NO. 90266-6
Cowlitz Co. Cause NO. 12-1-00627-7

SUPREME COURT OF STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

TERESA L. CLINE,

Appellant/Petitioner.

RESPONSE TO PETITION FOR REVIEW

SUSAN I. BAUR
Prosecuting Attorney
SEAN BRITTAIN/WSBA 36804
Deputy Prosecuting Attorney
Representing Respondent

HALL OF JUSTICE
312 SW FIRST
KELSO, WA 98626
(360) 577-3080

TABLE OF CONTENTS

PAGE

TABLE OF AUTHORITIES

Page

Cases

Statutes

Other Authorities

Rules

I. IDENTITY OF RESPONDENT

The State of Washington, by and through the Cowlitz County Prosecuting Attorney's Office, respectfully requests this Court deny review of the April 22, 2014 published opinion of the Court of Appeals in *State v. Cline*, COA No. 44026-1-II. This decision reversed the Cowlitz County Superior Court's dismissal of the Custodial Interference in the First Degree charge against the Petitioner and remanded for trial.

II. ANSWER TO ISSUES PRESENTED FOR REVIEW

1. The decision of the Court of Appeals is not in conflict with a decision of the Supreme Court.

2. The decision of the Court of Appeals is not in conflict with a decision of another decision of the Court of Appeals.

3. The decision of the Court of Appeals does not involve a significant question of law under the Constitution of the State of Washington or of the United States.

4. The decision of the Court of Appeals does not involve an issue of substantial public interest that should be determined by the Supreme Court.

III. STATEMENT OF THE CASE

On June 15, 2012, Joel Gavino was meeting with CPS worker Tarassa Wiper at his residence, located at 137 Williams Ave, Kelso,

Washington. During this meeting, Ranee Cline and Teresa Cline arrived at Mr. Gavino's residence. CP 16. Mr. Gavino and Ranee Cline are the biological parents of B.G., the child in this case. CP 16. While Ranee Cline and Teresa Cline were at Mr. Gavino's residence, Parent Child Assistance Program (PCAP) worker Jamie Nance arrived. Ms. Nance overheard Ranee Cline tell the Teresa Cline to take the child and leave Mr. Gavino's residence. CP 11.

While Mr. Gavino, Ranee Cline, and Ms. Wiper were speaking, Haleigh Grasser, a neighbor, observed the Teresa Cline move her vehicle to a parking spot down the street from Mr. Gavino's residence. CP 16. Approximately three minutes later, Ms. Grasser observed Teresa Cline running towards her vehicle while carrying the child like a football. CP 16. Ms. Grasser then observed Teresa Cline drive away with the child. CP 16. Mr. Gavino and Ranee Cline attempted to locate Teresa Cline and the child at CPS and PCAP. CP 16. After failing to do so, Mr. Gavino contacted 911. CP 16.

Cowlitz County Sheriff Deputy Dan Sheridan arrived at Mr. Gavino's residence. Deputy Sheridan interviewed Ranee Cline, who stated that she had not given permission to Teresa Cline to take the child from Mr. Gavino's residence. CP 16. Ranee Cline also stated that her grandmother, Rosemary Cline, had requested visitation with the child for

the entire Father's Day weekend. CP 16. According to Ranee Cline, they would be camping at Silver Lake. CP 16. Deputy Sheridan interviewed Mr. Gavino, who stated that there had been an ongoing dispute between himself, Teresa Cline, and Rosemary Cline about visitation with the child. CP 16 at 88. Mr. Gavino told Deputy Sheridan that Rosemary Cline had previously requested to have the child for the entire Father's Day weekend for a camping trip to Silver Lake. CP 16.

Deputy Sheridan interviewed Diane Waadevig, Mr. Gavino's aunt. Ms. Waadevig showed Deputy Sheridan a text message conversation she had with Rosemary Cline. CP 16. The text messages show that on June 13, 2012, Rosemary Cline had requested to have the child for the entire Father's Day weekend. CP 16. After Teresa Cline took the child from Mr. Gavino's residence, Ms. Waadevig told Rosemary Cline, through a text message, that she should call the Teresa Cline and tell her to return the child. CP 16. Rosemary Cline responded with a text message that said "this would not came to this if you would of just let ranee and the family see him once in a while." CP 16.

Cowlitz County Sheriff Deputy Kim Moore located Teresa Cline and the child at the Silver Cove RV campground. Deputy Sheridan arrived shortly and interviewed Teresa Cline. CP 16. After being informed of her rights, Teresa Cline told Deputy Sheridan that Ranee

Cline had asked her to take the child. CP 16. Deputy Sheridan re-interviewed Ranee Cline, who was also at the campground. Ranee Cline told Deputy Sheridan that she had given Teresa Cline permission to take the child. CP 16.

