



LEGAL UPDATE

PARENTAL KIDNAPPING

Commonwealth v. Sabin, (Appeals Court, June 20, 2024).

RELEVANT FACTS

A Probate and Family Court order granted the defendant visitation rights with his five-year-old son every other weekend (5 PM Friday – 6 PM Sunday) and two hours on Wednesday evenings.

On three occasions between November 26, 2019 and June 30, 2020 the defendant texted the mother about his intention to bring the child on a six-day vacation in New Jersey to visit an amusement park. On June 30 he texted, “Just 3rd heads up 7-26 to 8-1 taking [the child] on vaca.” The mother texted back that the court order does not allow him to take the child for a week and that she was not agreeing to it.

On Sunday, July 26, 2020, the mother texted the defendant at 2 PM to arrange to pick up the child after his visitation. The defendant said he was not giving the child back because they were going on vacation out of state. The mother again indicated that she did not agree to that. When the mother went to pick up the child, neither the defendant nor the child were there. After the defendant failed to answer multiple calls, she called the police.

Officers left a voicemail for the defendant who called back later that night. The officer explained he was calling to check on the wellbeing of the child because there appeared to be a probate order in effect that said the child was supposed to be with the mother. The defendant said “he knew he was in violation of the order, but that it was something he would deal with – the contempt of which he would deal with at another time.” The defendant reported being in Connecticut, approximately three hours from New Jersey, at the time of the call. The officer informed the defendant he was likely committing a criminal offense and encouraged him to

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return the child. The defendant said he would call the officer back. When the defendant called back, he said he was coming back with the child. The child was returned at 1:05 AM.

The defendant was charged with parental kidnapping, MGL c 265 § 26A. He was convicted and appealed.

DISCUSSION

Under MGL c. 265 § 26, the ordinary kidnapping statute, no specific period of confinement is required. Any restraint on an individual's liberty will suffice. Parental kidnapping under § 26A is different. That statute reads:

Whoever, being a relative of a child less than eighteen years old, without lawful authority, holds or intends to hold such a child permanently or for a protracted period, or takes, or entices such a child from his lawful custodian, or takes or entices from lawful custody any incompetent person or other person entrusted by authority of law to the custody of another person or institution shall be punished by imprisonment in the house of correction for not more than one year or by a fine of up to one thousand dollars, or both. Whoever commits any offense described in this section by taking or holding said child outside the commonwealth or under circumstances which expose the person taken or enticed from lawful custody to a risk which endangers his safety shall be punished by a fine of not more than five thousand dollars, or by imprisonment in the state prison for not more than five years, or by both such fine and imprisonment.

A brief restraint will not qualify. "The Commonwealth must prove either that the defendant held the victim for a protracted period of time or that the defendant intended to hold the victim for a protracted period of time (or permanently.)"

The Commonwealth's theory was that the defendant intended to keep the child for six days. Because that was the theory, the court did not have to determine whether the seven hours between 6 PM (when the child should have been returned to his mother) and 1:05 AM (when the child was returned to the mother) would meet the statutory requirement of a "protracted period."

"If the confinement is interrupted by police involvement before a protracted period of time has passed, which we may assume it was here, it is the defendant's intent that controls."

To determine whether the confinement was for a protracted period, the context of the situation matters. Factors could include the age of the child, any conditions on visitation, and the circumstances under which the child was taken.

"Here, the jury could find that the six days that the defendant intended to keep the child was a protracted period of time."

The judgement was affirmed.

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