# STATE OF CONNECTICUT *v.* LORI T.*
## (AC 40384)

Prescott, Bright and Devlin, Js.

*Syllabus*

Pursuant to statute (§ 53a-98 (a) (3)), a person is guilty of custodial interference in the second degree when, knowing that she has no right to do so, she "holds, keeps or otherwise refuses to return a child . . . to such child's lawful custodian after a request by such custodian for the return of such child."

Convicted, after a jury trial, of three counts of the crime of custodial interference in the second degree, the defendant appealed to this court. The defendant's children were at her home in Glastonbury for purposes of visitation over a holiday weekend. The defendant's former husband, F, who is the children's father, had sole physical and legal custody of the children, but they wanted to live with the defendant and not with F. When F arrived to pick up the children in accordance with the visitation schedule, the defendant told F that she was not sending the children out to him because they did not want to come out and that she was going to do what the children wanted to do. F contacted N, a Norwalk police officer and the children's school resource officer, and told him about the children's refusal to return to his home in Norwalk. A few days later, N contacted the defendant by telephone and asked her why the children were not returned to F, and she told N that they did not want to come out to F and that she would not make them go with him. N then warned the defendant that she could be in trouble if she did not return the children to school. When the children were still not in school approximately one week later, N followed up with the defendant, who said that she would not return the children to school. Thereafter, N sought an arrest warrant for the defendant. On appeal, the defendant claimed that § 53a-98 (a) (3) was unconstitutionally vague as applied to her and that there was insufficient evidence to support her conviction. *Held*:

1. The defendant could not prevail on her unpreserved claim that § 53a-98 (a) (3) was unconstitutionally vague as applied to her, the defendant having failed to demonstrate the existence of a constitutional violation, and, therefore, her claim failed under the third prong of the test set forth in *State* v. *Golding* (213 Conn. 233):

   a. The defendant's claim that § 53a-98 (a) (3) was unconstitutionally vague as applied to her because the phrase "refuses to return" was not defined in the statute and its meaning was not otherwise sufficiently

* In accordance with federal law; see 18 U.S.C. § 2265 (d) (3) (2018); we decline to identify any party protected or sought to be protected under a protective order or a restraining order that was issued or applied for, or others through whom that party's identity may be ascertained.

clear or definite to provide notice that her inaction of not forcing the children to go with F could expose her to criminal liability was unavailing; the language of the statute provided clear notice to the defendant that the core meaning of the phrase "refuses to return," which could be ascertained from common dictionary definitions, encompassed the behavior of a person who either affirmatively declines to return a child to his lawful custodian or declines to take any affirmative steps to do so upon the lawful custodian's request, and a person of ordinary intelligence in the defendant's circumstances would have understood that her abdication of any parental responsibility to return the children to F violated the core meaning of the statute.

b. The defendant failed to demonstrate that she fell victim to arbitrary and discriminatory enforcement of § 53a-98 (a) (3); although the defendant claimed that the statute is subject to arbitrary enforcement due to its vagueness and that it, therefore, impermissibly delegates the resolution of the definition of the phrase "refuses to return" to police officers, judges and juries on an ad hoc basis, it was unnecessary to address the particular enforcement of the statute in this case, this court having concluded that § 53a-98 (a) (3) provided sufficient guidance as to what conduct is prohibited and that it has a clear core meaning within which the defendant's conduct fell.

2. The evidence was sufficient to sustain the defendant's conviction of three counts of custodial interference in the second degree; the jury reasonably could have inferred from the evidence presented at trial that the defendant had the ability to take some action to return the children to F but that she refused to do so, F and N having testified that the defendant stated that she would not make the children go with F and that she was going to do what the children wanted, and the defendant having testified that she was going to support the children's decision not to go with F and that she was not going to make the decision for them, even though, as their mother, she had a certain amount of power do so.

Argued September 13, 2019—officially released June 2, 2020

*Procedural History*

Substitute information charging the defendant with three counts of the crime of custodial interference in the second degree, brought to the Superior Court in the judicial district of Stamford-Norwalk, geographical area number twenty, and tried to the jury before *Hernandez*, *J.*; verdict and judgment of guilty, from which the defendant appealed to this court. *Affirmed.*

*Megan L. Wade*, assigned counsel, with whom were *James P. Sexton*, assigned counsel, and, on the brief, *Emily G. Sexton*, assigned counsel, for the appellant (defendant).