On June 19, 2012, the Cowlitz County Prosecutor's Office filed an information charging Teresa Cline with Custodial Interference in the First Degree. CP 5. Teresa Cline's attorney filed a *Knapstad*[1] motion on August 7, 2012. CP 10. Included within the *Knapstad* motion were affidavits signed by Ranee Cline and Rosemary Cline. CP 12 and CP 13.

On August 16, 2012, the State filed a motion to amend the information. CP 19. The court deferred ruling on the State's motion until the *Knapstad* motion was ready to be heard. On August 30, 2012, despite an objection from Teresa Cline's attorney, the trial court granted the State's motion to amend the information. CP 19; RP at 2-6. On that same date, the trial court heard Teresa Cline's *Knapstad* motion. RP at 7-19. On September 20, 2012, the trial court granted the *Knapstad* motion, dismissed the charge without prejudiced and entered its findings. CP 22. The State filed a timely notice of appeal. CP 23. On April 22, 2014, Division II of the Court of Appeals reversed the Trial Court's granting of the Petitioner's motion to dismiss.

---

[1] *State v. Knapstad*, 107 Wn.2d 346, 729 P.2d 48 (1986).

IV. ARGUMENT

The Court of Appeals properly held that the State presented sufficient evidence to overcome the Petitioner's *Knapstad* motion and the superior court's dismissal should be reversed.

RAP 13.4(b) states that a petition for review will only be accepted by the Supreme Court only if one of four conditions are met: (1) If the decision of the Court of Appeals is in conflict with a decision of the Supreme Court; or (2) If the decision of the Court of Appeals is in conflict with a decision of another division of the Court of Appeals; or (3) If a significant question of law under the Constitution of the State of Washington or of the United States is involved; or (4) If the petition involves an issue of substantial public interest that should be determined by the Supreme Court. Neither in the petition for review nor in the decision from the Court of Appeals are there any issues that would fall under one of the four conditions as outlined by RAP 13.4(b). The Division II Court of Appeals holding in this case is not in conflict with any decisions of the Washington Supreme Court or another division of the Court Appeals.

A. The trial court's dismissal of the charge of Custodial Interference in the First Degree was properly reversed by the Court of Appeals.

A trial court's decision to dismiss under *Knapstad* is reviewed de novo. *State v. Missieur*, 140 Wn. App. 181, 184, 165 P.3d 381 (2007). All the facts and all reasonable inferences are viewed in the light most favorable to the State. *Id.* On review, the trial court's decision to dismiss under *Knapstad* will be affirmed if no rational fact finder could have found the essential elements of the crime beyond a reasonable doubt. *State v. O'Meara*, 143 Wn. App. 638, 641, 180 P.3d 196 (2008) (*following State v. Wilhelm,* 78 Wn. App. 188, 191, 896 P.2d 105 (1995)).

Questions of statutory interpretation is a question of law reviewed de novo. *State v. Bunker*, 169 Wn.2d 571, 577-78, 238 P.3d 487 (2010). The court's objective when interpreting a statute is to determine the legislature's intent. *State v. Jacobs,* 154 Wn.2d 596, 600, 115 P.3d 281 (2005). "If the statute's meaning is plain on its face, then the court must give effect to that plain meaning as an expression of legislative intent." *State, Dep't of Ecology v. Campbell & Gwinn, L.L.C.,* 146 Wn.2d 1, 9-10, 43 P.3d 4, 9 (2002). "Plain meaning is discerned from the ordinary meaning of the language at issue, the context of the statute in which the provision is found, related provisions, and the statutory scheme as a whole." *Jacobs*, 154 Wn.2d at 600. When statutory definitions are

absent, the court looks to the ordinary dictionary definition. *State v. Watson*, 146 Wn.2d 947, 954, 51 P.3d 66 (2002) (citing *State v. Sullivan*, 143 Wn.2d 162, 175, 19 P.3d 1012 (2001)). The court will presume that the legislature did not intend absurd results; thus, the court will interpret ambiguous language to avoid such absurdity. *State v. Ervin,* 169 Wn.2d 815, 823-24, 239 P.3d 354 (2010) (citing *State v. Vela*, 100 Wn.2d 636, 641, 673 P.2d 185 (1983)).

At issue in the present matter is whether the trial court's decision to grant the Petitioner's *Knapstad* motion was proper. The Court of Appeals was correct in reversing the trial court's decision because the question of what constitutes a "protracted period" of time is a factual question for the jury to decide. The term "protracted period" is undefined by RCW 9A.40.060(3). Recognizing this fact, the Court of Appeals looked at the dictionary definition of "protracted" and incorporated it into its analysis of the context of the statute, any and all related provisions, and the statutory scheme as a whole.

The express intent of the legislature is quite clear: to protect children and custodial parents from non-custodial parental kidnapping. *Opinion* at 9 (citing 1984 Final Legislative Report, 48th Wash. Leg., at 128-29). The Court of Appeals, nor the Petitioner, could point to a specific case that establishes the minimum amount of time needed to find

a "protracted period." Instead, as the Court of Appeals found, the prior case law addressing Custodial Interference in the First Degree ranged from less than a week[2] to many months.[3] Accordingly, when analyzing these cases, it is not just the amount of time involved but the context for which the interference took place.

