Clarifying Nevada's Kidnapping Law
6/9/08

The Kidnapping law, although seems to 'capture' many ways of defining the possibilities, leaves out the defining clarity of 'force' or 'against a person's will'.

According to Wikipedia the definition of kidnapping is:

In criminal law, kidnapping is the taking away or asportation of a person against the person's will, usually to hold the person in false imprisonment, a confinement without legal authority. This is often done for ransom or in furtherance of another crime. **A majority of jurisdictions in the United States retain the "asportation" element for kidnapping, where the victim must be confined in a bounded area against their will and moved. Any amount of movement will suffice for the requirement, even if it is moving the abductee to a house next door.** In the Commonwealth of Massachusetts, however, the asportation element has been abolished. Note that under early English common law, the asportation element required that the victim be moved outside the realm of England or overseas in order for an abduction to be considered "kidnapping."

According to the dictionary the definition of kidnapping is:

- To steal, carry off, or abduct by force or fraud, esp. for use as a hostage or to extract ransom.
- An act or instance or the crime of seizing, confining, inveigling, abducting, or carrying away a person by force or fraud often with a demand for ransom or in furtherance of another crime.
- To take (any one) by force or fear, and against one's will, with intent to carry to another place.

Nevada's Causalities of Kidnapping

Two inmates are currently serving sentences of 5-20 years in Nevada Prisons because one of the two inmates 'invited' a grown man to a party. The man drove himself, by himself, of his own free will to the party. The man *was* murdered by one of the inmates, however the murder was not planned. A 'kidnapping' did NOT occur as there was no 'force' used to lead the victim to the location, nor prevent him from leaving in his own vehicle at any time until he was killed.

In 2007, when the kidnapping law was challenged on the television news, the District Attorney on the OJ Simpson case stated: "he told someone to MOVE, and in this state, that's kidnapping."

How many people are currently in prison and charged with kidnapping by over-zealous District Attorneys, who were coerced into accepting pleas by overworked Public Defenders and Court Appointed Attorneys?

Attached are experts from 10/23/07 Las Vegas Review Journal article:
ANALYSIS: Despite witnesses, prosecutors might face tough task in Simpson kidnapping case

Teresa Werner
P.O. Box 21067
Sun Valley, NV 89433
terwer42@yahoo.com
775-338-1342

Experts from Las Vegas Review Journal article:

ANALYSIS: Despite witnesses, prosecutors might face tough task in Simpson kidnapping case

By ALAN MAIMON
REVIEW-JOURNAL
Oct. 23, 2007

FIRST-DEGREE KIDNAPPING CASES IN CLARK COUNTY DISTRICT COURT DURING 2006

57 Total cases

41 Kidnapping charges dismissed

3 Guilty pleas on first-degree kidnapping charges

1 Guilty verdict on first-degree kidnapping charges

2 Not guilty verdicts on first-degree kidnapping charges

1 Dismissal of first-degree kidnapping charges and not guilty verdict on other first-degree kidnapping charges

4 Kidnapping charges still pending

Source: Review-Journal analysis of Clark County District Court data

WHAT THE LAW SAYS

NRS 200.310
1.A person who willfully seizes, confines, inveigles, entices, decoys, abducts, conceals, kidnaps or carries away a person by any means whatsoever with the intent to hold or detain, or who holds or detains, the person for ransom, or reward, or for the purpose of committing sexual assault, extortion or robbery upon or from the person, or for the purpose of killing the person or inflicting substantial bodily harm upon him, or to exact from relatives, friends, or any other person any money or valuable thing for the return or disposition of the kidnapped person, and a person who leads, takes, entices, or carries away or detains any minor with the intent to keep, imprison, or confine him from his parents, guardians, or any other person having lawful custody of the minor, or with the intent to hold the minor to unlawful service, or perpetrate upon the person of the minor any unlawful act is guilty of kidnapping in the first degree which is a category A felony.

