from the person or persons having lawful charge of such child, shall be guilty of a felony, and, upon conviction thereof, shall be confined in the penitentiary not less than one nor more than ten years.

The defendant does not have to take the witness stand. You are not to consider that as any evidence. It is the state's duty to prove Mr. Smith guilty of a crime BEYOND A REASONABLE DOUBT.

JUDGE:

It is now time for you, the jury, to deliberate on the guilt or innocence of Jack Smith. You shall first pick a FOREPERSON and when you have reached the VERDICT please advise the Bailiff.

Bailiff, please give the jury five minutes to deliberate.

BAILIFF:

Yes, Judge.

AFTER THE JURY DELIBERATES AND COMES BACK TO THEIR SEATS:

JUDGE: Will the foreperson of the jury please stand. Have you reached a verdict?

FOREPERSON: We have, Your Honor.

JUDGE: Will the defendant please stand. You may read the verdict.

FOREPERSON: *As to the charges against Jack Smith, Your Honor, we find the Defendant:*

_____ *GUILTY*
OR
_____ *NOT GUILTY*

JUDGE: So say you all?

JURY: Yes.

JUDGE: We hope you have enjoyed learning about the criminal justice system, and you may now ask questions!

*Script written by Patrick S. Cassidy, President
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