

LEGAL NOTICES, cont.

for the conducting of a business under the assumed or fictitious name of SPECIAL EVENTS MANAGEMENT with its principal place of business at P.O. Box 833, Chambersburg, Pa. 17201. The names and addresses of all persons owning or interested in said business are Carole M. Fries, 4359 Sycamore Grove Rd., Chambersburg, Pa. 17201. and Phyllis Y. Conrad, 809 Lorty Ave., Chambersburg, Pa. 17201.
4-8

NOTICE IS HEREBY GIVEN pursuant to the provisions of the Act of Assembly of May 24, 1945, P.L. 967 and its amendments and supplements of intention to file with the Secretary of the Commonwealth of Pennsylvania at Harrisburg and with the Prothonotary of the Court of Common Pleas of Franklin County, Pennsylvania, on or after April 8, 1983, an application for a certificate for the conducting of a business under the assumed or fictitious name of UNION LABEL INSURANCE AGENCY with its principal place of business at 72 N. Second St., Chambersburg, Pa. 17201. The names and addresses of all persons owning or interested in said business are Donna G. Dillon, 72 N. Second St., Chambersburg, Pa. 17201.
4-8

IN THE COURT OF COMMON PLEAS OF THE 39TH JUDICIAL DISTRICT OF FRANKLIN COUNTY, PENNSYLVANIA - ORPHANS' COURT DIVISION

The following list of Executors, Administrators and Guardian Accounts, Proposed Schedules of Distribution and Notice to Creditors and Reasons Why Distribution cannot be Proposed will be presented to the Court of Common Pleas of Franklin County, Pennsylvania, Orphans' Court Division for CONFIRMATION: May 5, 1983.

ELLIOTT First and final account, statement of proposed distribution and notice to the creditors of the Farmers and Merchants Trust Company of Chambersburg, executor for the estate of John L. Elliott late of the Borough of Chambersburg, Franklin County, Pennsylvania, deceased.

HIGHLANDS First and final account, statement of proposed distribution and notice to the creditors of Kathryn E. Highlands and Blanche Hawbaker, executrices of the estate of Barbara

LEGAL NOTICES, cont.

Elmira Highlands late of the Borough of Mercersburg, Franklin County, Pa. deceased.

MCDOWELL First and final account, statement of proposed distribution and notice to the creditors of Carolyn M. Wood, executrix of the estate of Milton McDowell late of the Borough of Chambersburg, Franklin County, Pennsylvania, deceased.

QUIVERS First and final account, statement of proposed distribution and notice to the creditors of Charles M. Quivers and Charles H. Davison, executors of the will of Eleanor M. Quivers late of the Borough of Chambersburg, Franklin County, Pa. deceased.

Glenn E. Shadle
Clerk of Orphans' Court of
Franklin County, Pa.
4-8, 4-15, 4-22, 4-29

NOW, this 17th day of December, 1982, the Order of Court dated March 15, 1982, appointing Thomas B. Steiger, Esq., Master, to take the testimony and file a report and recommendation on the issue of equitable distribution in the above-captioned matter is vacated. The Master shall return all papers in his possession to the Prothonotary and submit a statement for services rendered to the Prothonotary for payment from the deposit made by the Plaintiff.

Exceptions are granted the Plaintiff.

COMMONWEALTH VS. SHERVANICK, C.P. Franklin County Branch, No. 163 of 1982

Criminal Law - Interference with child custody - locus of crime

1. The locus of a crime is always an issue, since a court has no jurisdiction of a crime unless it occurs within the county of trial or unless by some statute, it need not have occurred within that county.
2. When a statute uses the word "knowingly" the essential element is knowledge.
3. Where a court order gave a father 8 hours visitation and he took his child from Franklin County to Colorado, due to the limited time allowance for visitation, a jury could find intent to remove the child in violation of 18 C.P.S.A. Sec. 2904.
4. If a jury finds a defendant took the child from Pennsylvania for a period in excess of the time allowed, and if the intent to take the child was formed at the time the child was picked up, Defendant could be in violation of 18 C.P.S.A. Sec. 2904.

John R. Walker, District Attorney, Attorney for the Commonwealth

Michael B. Finucane, Esquire, Attorney for the Defendant

OPINION AND ORDER

EPPINGER, P.J., January 17, 1983:

Thomas Shervanick and Sandra Elizabeth Pardun are the

parents of Laurie E. Pardun, a minor child born July 2, 1978. An order of Umatilla County Circuit Court, Oregon, gave Thomas visitation rights with the child.¹ The Order provided that Thomas could visit with the child for eight hours a day on two weekend days a month until the child was four years old.²

Ostensibly acting under the rights granted to him by the Oregon Court, which is a Court of competent jurisdiction, on March 28, 1982, Thomas took the child from Franklin County where she was residing with her mother to Colorado and did not return her to the mother within the eight hour period. The mother had to go to Colorado to get her daughter.

The defendant is charged with violating 18 C.P.S.A. Sec. 2904 (Crimes Code) which provides:

Interference with custody of children

(a) Offense defined. - A person commits an offense if he knowingly or recklessly takes or entices any child under the age of 18 years from the custody of its parent, guardian, or other lawful custodian, when he has no privilege to do so.