Despite expected guilty pleas today from two men planning to testify against him, O.J. Simpson has little chance of being put away for life on kidnapping charges. A Review-Journal analysis of Clark County cases from 2006 shows **only two of 57 defendants similarly charged with robbery, extortion, or carjacking and first-degree kidnapping have gotten life sentences. In fact, kidnapping charges were dismissed more than two-thirds of the time, and more than half of the defendants in those cases eventually got probation or no punishment at all.**

Lost in the frenzy of Simpson's arrest are questions about the legitimacy of charging the defendants with first-degree kidnapping, a crime that carries a possible sentence of life in prison, with possibility of parole.

According to police, Simpson and his co-defendants, two of them with handguns, barged into a room at Palace Station and swiped sports memorabilia, some of which Simpson has claimed are rightfully his.

On an apparent audiotape of the incident, Simpson is heard saying, "Don't let nobody out of this room."

To justify the first-degree kidnapping charge, District Attorney David Roger, who is prosecuting the case, used language in state law about holding or detaining victims against their will even for a brief period. He opted against charging Simpson and the others with lower-level crimes such as second-degree kidnapping or false imprisonment.

Gabriel Grasso, Simpson's local attorney, said he plans to file a motion to have the kidnapping charges dismissed. "We're going to put the kidnapping charges to a serious test," Grasso said.

Stephanos Bibas, a professor at the University of Pennsylvania Law School who has written about the plea bargaining process, said Roger is using **a common strategy to gain leverage in possible negotiations. "A prosecutor throws in everything the law entitles him to, and then gives everyone a discount. . . . If you throw enough mud, some of it will stick,"** he said.

Local defense attorney Richard Wright, who is not involved in the case, said Simpson appears to be the subject of **overzealous prosecution**. **"They simply loaded it up,"** Wright said. **"This is not what the layman views as kidnapping."**

Roger makes no apologies, however, for how he charges cases. "We allege all charges we think we can prove beyond a reasonable doubt," he said in an interview earlier this year about his office's general policy for charging cases. **"I know some people suggest there's vindictive prosecution, but if we're operating within the perimeters of the law,** I don't think our prosecutors are being vindictive."

The newspaper's analysis of recent cases shows Roger's **office routinely pursues kidnapping charges in robbery cases, but rarely gains convictions on them**.

In the 53 cases from last year that have been resolved, **only one saw a defendant convicted of kidnapping at trial. Defendants pleaded guilty to the charge just three times.** In 28 cases, the accused got probation or less.

The two who got life sentences were a carjacker who pleaded guilty to kidnapping and a repeat felon who was convicted at trial on other charges.

Many of the kidnapping cases from last year were assigned to public defenders or court-appointed attorneys, who are paid $100 per hour for the cases because of the possible life sentence they carry.

Formal challenges of the district attorney office's use of the kidnapping statute have been rare because so few of the cases have gone to trial.

The occasional test, however, has shown Roger's office **might be too broadly applying the law**.

The Supreme Court this year overturned a jury's guilty verdict on kidnapping against Juan Garcia, a Las Vegas man who robbed an auto shop in 2003. During the robbery, Garcia restrained two victims with duct tape, but the Supreme Court ruled that was not enough to sustain a kidnapping conviction. The Garcia ruling followed an earlier state high court decision that sought to better define kidnapping.

To support a kidnapping conviction, the court ruled in Mendoza v. Nevada that movement or restraint of victims during a robbery "must substantially increase the risk of danger to the victim over and above that necessarily present" in a robbery.

The ruling was accompanied by a new jury instruction for those crimes. **Most of the kidnapping cases from last year didn't explore the legal basis for the charges.** Samaja Funderburk's case did. Funderburk was charged in May 2006 with dozens of kidnapping counts stemming from a string of convenience store robberies.

