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Criminal Law--Kidnapping

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ing an administrative order to be passed upon by a jury where such order constitutes an essential element of a crime. The constitutional guarantees of a jury determination of all the essential elements of a crime are thus preserved.

William Jack Stevens

Criminal Law—Kidnapping

The *Ds* entered the complainants' car and forced them to drive twenty-seven blocks. During the trip the *Ds* robbed the complainants. The *Ds* were convicted of kidnapping, robbery, and criminal possession of a pistol. The New York Court of Appeals reversed the kidnapping conviction. A majority of the judges reasoned that because kidnapping is a very serious crime with harsh punishment and the offense committed was essentially robbery, the kidnapping statute should not be applied. The court reached this conclusion after admitting that the language of the kidnapping statute might literally apply. *People v. Levy*, 15 N.Y.2d 159, 204 N.E.2d 842 (1965).

Before 1932 kidnapping was considered a less serious crime than it is today. In thirty states the penalty for kidnapping was less than life imprisonment. 26 J. AM. INST. CRIM. L.&C. 762 (1936). In 1932 a rash of kidnappings culminated in the abduction and murder of Charles Lindbergh, Jr., and to meet the threat of the sudden outbreak of kidnapping legislatures in most states changed their statutes or enacted new ones. West Virginia followed a typical pattern. In 1933 the West Virginia legislature decided to impose the death penalty for the crime of false imprisonment to extort ransom. W. VA. CODE ch. 61, art. 2, § 14a (Michie 1961); Comment, 67 W. VA. L. REV. 156 (1965).

Kidnapping statutes have changed little from their 1930 form. They all contemplate the unlawful restraint of the victim. However, they may be divided into three different groups as to the element of the defendant's purpose. A majority of the state acts make punishable as kidnapping an unlawful restraint only when the defendant's purpose was to extort ransom. Other acts are broader in that the defendant's purpose may have been either to extort ransom or to rob. ARIZ. REV. STAT. art. 25, § 13-492 (1965); CAL. PENAL CODE § 209; NEV. REV. STAT. tit. 13, ch. 20.320 (1963);

Wyo. STAT. tit. 6, § 6-58 (1959). A third type has no provision as to the purpose and can be interpreted as making punishable any unlawful restraint no matter what the defendant's purpose. DEL. CODE tit. 11, § 621(a) (West 1953); CODE OF MD. art. 27, § 337 (Michie 1957); N.H. REV. STAT. tit. 58, ch. 585.19 (1955); N.Y. PENAL LAW § 1250 (McKinney 1944). The federal statute, the Lindbergh law, does not fit into any of the three groups. It makes punishable the interstate transportation of anyone kidnapped for the extortion of ransom, "or otherwise." 4 U.S.C. § 1201 (1964). This language in effect leaves the scope of the federal act to judicial interpretation.

The problem in the principal case is whether a defendant should be convicted of kidnapping when the forceable restraint of which he is guilty was merely incident to the perpetration of another crime. The answer to this question often determines whether the court will mete out one punishment or another. The problem arises under the federal act and under two of the three types of state acts. These two types are (1) the ones in which the defendant's purpose may have been either to extort ransom or to rob and (2) the ones in which there is no provision as to purpose. Prosecutors enforcing statutes of the first type have obtained convictions of kidnapping where the event was essentially robbery. Similarly, under the second type convictions of kidnapping have been obtained where the event was essentially assault, rape or some other crime.

In *Chatwin v. United States*, 326 U.S. 455 (1946), the Supreme Court stated that the broad language of the federal statute must be restricted somewhat in view of the history and setting in which the act was passed. Events such as those in the Lindbergh case, *State v. Hauptman*, 115 N.J.L. 412, 180 Atl. 809 (1935), were contemplated by Congress when it passed the act. The Supreme Court intimated that the federal act should not be construed to make punishable events essentially unlike those in the Lindbergh case.

The principal case marks the first occasion on which a kidnapping conviction has been overturned because the restraint was merely incident to the commission of another crime. However, Justice Edmonds, dissenting in such a conviction, took a similar position fifteen years earlier. *People v. Knowles*, 35 Cal. App.2d 196, 217 P.2d 1 (1950).

