

Ask the Lawyer: UCMJ's Kidnapping Statutes Can Apply to Domestic Disputes

By Mathew B. Tully

Q:

Is it seriously considered kidnapping if I refuse to let my girlfriend storm out of the room during an argument?

A:

We generally think of kidnappers as villains who bind and gag their victims and lock them in dark rooms. However, service members do not have to go this far to violate Article 134 of the Uniform Code of Military Justice.

Kidnapping involves the seizing, confining, inveigling, decoying or carrying away of someone who is held against his or her will. These actions must be willful and wrongful and prejudicial to good order and discipline in the armed forces, or of a nature to bring discredit upon the armed forces.

Earlier this year, in *U.S. v. Gonzales*, the Navy-Marine Corps Court of Criminal Appeals affirmed a married Marine Corps private's conviction of kidnapping.

The charge stemmed from an argument he had with his mistress in a hotel room. During the argument, the woman attempted to leave the room, but the private blocked her exit by standing in front of a door and placing his hand over the doorknob.

The woman unsuccessfully tried to exit through another door. When she again tried to leave through the main doorway, the private stood in the way, threw her on the bed and pinned her down. She finally managed to escape when the hotel's manager came to the room, but over the course of the two-minute incident, the private prevented her from leaving the room four times, according to court documents.

Just because a service member doesn't succeed in holding a victim for more than a moment doesn't mean he is off the hook. The member could be charged with attempted kidnapping in violation of Article 80.

For example, the Court of Military Appeals case of *U.S. v. Santistevan* in 1987 involved a Marine Corps corporal who attempted to sexually assault a woman. The woman had driven the corporal to his home, and he attempted to take her at knifepoint to a wooded area. Her first attempt to escape resulted in her being caught and beaten, but she succeeded the second time and was rescued by a passing car.

The corporal challenged an attempted-kidnapping charge, saying there was no evidence suggesting he would have held the victim long enough to complete the sexual assault.

However, the court said what the corporal “actually would have done had he successfully moved the victim is conjectural and irrelevant” — more important was his intent to “knowingly and willfully” transport a victim against her will.

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