

No. 1-12-3286

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 10 CR 20313
	)	
RYAN THOMPSON,	)	Honorable
	)	Clayton J. Crane,
Defendant-Appellant.	)	Judge Presiding.

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JUSTICE LIU delivered the judgment of the court.  
Presiding Justice Simon and Justice Neville concurred in the judgment.

**O R D E R**

¶ 1 *Held:* Defendant was proven guilty beyond a reasonable doubt of aggravated kidnapping when the evidence at trial established that the victim did not have keys to the locked security gate, and defendant threatened to injure her if she moved or went to the windows.

¶ 2 Following a bench trial, defendant Ryan Thompson was found guilty of aggravated criminal sexual assault, aggravated kidnapping, and aggravated domestic battery. He was sentenced to consecutive prison terms of 10 years for aggravated criminal sexual assault and 7 years for aggravated kidnapping. He was also sentenced to a concurrent term of three years in

prison for aggravated domestic battery. On appeal, defendant contends that he was not proven guilty of aggravated kidnapping beyond a reasonable doubt because there was no evidence that he secretly confined the victim. He also contends that his conviction for aggravated domestic battery violates the one-act, one-crime rule. We affirm in part, vacate in part, and remand for resentencing.

¶ 3 Defendant's arrest and prosecution arose out events occurring over several days during which the victim, defendant's former girlfriend N. F. was, *inter alia*, locked inside defendant's home and beaten.

¶ 4 At trial, the victim testified that she and defendant had a child together, and that the end of their relationship had been "very rough." On October 16, 2010, defendant contacted the victim on her mother's cell phone and told the victim to come to his apartment to pick up items he purchased for their child. The victim agreed "only because of the child." When she arrived, the security gate to his apartment was locked, so she reached through and knocked on the door. She did not have a key to the padlock securing the gate. When defendant let the victim in, he told her that items for their daughter were in his bedroom. Once the victim was there, however, defendant asked her to sit on the bed because he wanted to ask her something. Defendant told the victim she had "two seconds" to tell him who she was fu\*\*\*. Although the victim was shocked that defendant would ask her questions about her life because they were no longer together, she answered "[n]obody." Defendant responded by punching her in the right eye. He then repeated the question and punched her in nose when her answer was the same. The victim could not leave because there were security gates on the front and back doors and the kitchen window was

boarded up. She could not jump out of a window because defendant lived in a "high rise" building.

¶ 5 Defendant subsequently told her that he was not done yet and when she left she would be so "fu\*\*\* up" that no one would recognize her. At one point, defendant told the victim to take off her bloody clothes and clean them. He also told her to take a shower and put on certain clothes. The victim complied. Defendant then told the victim that since she was fu\*\*\* other people, she was going to "give it" to him as well. Defendant punched the victim in the face, bit her, put his hand on her neck, and ultimately inserted his penis into her vagina. After defendant ejaculated, he told the victim to shower and she did. After the shower, defendant made the victim get onto a bed. He then wrapped his leg and arm around her tightly and told her she was not going "no where [*sic*]." She did not try to get away because she did not know where the keys to the locked security gate were located.

¶ 6 When the victim woke up, defendant told her that he was going to let her go and then began laughing. Defendant began running a knife down the victim's thigh, and, ultimately, stabbed her. Defendant told her to stay in bed and that he would go to his sister's house for peroxide. He told her not to get up, go to the windows or move, and that if she did he would know and "fu\*\*\* [her] up." The victim stayed in the bedroom because she was afraid for her life. When he returned, defendant first told the victim that he was going to let her go, and then said "sike [*sic*]." After pouring peroxide on the victim's leg, defendant stated he was going to school and to stay in the room until he came back. The victim heard defendant lock the apartment door and the security gate when he left. She did not try to get out because she did not have keys.

When defendant returned with groceries he instructed the victim to put them away. He then left again.

¶ 7 When defendant returned he was "very mad." Eventually, defendant asked the victim who she was fu\*\*\* and she responded no one. Defendant then struck the victim. He told her that she was "going to leave that house real fu\*\*\* up," if she made it out alive. Defendant continued to strike the victim in the face. The victim, who was choking on blood and cracked teeth, begged to be allowed to rinse out her mouth. Defendant handed her a cup and told her not to try anything stupid. Although she went to the bathroom and started the water, the victim then ran to the front room, opened a window and began yelling for help. Defendant came out, grabbed her, and held her partially out of the window threatening to drop her. Ultimately, defendant pulled her back inside, took her to the bedroom, threw her on the bed, and began to punch her in the face. When the victim realized that defendant was trying to stab her, she grabbed the knife. Although she cut several fingers, the victim was able to push the blade until it broke. She then stabbed defendant. Defendant got off her. The victim found keys, but her hands were too bloody to unlock the gate so defendant took the keys and opened the gate. The victim then ran into the hallway screaming. Defendant followed her while talking on his cell phone. The victim stayed in the hallway with defendant's neighbors until the police and an ambulance arrived.

