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Schofield v. State, 132 Nev. Adv. Op. 26 (Apr. 21, 2016)

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CRIMINAL LAW: FIRST-DEGREE KIDNAPPING

Summary

The Court determined that (1) Nevada's first-degree kidnapping statute NRS 200.310(1)'s "intent to keep" language is ambiguous; (2) NRS 200.310(1) requires proof that the accused intended to keep the minor for a protracted period of time or permanently; and (3) reversal is warranted because there is insufficient evidence to support appellant's first-degree kidnapping conviction under the proper legal standard.

Background

The appellant, Michael John Schofield (Schofield), is the father of the victim, Michael Joshua Schofield (Michael), and at the time of the incident he did not have legal custody of Michael.

Schofield visited Michael on a Sunday and realized he left something behind at a grocery store. Schofield asked Michael to go back with him and retrieve it. Michael refused to go and they had an argument, which became physical. Michael tried to flee from Schofield but he was caught and placed into a chokehold or headlock and was dragged and thrown into Schofield's car. During these events the police were called and Schofield was tackled by two off-duty police officers, before he could get into a van and leave with Michael.

Schofield was charged with child abuse, neglect or endangerment; domestic violence (strangulation); burglary; and first-degree kidnapping. A jury convicted him of child abuse and first-degree kidnapping. Schofield appealed this conviction.

Discussion

Schofield argued that the "intent to keep" language in the first-degree kidnapping statute was ambiguous and should require intent to keep the minor permanently or indefinitely. NRS 200.310(1) states: "[A] person who leads, takes, entices, or carries away or detains any minor with the *intent to keep*, imprison, or confine the minor from his or her parents, guardians, or any other person having lawful custody of the minor. . . is guilty of kidnapping in the first degree."² (Emphasis added.) The court had to determine (1) whether NRS 200.310(1)'s "intent to keep" language was ambiguous; (2) if so, what "intent to keep" means; and (3) whether there was sufficient evidence to convict Schofield of first-degree kidnapping under the appropriate legal standard.

NRS 200.310(1)'s "intent to keep" language is ambiguous

The Court determined the verb "to keep" in the statute was ambiguous because it could be reasonably interpreted in two ways.³ First, it can be interpreted as intent to possess a minor

¹ By Kristian Kaskla.

² NEV. REV. STAT. § 200.310(1) (emphasis added).

³ *State v. Cantanio*, 120 Nev. 1030, 1033, 102 P.3d 588, 590 (2004).

permanently or for a protracted period of time. Second, it can be interpreted as intent to possess a minor for any period of time against his legal guardian's wishes. Thus, the court determined that the "intent to keep" language was ambiguous.

The word "keep" in NRS 200.310(1) must mean "keep permanently or for a protracted period of time"

The Court invoked the rule of lenity to resolve the ambiguity in Schofield's favor because the intent of the legislature was unclear.⁴ The Court determined that interpreting "keep" to mean "possess for any amount of time against a legal guardian's wishes" would be exceptionally broad. Interpreting the language to require proof of intent to keep the minor permanently or for a protracted period of time would be narrower. Thus, the rule of lenity required that the Court "interpret NRS 200.310(1)'s "intent to keep" requirement as requiring an intent to keep a minor permanently or for a protracted period of time."

Conclusion

The Court concluded that under the proper definition of "intent to keep," there was insufficient evidence to support Schofield's first-degree kidnapping conviction because there was no evidence that he intended to keep Michael permanently or for a protracted period. Also, the "overwhelming evidence at trial" showed Schofield intended to take Michael to the store and return him. Therefore, no rational juror could have found, beyond a reasonable doubt, that he intended to keep Michael permanently or for a protracted period and his conviction was reversed.

⁴ State v. Lucero, 127 Nev. 92, 99, 249 P.3d 1226, 1230 (2011).