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CAN YOU KIDNAP YOUR OWN CHILD?

By Jay Howell

The South Florida kidnapping in question began when the defendant went to the home of his in-laws where his wife and year old son were also staying. At the time, the defendant was subject to a domestic violence order which precluded him from contact with his wife, and which gave her custody of the 1-year-old son. In the course of a confrontation with his wife over the child, he accosted his mother-in-law with a handgun and after the wife and mother-in-law fled the home, took the blind father-in-law and his 1-year-old son hostage. An eight hour standoff followed. Eventually, after he had threatened to shoot his father-in-law and to kill both his wife and the baby if she did not go back to him, negotiations with the police SWAT team ended with him releasing the father-in-law, and, although he had said that the baby was his "ace in the hole," he released the child as well.

He was convicted of several crimes, including armed burglary, the armed kidnapping of the father-in-law and his son, and aggravated assault on the father and mother-in-law.

On appeal the defendant challenged his conviction on the count where he was charged with the armed kidnapping of his son, citing the Florida kidnapping statute which

contains a provision that states that the confinement of a child under the age of 13 is against his will if such confinement is **without** the consent of his parent or legal guardian. The defendant argued that this language meant it was impossible for him to be convicted of kidnapping his own son.

Previous appellate courts have ruled that one cannot be criminally liable simply for confining or taking possession of one's child. In this case, the appellate court disagreed with the statutory language and previous appellate decisions. The appellate court's opinion was that the defendant was **not** entitled to the "possession" of his son because of what it called a lawful and controlling order of court – the domestic violence court order where the child's custody had been granted solely to his mother. Furthermore, the court concluded that when the parent does not simply exercise his rights to the child, but takes him for an ulterior and unlawful purpose which is specifically forbidden by the kidnapping statute itself, the defendant's conduct is not protected. The appeals court denied the defendant's appeal based upon his status as the natural parent.

The decision is *Lafleur v. State*, and was decided by the Third District Court of Appeal in Miami on October 5, 1995.

In a similar case, the Second District Court of Appeal in Tampa found that the State was prevented from prosecuting the defendant for kidnapping his own child. The appellate court in Tampa was careful to say that there was no question that the defendant's behavior was inappropriate, and that they believe the State could have charged the defendant with assaulting a child, child abuse, or contributing to the dependency of a minor under the facts of the case.

So what happens when the decisions of two of our appellate courts are in conflict? In the most recent case, the Third District Court of Appeal in Miami, citing conflict with the Tampa decision, certified the case to the Supreme Court of Florida for the ultimate decision on how these laws will be interpreted.