

STATE OF NEW HAMPSHIRE

COOS, SS.

SUPERIOR COURT

State of New Hampshire

v.

Dustin Duren

214-2024-CR-28

DEFENDANT’S MEMORANDUM ON KIDNAPPING UNDER RSA 627:4, II(c)

Now comes the Defendant, Dustin Duren, through counsel, and requests that the Court accept this memorandum regarding the meaning of the word “kidnapping” under RSA 627:4.

- I. The word “kidnapping” in RSA 627:4, II(c) is not a reference to the statutory offense defined in RSA 633:1, but instead has an ordinary meaning.
 1. RSA 627:4, II (c) explains that a person is justified in using deadly force if he reasonably believes that a person is “committing or about to commit a kidnapping”.
 2. As used in RSA 627:4, II (c), the word “kidnapping” has an ordinary meaning, and is not a reference to RSA 633:1.
 3. In State v. Davidson, the New Hampshire Supreme Court held that the trial court erred in refusing to give a defendant’s requested jury instruction on defense of property. 163 N.H. 462, 475 (2012). The trial court’s reasoning in denying the requested jury instruction was that that the phrase “unlawful taking” was “essentially a theft, as defined by statute”. The Supreme Court explained that, in interpreting statutes, the court “must first look to the plain language of the statute to determine legislative intent. We can neither ignore the plain language of the legislation nor add

words which the lawmakers did not see fit to include.” Id. at 473 (internal citations omitted). The Supreme Court highlighted that when the legislature intends for a statute to refer to or be limited by the language of another statute, it does so explicitly. As the Court explained, “The legislature’s reference in RSA 627:8 to the crime of criminal mischief, see RSA 634:2 (2007) (amended 2009, 2010), demonstrates that the legislature could have specifically limited “unlawful taking” to the crime of theft, if it were so inclined.” Id. at 474. Analogously, in this case, if the legislature had been so inclined to limit “kidnapping” to the statutory offense outlined in 633:1, it could have done so by including the words “as defined by”, so that the statute said person is justified in using deadly force if he reasonably believes that a person is “committing or about to commit a kidnapping **as defined in RSA 633:1**”. The legislature did not include the words “as defined in 633:1, and the court cannot add words the legislature did not see fit to include.

4. The legal significance of the phrase “as defined in” is even more explicitly explained in State v. Woodbury, 172 N.H. 358 (2019). Woodbury addresses the RSA 641:6, Falsifying Physical Evidence. The relevant portion of RSA 641:6 states, “[a] person commits a class B felony if, believing that an official proceeding, as defined in RSA 641:1, II, or investigation is pending or about to be instituted...”. The Woodbury court explains, “the statute includes the phrase, “as defined in RSA 641:1, II,” between the two types of inquiries. See RSA 641:6. This phrase is of particular importance, as it signifies to the reader of the statute that ‘official proceeding’ is a term of art defined by the legislature while ‘investigation’ is not.” 172 N.H. at 366. Since RSA 627:4, II (c) does not include the phrase “as defined in RSA 633:1”, the

word “kidnapping” as used in RSA 627:4, II (c) is not a term of art defined by the legislature. Instead, the word “kidnapping” as used in RSA 627:4, II (c) has its plain, ordinary meaning. See Woodbury, 172 N.H. at 365 – 66.

II. Parents can be charged with kidnapping under RSA 633:1.

5. As outlined above, the court cannot limit the word “kidnapping” in the defense of others statute to the offense as defined in RSA 633:1, and therefore whether or not parents can be charged with kidnapping their own children under RSA 633:1 does not determine whether an instruction on RSA 627:4, II (c) must be given in this case.
6. Notwithstanding the above, on information and belief parents have been charged with kidnapping their own children in the following cases:
 - a. State v. Erika Wallace, Case No. 216-2017-CR-01169
 - b. State v. Joshua Wallace, Case No. 216-2017-CR-01270
7. RSA 633:1 encompasses multiple variants of the offense of kidnapping. RSA 633:1, I-a describes a variant of kidnapping that applies only if the child taken is “unrelated to the person by consanguinity”. A parent cannot be charged with kidnapping their biological child under RSA 633:1, I-a, as a parent is related to their biological child by consanguinity.
8. RSA 633:1, I does not contain the same language regarding consanguinity. Under the same statutory interpretation principles described above, the legislature's reference to consanguinity in RSA 633:1, I-a, demonstrates that the legislature could have specifically limited the offense of kidnapping in RSA 633:1, I to victims “unrelated to the person by consanguinity” if it were so inclined. The

fact that the legislature omitted the words “unrelated to the person by consanguinity” from RSA 633:1, I shows that the legislature did not intend that limitation to apply to RSA 633:1. The court cannot add words the legislature did not see fit to include to RSA 633:1. Parents can be charged with violating RSA 633:1 by kidnapping their own children.

THEREFORE, Mr. Duren respectfully prays the Court:

A) ACCEPT this memorandum.

Respectfully submitted,

/s/ Margaret Kettles

Margaret Kettles, Esq., Bar ID# 270836
New Hampshire Public Defender
485 NH Route 10
Orford, NH 03777
(603) 353-4440

CERTIFICATE OF SERVICE

I certify that a copy of this has been forwarded to Bethany Durand, Esq. and Joshua Speicher, Esq. of the NH Attorney General’s Office on October 22, 2025.

/s/ Margaret Kettles

Margaret Kettles, Esq.