(b) Defenses. - It is a defense that:

(3) The actor is the child's parent or guardian or other lawful custodian and is not acting contrary to an order entered by a court of competent jurisdiction.

The defendant filed a motion to quash the information, stating that the defendant was privileged to take his daughter from Franklin County. The argument is made that all provisions of a penal statute must be strictly construed, and that the words "takes or entices" do not include terms like "retains or fails to return" a child.

The locus of a crime is always an issue since a court has no jurisdiction of a crime unless it occurs within the county of trial or unless, by some statute, it need not have occurred within that county. *Commonwealth v. Ohle*, 291 Pa. Super 110, 435 A.2d 592

¹While the Oregon order does not specifically state that custody of the child is with her mother, that conclusion may be reached from the fact that the father was given only visitation rights.

²At the time of the alleged offense, March 28, 1982, the child was three years old.

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LEGAL NOTICES, cont.

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Glenn E. Shadle
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4-8, 4-15, 4-22, 4-29

BAR NEWS ITEM

We welcome to the Bar of the Franklin County Division of the Court of Common Pleas, Forest N. Meyers, Esq. Forest was admitted to our Bar on Wednesday morning, April 6, 1983, although he was earlier a member of the Bar of the Cumberland County District and has been practicing law for a number of years. While the fanfare associated with one's initial admission to the Bar may, as Forest wished it, best be dispensed with in the case of subsequent admissions, Forest is not really so old a person that he is not worthy of our congratulations, best wishes for success, and sympathies with respect to all the Court appointments he will shortly be deluged with. One thing we fervently hope is that Forest will now become one of the subscribers to our Journal, and one of the participants in its contents.

(1981); *Commonwealth ex. rel. Chatary v. Nailon*, 416 Pa. 280, 206 A.2d 43 (1965). The place of the crime is to be determined by the acts of the accused that violate the statute. *Johnson v. U.S.*, 76 S. Ct. 351 U.S. 215, 100 L. Ed. 1097 (1956).

So the question is whether the defendant did an act in Franklin County, Pennsylvania which was a violation of the section of the Crimes Code. If not, then the motion to quash the information must be granted.

However, 18 C.P.S.A. Sec. 302(b) provides:

(2) A person acts knowingly with respect to a material element of the offense when:

(i) if the element involves the nature of his conduct or the attendant circumstances, he is aware that his conduct is of that nature or that such circumstances exist; and

(ii) if the element involves a result of his conduct, he is aware that it is practically certain that his conduct will cause such a result.

(3) A person acts recklessly with respect to a material element of an offense when he consciously disregards a substantial and unjustifiable risk that the material element exists or will result from his conduct. The risk must be of such a nature and intent of the actor's conduct and circumstances known to him, its disregard involves a gross deviation from the standard of conduct that a reasonable person would observe in the actor's situation.

When a statute uses the word "knowingly" the essential element is knowledge. *U. S. v. Mongiello*, 442 F. Supp. 835 (1977). "Reckless conduct is intentional acting or failing to act in complete disregard of a risk of harm to others which is known or should be known to be highly probable and with a conscious indifference to the consequences. *Junk v. East End Fire Dept.*, 262 Pa. Super. 473, 396 A.2d 1269, 1274 (1978).

Considering the limited time allowed for his visitation, 8 hours, and that he took the child to Colorado, a jury could find that at the time he removed the child from this jurisdiction he intended to take and did take the child in violation of 18 C.P.S.A. Sec. 2904.

The requisite intent of an offense is one of the elements of the crime, *Commonwealth v. Walzack*, 468 Pa. 210, 360 A.2d (1976). Because state of mind is by its very nature subjective, absent a

declaration by the actor himself, it can only be determined by looking to the conduct and the circumstances surrounding it. *Commonwealth v. O'Searo*, 466 Pa. 224, 352 A.2d 30 (1976) and it is the function of the jury, not the court, to draw inferences and conclusions from the facts in evidence. *DeGregoris v. Stockwell Rubber Co., Inc.*, 235 Pa. Super. 71, 340 A.2d 570 (1975). Inferences of fact are derived wholly and directly from the circumstances of the particular case, by means of the common experiences of mankind and without the aid or the control of any rules of Court; thus, such inferences are to be drawn by the jury, not by the Court. *Philadelphia Trust Safe-Deposit and Ins. Co. v. Philadelphia & E.R. Co.*, 160 Pa. 590, 28 A. 960 (1894).

By his motion to quash the information, the defendant has asked the Court to intervene in a matter that is strictly for the jury; that is to determine from the defendant's actions whether he intended to take and took the child from her mother without the privilege to do so. We believe that if a jury finds the defendant took the child from Pennsylvania for a period in excess of the time allowed, if the intent to take the child was formed at the time the child was picked up, it could be a violation of this statute.³

We hold that we are a Court of competent jurisdiction and that the case should not be dismissed because where different but reasonable conclusions can be drawn from the evidence the issue must be submitted to the jury.

ORDER OF COURT

January 14, 1983, the motion to quash the information is denied.

SMURO V. GSELL, C.P., Franklin County Branch, No. A.D. 1982 - 359

³If the father's visitation period had been long enough so that he could have taken the child to Colorado and then decided not to return her is another matter which we do not address.

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