

SUSTAIN UP. 5/5/60.

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In this indictment there are two counts.

On Count One, which is framed on Section 35 $\frac{1}{2}$ of the Criminal Code, I find that all the elements have been proved. I find no force in the argument that there was no taking. Even without authority I would hold that the evidence in the case is sufficient to constitute a taking, but there is ample authority in support.

Under this Section it is immaterial that the accused believed the girl to be above the age of sixteen years. He says she told him she was seventeen, but from his own statement he must have known the girl when she was still at school. That the girl Rita Watkins accompanied the accused with her own consent or at her own suggestion is immaterial. I must find him guilty on this Count.

As to Count Two, which is for an offence under Section 21 \textcircled{D} of the Code, it appears to me on the evidence that the accused was not the prime mover in the matter. Although he declared that they wanted to get married, he did suggest that she return home when they had got back near her home, so I give him the benefit of a reasonable doubt that he was the instigator and the prime mover in the events. I find him not guilty on Count Two.

J.

R. -v- GEORGE FRANCES TAURINO.

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