

A man and his friend were competitive marathon runners, and the man was determined to win a race that was upcoming in two days. The man invited his friend over for dinner, and afterward, the man asked his friend if he wanted to see the new bar that he had recently built in his basement. The friend agreed, and the man led him into his basement. When the friend entered the basement, the man locked the door behind him. The man left the friend in the basement, ran the marathon, and returned two days later to let him out. The friend immediately reported the man to the police, who subsequently arrested and charged the man with kidnapping.

Is the man guilty of kidnapping?

- A. No, because the friend was not moved.
- B. No, because the man did not use force or threats to confine the friend in the basement.
- C. Yes, because the friend was confined due to his reliance on the man's misrepresentation.
- D. Yes, because the man concealed the friend in the basement for two days.

## Explanation:

### Kidnapping

<b>Common law</b>	Forcibly abducting or stealing person from his/her own country & sending to another country	
<b>MPC</b>	Unlawfully moving or confining another to:  hold for ransom or as hostage facilitate commission of felony or flight thereafter injure/terrorize victim or another <i>or</i> interfere with governmental/political function	
<b>Modern view</b>	General	Intentional & unlawful confinement involving:  some movement (asportation) <i>or</i> concealment
	Aggravated	General kidnapping committed for:  ransom commission of other crime offensive purpose <i>or</i> child stealing

**MPC** = Model Penal Code.

Under the modern view, **kidnapping** is:

the intentional\* and unlawful confinement of another against that person's will (eg, by force, threat, or fraud) coupled with either moving or **concealing** that person.

**Concealment** occurs when the victim is kept in a **hidden location**—ie, a place where the victim is not likely to be found—for a **substantial period of time**.

Here, the friend was unlawfully confined against his will after the man lured the friend into the basement to see the new bar. The friend was then locked in the basement for two *days*—a substantial period of time. And since the man's basement is a place where the friend was not likely to be found, the man is guilty of kidnapping.

\***General intent crimes** such as kidnapping require only the intent to perform an act that is unlawful.

**(Choice A)** Kidnapping can be accomplished either by moving the victim (even only a short distance) *or* by concealing the victim for a substantial period of time (as seen here). Therefore, the fact that the friend was not moved does not absolve the man of guilt.

**(Choice B)** A confinement must be accomplished by force, threat, or fraud. Although the man did not use force or threats to confine the friend in the basement, the man did use fraud to do so.

**(Choice C)** Unlawfully confining the friend in the basement by misrepresentation constitutes false imprisonment. But it does not amount to kidnapping, where the confinement must be against the person's will and coupled with the movement or concealment of that person.

**Educational objective:**

Kidnapping is the intentional and unlawful confinement of another against that person's will, coupled with the movement or concealment of that person. Concealment occurs when the victim is kept in a hidden location for a substantial period of time.

**References**

Charles E. Torcia, 3 Wharton's Criminal Law § 207 (15th ed. 2020) (explaining that a kidnapper substantially interferes with the victim's liberty by confining the victim in a place where the victim is not likely to be found).

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