

A driver stopped at a red traffic light in his home state. A stranger opened the passenger door, got in, and pointed a gun at the driver. The stranger then directed the driver to keep driving. They drove several miles, crossed into a neighboring state, and drove several more miles.

When they reached a remote location, the stranger ordered the driver to pull over. The stranger then robbed the driver of his wallet and cash and ordered him out of the car. The stranger drove off in the driver's car.

The stranger is charged with kidnapping in the neighboring state, which has adopted the Model Penal Code.

Can the stranger properly be convicted of kidnapping in the neighboring state?

- A. No, because any kidnapping took place in the driver's home state.
- B. No, because the restraint was incidental to the robbery.
- C. Yes, because the driver in effect paid a ransom for his release.
- D. Yes, because the driver was transported under threat of force in the neighboring state.

Explanation:

A defendant can be prosecuted in any state where an essential part of the crime has occurred without violating **double jeopardy**. Under the Model Penal Code, **kidnapping** occurs when a victim is intentionally and unlawfully moved (or confined) for any of the following purposes:

- to hold for ransom/reward or as a hostage/shield
- to **facilitate commission of any felony** or flight thereafter
- to inflict bodily injury on or terrorize the victim or another
- to interfere with performance of a governmental or political function

An **unlawful movement** occurs when the victim is (1) removed from his/her residence or business or (2) **taken a substantial distance** from where he/she is found. And the movement must be **more than incidental** to the commission of another crime. To make this determination, courts consider the **distance and duration** of the movement as well as the **increased danger** the movement posed to the victim.

Here, the stranger entered the car, pointed a gun at the driver, and unlawfully forced him to drive a substantial distance into a neighboring state. This was done so that the stranger could **rob** the driver of his wallet, cash, and car. And since the driver was (1) forced to drive several miles in the neighboring state and (2) at risk of being shot while doing so, his kidnapping was more than incidental to the robbery **(Choice B)**. As a result, the stranger can be convicted of kidnapping in the neighboring state.

(Choice A) The kidnapping did not only occur in the driver's home state because he was forced to drive across state lines.

(Choice C) A defendant can be convicted of kidnapping for moving a victim to hold for ransom. But the driver did not pay a ransom since the stolen cash, wallet, and car were not given in exchange for his release.

Educational Objective:

Under the Model Penal Code, unlawfully moving a victim a substantial distance through two states to facilitate a crime constitutes kidnapping in both states.

References

Model Penal Code § 212.1 (Am. Law Inst. 2019) (kidnapping).

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Kidnapping under Model Penal Code