Deputy District Attorney Linda Lewis argued in a written court filing that kidnapping could be charged because potential harm to the victims was increased when the defendant herded them into walk-in refrigerators or break rooms. Funderburk's attorney, John Parris, cited the Mendoza ruling and argued those acts were incidental to the robberies

Two months later at the opening of Funderburk's trial, Lewis asked that the kidnapping charges be dropped. **"We have determined it would be a waste of the court's time and resources, and ultimately if there should be a conviction, a waste of the Supreme Court's time in reviewing the issues pertaining to the kidnapping charges,"** Lewis told a judge. Lewis declined to elaborate on her decision.

Robert Dennis Rentzer, Alexander's attorney, said it often is best for a client to plead guilty to a low-level felony rather than risk being convicted of a more severe crime. **"It might be in a client's interest to enter a plea to the least significant offense ... even if the person feels they were not guilty and would probably be acquitted at trial,"** Rentzer said.

Edward Miley, Cashmore's attorney, said the possible penalty for a kidnapping conviction "weighed heavily" on his client during plea negotiations. Though kidnapping charges are common, the Simpson case is about as atypical as they come because of the defendant's past and resources.

"Simpson can hire good attorneys, so there's more likelihood it will go to trial," he said. "O.J. is not about to do prison time. ... **Most people don't have a dream team, so O.J. justice is not typical justice."**

Kill the Felony Murder Rule
6/9/08

Nevada is one of a few remaining states that if a death occurs during the commission of certain felonies, it is first degree murder, and all participants in the felony can be held equally accountable even if they did no harm, possessed no weapon, and had little/no knowledge a death would even occur. In Nevada's court system, intent does not have to be proven for anything but the underlying felony.

There are many class A and class B felons in our prison system who have spent, or will spend, more then 10 years in prison for murders they did not commit. Should they be punished? If they made a decision to involve themselves in a crime? Absolutely. Should they be labeled a murder if they did not commit the act or be a part of that decision? Absolutely not. Not only does one person have little/no control over someone else who would make such a violent decision as murder, but at the point that the decision is made, a grave decision must be made by the 'accessory' in most cases, to go along with it or be the next victim. Should they be labeled a violent person and go to prison for the rest of their life at the tax payers expense because they chose to live and not die with the victim?

The price tag for tax payers for 10 years in prison is more then $200,000 per inmate. Every day, we as a nation and a state, are making more and more cuts to education and social services, largely due to our growing prison population. Can we afford to keep punishing people for crimes we KNOW they did not commit?

In a case I know very well in our prison system, a man was involved in a murder with two other co-defendants. One of the co-defendants received a lesser then Murder I charge and has been paroled long ago. The offender who admitted to the murder received Murder I (10-life) and also a deadly enhancement sentence. The person I know very well received a charge of Murder I (10-life) but did not receive a deadly enhancement because he did not commit the murder. He is now accused of and labeled a violent murderer for the rest of his life.

This man has been in prison nearly 14 years, receiving two parole denials despite positive programming and minimal disciplinary actions. The two times he has gone to the Parole Board, the Board asks him if he is ready to admit full responsibility for his crime. Because he did not commit a murder (which is his accused crime), he can not truthfully admit full responsibility, especially when he was yards away from the man who made the decision to commit the murder. Because he will not admit FULL responsibility, which he cannot do without lying, he is repeatedly denied parole and the tax payers spend tens of thousands more dollars to keep him in prison.

I believe the media attention that has come from a few cases such as Brandon Hein in California and Ryan Holle of Florida, who lent his car to his roommate, who then murdered someone while he was at home in bed, will hopefully force states to realize what other countries have many years ago; that the felony murder rule is a senseless way of punishing the tax payers rather then the criminal.

Attached is an article about Brandon Hein by Charles Grodin that appeared in the NY Daily News that reiterates the views of many who agree the Felony Murder Rule needs to be killed.

Teresa Werner
P.O. Box 21067
Sun Valley, NV 89433
terwer42@yahoo.com
775-338-1342

Felony Murder Rule Should Be Killed

May 26, 2008

The felony murder rule is a disgrace to our justice system.