In *People v. Black*, 18 A.D.2d 719, 236 N.Y.2d 240 (App. Div. 1962), the victim of a robbery was kept as a hostage and confined for a considerable time. In the principal case it was acknowledged that such events amount to both robbery and kidnapping. However, the distinction between situations in which kidnapping does and does not occur is not made very clear. Apparently the criteria to be used are: (1) Were the defendant's actions essentially one crime? (2) Did the legislature intend to make these actions punishable as kidnapping? (3) Were the actions kidnapping in the conventional sense in which the term is understood?

The California statute is one under which the problem of the principal case can arise. The element of purpose is broadly stated in that the defendant's purpose might be either to extort ransom or to rob. CAL. PENAL CODE § 209. In *People v. Knowles*, *supra*, the defendant forcibly moved a clerk around one room in a store to facilitate robbing the store. The defendant was convicted of kidnapping. Justice Edmonds argued vehemently in his dissent that the California legislature could not have meant these acts to be kidnapping from either a grammatical or historical interpretation of the kidnapping statute. Justice Carter agreed with Justice Edmonds and further argued that the holding placed too much discretionary power in the hands of prosecuting attorneys. He felt they could now turn most robberies into capital offenses by indicting for kidnapping. The decision has been severely criticized. Note, 15 ALBANY L. REV. 65 (1951); Note 38 CALIF. L. REV. 920 (1950); Note, 29 So. CAL. L. REV. 310 (1951); Comment, 3 STAN. L. REV. 156 (1950).

In *State v. Jacobs*, 93 Ariz. 336, 380 P.2d 998 (1963), the defendant forced a woman to move about her home and a few feet outside it. During this movement he robbed and raped her. Convictions of robbery, rape and kidnapping were upheld.

The *Jacobs* and *Knowles* cases represent essentially the same position as that taken by the New York courts prior to the principal case. *People v. Florio*, 301 N.Y. 46, 92 N.E.2d 881 (1950).

In the future New York should not be confronted with this problem because of its new penal code. The new code did not apply to the principal case because it does not go into effect until 1967. Under this act New York will have two degrees of kidnapping. First degree kidnapping requires that either (1) the

defendant intended to extort ransom; (2) the restraint of the victim lasted more than twelve hours and was for the purpose of physically injuring him, or terrifying him, or of advancing the commission of a felony or of interfering with a governmental function; or (3) the victim died during the restraint. N.Y. REV. PENAL LAW § 135.25.

The Model Penal Code published by the American Law Institute foreshadowed the changes recently made by the New York legislature. The Institute urged legislatures to reform their kidnapping statutes to prevent abusive prosecution for kidnapping. MODEL PENAL CODE § 212.1, comment (Tent. Draft No. 11, 1960). The model kidnapping statute requires that the victim be held for a substantial period of time for the purpose of either (1) ransom, (2) furthering the commission of a felony, (3) injuring or terrorizing the victim or (4) interfering with a governmental function. It is further provided that kidnapping is a first degree felony only when the victim is not released alive in a safe place prior to trial. MODEL PENAL CODE, § 212.1 (Tent. Draft No. 11, 1960).

These statutes eliminate the difficult problem encountered in the *Knowles*, *Jacobs* and principal cases. Whether courts in other states will have to wrestle with this problem must be answered by the legislators or prosecutors in the respective states. As Justice Carter pointed out in the *Knowles* case, the question should not be answered by the prosecutors.

Forrest Hansbury Roles

Domestic Relations—Married Woman's Domicile

H, a resident of Texas, married *W*, a resident of West Virginia. After four years of marriage, *W* returned to West Virginia on December 26 and seven days later brought suit for divorce on grounds of cruelty. *H* moved that the action be dismissed for lack of jurisdiction. *H* contended that neither he nor *W* met the residence requirements of the West Virginia Code. The trial court overruled *H*'s motion and granted the divorce. *H* appealed. Held, reversed. According to the West Virginia Code, when a suit for divorce is not based on adultery, one of the parties must have been a bona fide resident of the state for at least one year prior to the institution of the suit. When a woman marries, the domicile of