COURT OF APPEALS OF VIRGINIA

Present: Judges Willis, Humphreys and Senior Judge Overton
Argued at Chesapeake, Virginia

DARRELL JEROME REDMOND

                                      MEMORANDUM OPINION[*] BY
v.   Record No. 1726-00-1   JUDGE JERE M. H. WILLIS, JR.
                                           JUNE 5, 2001
COMMONWEALTH OF VIRGINIA

        FROM THE CIRCUIT COURT OF THE CITY OF PORTSMOUTH
                 Von L. Piersall, Jr., Judge

        S. Jane Chittom, Appellate Defender (Public
        Defender Commission, on brief), for
        appellant.

        Shelly R. James, Assistant Attorney General
        (Mark L. Earley, Attorney General, on brief),
        for appellee.

     On appeal from his convictions of robbery, in violation of

Code § 18.2-58, and abduction, in violation of Code § 18.2-47,

Darrell J. Redmond contends that the evidence failed to prove an

abduction separate and apart from the robbery and, thus, was

insufficient to support the abduction conviction. We disagree and

affirm the judgment of the trial court.

                     I. BACKGROUND

     We view the evidence in the light most favorable to the

Commonwealth, granting to it all reasonable inferences fairly

deducible therefrom. See Sutphin v. Commonwealth, 1 Va. App. 241,

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

243, 337 S.E.2d 897, 898 (1985). A judgment will not be set aside

unless it is plainly wrong or without supporting evidence. See

Higginbotham v. Commonwealth, 216 Va. 349, 352, 218 S.E.2d 534,

537 (1975).

On November 27, 1998, at approximately 7:00 p.m., Malcolm

Lee Dillard, III was approached by Redmond and another man.

Redmond told Dillard to "get on the ground." He removed

Dillard's jacket and said, "[You] might as well give it up."

Dillard gave Redmond twelve dollars that he had on his person.

Redmond then searched Dillard and removed his wallet. The other

assailant said, "[You] might as well go ahead and kill this

dude."

The assailants allowed Dillard to rise. Redmond said, "I

might as well go ahead and kill you." He grabbed Dillard's arm

and led him down the street "a long way, about twenty yards or

more," continuing to say he ought to kill him. At this point,

Redmond saw a pager on Dillard's hip and demanded it. When he

snatched the pager, they "got separated" and Dillard escaped.

Dillard identified Redmond as the person who robbed and

abducted him. He testified that he saw Redmond in the light of

a streetlight and recognized him because the two had played

junior varsity football together.

At the conclusion of the Commonwealth's evidence, Redmond

moved to strike the abduction charge, arguing that the

identification was unreliable and that the abduction was not an

act separate from the robbery. The trial court denied the
motion.

Redmond denied committing the crimes. He renewed his
motion to strike, and the trial court again denied the motion.
The jury found Redmond guilty of robbery and abduction and
sentenced him to seven years imprisonment.

II. ABDUCTION AND ROBBERY

A defendant may be convicted and receive separate
punishments for abduction and another crime involving restraint
"both growing out of a continuing course of conduct . . . when
the detention committed in the act of abduction is separate and
apart from, and not merely incidental to, the restraint employed
in the commission of the other crime." Brown v. Commonwealth,
230 Va. 310, 314, 337 S.E.2d 711, 713-14 (1985).

The jury's finding of an abduction separate and apart from
the robbery is not plainly wrong and is supported by the
evidence. Redmond ordered Dillard to the ground and removed his
jacket and wallet. At this point, the robbery was complete.
Redmond then grabbed Dillard's arm and led him twenty yards down
the street, stating his intention to kill him. This act was not
inherent in or necessary to the robbery. It was an act separate
and apart from the completed robbery. The theft of the pager
was a subsequent event, resulting from Redmond's observation of
the pager after the abduction. The abduction was not for the

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purpose of discovering the pager or facilitating its theft. It

was not incident to that theft.

We affirm the judgment of the trial court.

<u>Affirmed.</u>