It states that any death which occurs during the commission or attempt to commit certain felonies, which include arson, rape or other sexual offenses, burglary, robbery or kidnapping is first degree murder, and all participants in the felony can be held equally culpable, including those who did no harm, possessed no weapon and did not intend to hurt anyone. Intent does not have to be proven for anything but the underlying felony. Even if, during the commission of the underlying felony, death occurs from fright, a heart attack for instance, it is still first degree murder.

Here's an example of the application of the felony murder rule. Brandon Hein was a teenager who didn't kill anyone, but he's serving the same sentence - life imprisonment without the possibility of parole as the Menendez brothers who killed their parents, Gary Ridgeway who killed forty eight women in Washington state, Sirhan Sirhan who killed Robert Kennedy, and Charles Manson, although Charles Manson does get to come up for parole. Brandon Hein cannot. Ever. So what did Brandon Hein do? He was drunk and got into a fight that involved six boys where one boy stabbed another who bled to death. The boy who did the stabbing admitted he did it in an effort to get another boy off his younger brother. It didn't help the case that that same boy earlier in the day took a wallet off the seat of a parked van. No charges were brought there.

The state did not claim that Brandon killed anyone, but under the felony murder rule as applied in this case in California, Brandon was sentenced to life imprisonment without the possibility of parole. How can that be? Under the felony murder rule if a jury decides that Brandon and his friends went to a fort in the backyard of a house in Agoura Hills, Calif., to steal marijuana and not just to smoke it or buy it as the boys claimed, Brandon could be convicted of intended robbery. That is what the jury decided in spite of the fact that most of the boys knew each other, no one wore disguises and nothing was taken. Several important factors help explain this gross miscarriage of justice. First, the boy who died was the son of a policeman. Second, the trial took place after the O.J. Simpson acquittal and a hung jury in the Menendez brothers' case. The prosecution badly wanted a conviction. The most important prosecution witness was Mike McLoren who was with the boy who died. Mike McLoren has been a known drug user and dealer for many years who had lied to the authorities on several occasions before his testimony.

Legal scholars have said the sentence for Brandon Hein, who had no prior record, is one of the most outrageous applications of the felony murder rule they have ever seen. If you want to talk about human rights violations, you need look no further than the Centinela State Prison in Imperial, Calif., where Brandon Hein is in his thirteenth year of incarceration. Brandon began his sentence when he was eighteen. He is now 31. A life sentence with no chance for parole for a teenager who did nothing more than get drunk and get into a fight.

If that's not bad enough, early on the morning of March 10, 2003, a hung over 20-year-old named Ryan Holle lent his car to his roommate, who then went out with others and committed a robbery and murder. At the time of the crime Ryan Holle was asleep in his bed. He is serving a life sentence without the possibility of parole at the Wakulla Correctional Institution near Tallahassee, Fla. The prosecutor explained to the jury in 2004 "No car, no crime." Mr. Holle had no criminal record. He had lent his car to his roommate countless times before. The roommate in a pretrial deposition said "All he did was say, 'use the car.' I mean nobody really knew that that girl was going to get killed. It was not in the plans to kill somebody, you know." Mr. Holle did testify that he had been told "It might be necessary to 'knock out' the young woman." He also said "I honestly thought they were going to get food. When they mentioned what was going on, I actually thought it was a joke. I thought they were just playing around. I was just very naïve. Plus from drinking that night I just didn't understand what was going on."

Adam Liptak broke this story for the New York Times on Dec. 4, 2007. I spoke to him recently, and he said there was almost no coverage of this when the event took place in 2003. He said he had later appeared on Court TV with the murdered girl's parents who felt that the boy who was home asleep was just as guilty as the boys who committed the crime.

Most scholars trace the felony murder rule to English common law but parliament abolished it in 1957. India and other common law countries have followed England in abolishing it. In 1990 the Canadian Supreme Court did away with it.

