

## **Kidnapping**

This file contains two directions;

- 1, Where there is no dispute that there was a kidnapping and the only issue is the defendant's involvement; and
- 2, Where force and absence of consent are both disputed.

### **1, Kidnapping (involvement in issue)**

Somebody is guilty of kidnapping if he takes or carries away another person by force without the consent of the person taken or carried away and without lawful excuse.

In this case, C\*\* described how he was \*\*pulled into a car by D\*\* and X\*\* by force and driven off against his will. What he described was a kidnapping. Indeed D\*\* has not disputed that there was a kidnapping and X\*\* has already pleaded guilty to the role that he played in the kidnapping. However, D\*\* denies that he was the other person involved in the kidnapping.

So, the key question for you to answer in relation to Count \*, having regard to all the evidence and the directions which I give you, is

Was D\*\* was involved in pulling C\*\* into the car and holding him in it?

If you are sure that the answer is "yes", D\*\* is guilty of Count \*.  
If the answer may be "no", he is not guilty of Count \*.

### **2, Kidnapping (force and absence of consent in issue)**

Somebody is guilty of this offence if he (1) takes or carries away another person (2) by force or fraud (3) without the consent of the person taken or carried away and (4) he does this without lawful excuse.

There is no dispute that D\*\* took or carried away C\*\*.

Similarly, there is no suggestion that the defendant had any lawful excuse – the final words in the particulars of offence.

Religious or cultural beliefs cannot in law give someone a lawful excuse. Or, to put it another way, the fact that someone believes that what he or she is doing is right is no defence if that act is against the law.

So, you do not have to consider the meaning of the words "takes or carries away" or "without lawful excuse". The first questions that you have to answer is whether it was done by "force or fraud" and whether it was done "without consent".

"By force or fraud". The taking or carrying away must have been by force or fraud. There is no suggestion that the taking away was by fraud. The only issue is whether or not it was done by force. The prosecution say that the force used comprised a number of acts, namely \*\*  
As a matter of law, what C\*\* described, if true, amounted to being taken or carried away by force.

D\*\* denies this. He says \*\*.

“Without consent”

These two words must be given their ordinary meaning. “Without consent” means without agreement. There is a difference between someone consenting or agreeing to something - giving real consent - on the one hand and someone submitting to what she or he is told to do because he or she feels that there is no choice. The question is whether or not C\*\* actually consented – i.e. what was in her mind at the time immediately before she was taken or carried away. The prosecution have to prove that C\*\* did not actually consent, did not actually agree to being taken to \*\*. You must consider that question against the background of all the evidence, including what if anything, she said. The defendants all say that she was not forced but that she went willingly, by consent. When considering this, you should apply your combined good sense, experience and knowledge of human nature to all the facts of this case.

But that is not the end of the issue of consent. If the defendants honestly, genuinely believed that C\*\* consented to being taken to \*\*, that is a defence to the charge of kidnapping. Were the defendants, as the prosecution say they were indifferent to her feelings and wishes and determined to take her to \*\* whether or not she agreed? Was it a situation where they “couldn’t care less” whether she agreed to go or not? Or did they, as the Defence say, honestly, genuinely believe that she agreed to go to \*\*? The prosecution have to make you sure that the defendants did not honestly, genuinely believe that C\*\* was consenting or agreeing to being taken away. If you are not sure on this, or any of the other requirements which I have mentioned, she is not guilty

So, the key questions for you to answer in relation to Count \*, having regard to all the evidence and the directions which I give you are

- (i) Are you sure that the taking or carrying away was done by force?
- (ii) Are you sure that C\*\* did not consent, did not agree to being taken to \*\*?  
and
- (iii) Are you sure that the Defendants did not honestly, genuinely believe that she was consenting?

If the answer to all these three questions is "yes", the defendant is guilty of this count. If you are not sure about any question, the defendant is not guilty of this count.