The Petitioner's argument would result in an absurd result. Basically, the only means of committing this offense is when a person intentionally deprives a parent of access to their child for "a period of time similar or close in length to 'permanently.' *Petitioner's Brief* at 12. Under this argument, a person who grabs a 14 month old baby, carries him like a football as she sprints to her car and leaves for an unknown location cannot be charged if the child is returned a month later, six months later, a year later, or five years later because none of these times come close to "permanently." If we were to adopt the Petitioner's line of thinking, the legislative intent would be defeated.

One logical conclusion is apparent when considering the statutory language, the legislative intent, and the prior case law – these cases are context-dependent. *Opinion* at 9. Thus, the Court of Appeals was correct in reversing the trial court's dismissal of the present matter. As stated

---

[2] *State v. Veliz*, 176 Wn.2d 849, 851-52, 298 P.3d (2013) (defendant was charged six days after taking the child)

[3] *State v. Justesen*, 121 Wn. App. 83, 84-85, 86 P.3d 1259, *review denied*, 152 Wn.2d 1033 (2004) (defendant concealed child for eighteen months).

above, the present matter involves a finding by the jury – can a weekend, under these particular circumstances, be considered protracted period of time? This is a factual question, not a question of law and does not involve an issue of substantial public interest.

B. The Court of Appeals properly found that the State presented sufficient evidence that the Petitioner intended to deprive Mr. Gavino of access to his child.

As stated above, when ruling upon a defendant's *Knapstad* motion, all the facts and *all reasonable inferences* are viewed in the light most favorable to the State. *Missieur*, 140 Wn. App. at 184 (emphasis added). As the Court of Appeals concluded, the Petitioner simply misinterprets RCW 9A.40.060(3). The plain language of the statute applies "to a person who takes a child *under the direction of a parent* with intent to deprive *the other parent* of access to the child..." *Opinion* at 11; RCW 9A.40.060(3).

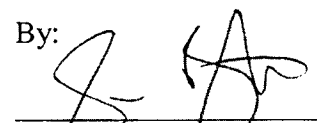
The Petitioner took the child at the direction of Ranee. Rosemary wanted to have the child over Father's Day weekend for a family camping trip. Rosemary was well aware of the Petitioner's actions. The child was found with the Petitioner and her family later that day. Mr. Gavino did not have access to his child after the Petitioner grabbed him, sprinted away to her car, drove away, and went to a completely different area. Given these facts, a jury could find that that the Petitioner, through her actions, intended on depriving Mr. Gavino of access to his child.

V. CONCLUSION

For the reasons stated above, Petitioner's petition for discretionary review should be denied.

Respectfully submitted this 24 day of July, 2014.

SUSAN I. BAUR
Prosecuting Attorney

By: 

SEAN M. BRITTAIN/WSBA #36804
Deputy Prosecuting Attorney
Representing Respondent

CERTIFICATE OF SERVICE

Michelle Sasser, certifies that the Response to Petition for Review was served electronically via e-mail to the following:

Supreme Court
Temple of Justice
P.O. Box 40929
Olympia, WA 98504
supreme@courts.wa.gov

and,

Mr. James K. Morgan
Attorney at Law
1555 3rd Ave., Suite A
Longview, WA 98632
info@jimmorganlaw.com
Karen Legette (klegette@qwestoffice.net)

I CERTIFY UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT.

Signed at Kelso, Washington on July 24th, 2014.

Michelle Sasser

Michelle Sasser

OFFICE RECEPTIONIST, CLERK

To: Sasser, Michelle
Subject: RE: PAs Office Scanned Item Teresa L. CLine, 90266-6, Response to Pet for Review

Received 7-24-14

Please note that any pleading filed as an attachment to e-mail will be treated as the original. Therefore, if a filing is by e-mail attachment, it is not necessary to mail to the court the original of the document.

From: Sasser, Michelle [mailto:SasserM@co.cowlitz.wa.us]
Sent: Thursday, July 24, 2014 10:33 AM
To: OFFICE RECEPTIONIST, CLERK; info@jimmorganlaw.com; Karen Legette (klegette@qwestoffice.net)
Subject: FW: PAs Office Scanned Item Teresa L. CLine, 90266-6, Response to Pet for Review

Attached, please find the Response to Petition for Review regarding the above named Petitioner.

If you have any questions, please contact this office.

Thanks,

Michelle Sasser, Paralegal
Cowlitz County Prosecuting Attorney's Office
312 S.W. 1st Ave.
Kelso, WA 98626

From: pacopier_donotreply@co.cowlitz.wa.us [mailto:pacopier_donotreply@co.cowlitz.wa.us]
Sent: Thursday, July 24, 2014 11:27 AM
To: Sasser, Michelle
Subject: PAs Office Scanned Item