The prosecutor in the Ryan Holle case offered a plea deal that might have led to ten years in prison. "I did so, because he was not as culpable as the others," and yet he is serving life in prison with no chance for parole even though he was home asleep at the time of the crime.

A few of our states have abandoned the felony murder rule because of its far reaching consequences, but not Florida and California. Every state in America should abolish this law. Who's the criminal here? The boy who was home asleep in bed at the time of the crime, or the state which put him in prison for the rest of his life with no chance of parole?

Charles Grodin is currently a commentator for CBS News. A celebrated actor, Golden Globe and Emmy winner, he is also a best-selling author. He was a commentator for "60 Minutes II" and hosted "The Charles Grodin Show," on CNBC. His commentaries continue to be heard on WCBS and many other stations. In 2006, Grodin received the William Kunstler Award for Racial Justice.

Brandon Hein has been in prison going on 13 years for a crime nobody says he committed. His case is now before the United States 9th Circuit Appeals Court. Brandon has never seen the Internet as we know it. His web site is www.BrandonHein.com and is maintained by the Friends of Brandon Hein.

http://richarddetrich.wordpress.com/2008/05/26/felony-murder-rule-should-be-killed/

Streamlining Consecutive Paroles
6/9/08

The 'theory' of consecutive sentences for multiple crimes is a sound one when it involves crime sprees or habitual activities consisting of multiple acts. However, when one criminal event results in multiple crimes due to unfortunate and sometimes unplanned circumstances, stacking charges is senseless and serves no one.

There are two options to correct the senseless form of consecutive sentencing:

Automate Consecutive Paroles

One of the main issues proposed in AB 416 in the last legislative session was for the very much needed oversight committee for the NDOC. However, another idea that has been proposed in past legislative sessions is to streamline consecutive institutional paroles. With the adoption of an oversight committee for the NDOC, there is no reason that institutional paroled can't be granted or denied automatically by the NDOC. If the inmate programs positively, has a low/no risk of re-offending, and has not committed an additional crime while incarcerated, s/he would be granted an institutional parole to the next sentence after completing the minimum of the longest sentence imposed by the Judge.

Adopting this process would greatly reduce the Parole Board work load as there would be no reason to hold hearings on each sentence. The only hearings that would be held is when the likelihood for success of the inmate is questionable that the NDOC Caseworker would need the guidance of the Parole Board, and when the inmate is eligible to be paroled to the community.

Re-Evaluate Long-Term Consecutive Sentences

There are many cases of a single crime being committed, where there are multiple, consecutive charges stacked that result in a long term prison sentences. When the longest sentence of all the charges combined is 5-10 years or more, this begs the question of who is paying more for the crime: the criminal, the tax-payer, or the community, when they may be ultimately released worse then when they went in after spending so long in a violent environment and out-of-touch with society.

A 10 year sentence is a long time; to put it in perspective, those who have served more then 10 years have never seen the internet, never used a debit card to pay for things, and have never held a cell phone in their hand. The fast changing times our society are sometimes challenging for some of us 'in' it everyday. The challenges an ex-convict must face to catch up on 10 years of society, family, and technology are overwhelming enough, however they also have the pressures of finding employment and adhering to strict parole guidelines.

There are heinous crimes and repeat offenders that society should remain safe from. However, there are many who have grown, programmed positively, and completed the minimum of the longest sentence imposed by the Judge, that should be considered to have their sentences run concurrently.

Adopting this process would also greatly reduce the Parole Board workload as there would be fewer hearings for consecutive sentences. In fact, enabling the NDOC to grant/deny institutional paroles coupled with long-term concurrent sentencing structures being re-evaluated to be consecutive, this would greatly reduce the workload of the Parole Board so they could dedicate more time on hearings for high-risk/repeat offenders.

Teresa Werner
P.O. Box 21067
Sun Valley, NV 89433
terwer42@yahoo.com
775-338-1342