¶ 8 The victim testified that at one point during her confinement, defendant received a call on his cell phone from the victim's mother. Defendant put the phone on speaker and held it during the conversation.

¶ 9 Carolyn F., the victim's mother, testified that when the victim left the house, she believed that the victim and her children were spending the weekend with the victim's friend Tameka. She

did, however, receive a "quick" phone call from the victim who was nervous. When Carolyn asked the victim if the victim was able to call the police, the victim said no. Carolyn did not call the police. Although she sent relatives out to look for the victim, neither the victim nor defendant was found. Carolyn did not know where defendant's new apartment was located.

¶ 10 Jo Johnson, who lived in the apartment below defendant, testified that she went up the stairs when she heard someone calling for help. Johnson called the police and stayed in the hallway. A girl then came running down the stairs with two black eyes, a head as big as a pumpkin and blood on her face. Johnson did not know the girl's name, but had previously seen her at the building with a baby.

¶ 11 Defendant testified that after he moved into the apartment, he gave the victim a set of keys. When the victim came over, they spent the evening watching DVDs and smoking marijuana. He denied threatening, hitting or telling the victim that she was not free to leave. On Sunday morning, he saw the victim looking through his cell phone and they argued. When defendant left the house, he did not tell the victim that she could not leave. He later returned with alcohol, snacks and more marijuana. That evening, they watched DVDs, drank, and smoked marijuana. The victim also performed "oral sex" on him. The next morning, he again found the victim looking at texts and photos on his phone. The photos were sent by another woman. The victim became angry when defendant reached for his phone. She ultimately pulled out a sharp metal object that looked like a trident and began to jab at him. Defendant suffered cuts to the upper chest and left the apartment so that the victim could calm down. When he returned the victim was watching television. They later engaged in consensual sexual activity. The next morning, defendant again found the victim "rummaging" through his phone. The victim told

defendant that she had something very important to tell him, but did not know how to do it.

Defendant suggested that she handcuff him in order to feel more comfortable.

¶ 12 After the victim handcuffed him, she began to tie a sheet around his hands. Although defendant told the victim to take the cuffs off, she continued to tie him up. Defendant then head butted the victim. She responded by grabbing a knife and stabbing him in the chest. Defendant ran out of the room to assess his injuries and "split" the handcuffs, then returned to the victim to ask what was "going on." The victim stabbed him multiple times. While struggling with the victim, defendant grabbed the knife and the blade broke. At one point, he began punching the victim. Although defendant was able to open the front door, the gate was still locked. When the victim saw defendant "with the light on," she put her hands on her head and repeated "oh, what have I done?" three times. Defendant told the victim to get keys. After getting the keys, defendant opened the gate and began to limp down the stairs with the victim's help. He instructed the victim to get his cell phone. Defendant then called his oldest daughter and his mother to tell them, just in case he died, that he loved them. He also called an ambulance. He eventually passed out and woke up in the hospital.

¶ 13 During cross-examination, defendant testified that he and the victim were still in an exclusive relationship in October 2010. However, he did have pictures of another woman on his cell phone. He locked the security gate with a padlock every time that he left the house.

¶ 14 In finding defendant guilty beyond a reasonable doubt as to "each and every count," the court stated that it believed the victim. Ultimately, the court sentenced defendant to 10 years in prison for aggravated criminal sexual assault (count 2) and to a consecutive 7-year sentence for aggravated kidnapping based upon the commission of aggravated domestic battery (count 5).

Defendant was also sentenced to a concurrent 3-year term of imprisonment for aggravated domestic battery (count 8). Defendant's mittimus indicates that "the balance of counts" were to merge with counts 2, 5, and 8.

¶ 15 On appeal defendant contends that he was not proven guilty beyond a reasonable doubt of aggravated kidnapping because the evidence at trial did not establish that he "secretly" confined the victim.

¶ 16 In assessing the sufficiency of the evidence, this court must determine whether any rational trier of fact, after viewing the evidence in the light most favorable to the State, could have found the elements of the offense proved beyond a reasonable doubt. *People v. Baskerville*, 2012 IL 111056, ¶ 31. "Under this standard, all reasonable inferences from the evidence must be allowed in favor of the State." *Baskerville*, 2012 IL 111056, at ¶ 31. This court is prohibited from substituting its judgment for that of the fact finder on issues involving witness credibility and the weight of the evidence. *People v. Jackson*, 232 Ill. 2d 246, 280-81 (2009). In weighing the evidence, the fact finder is not required to disregard the inferences that naturally flow from the evidence, nor must it search for any possible explanation consistent with a defendant's innocence and raise it to the level of reasonable doubt. *Jackson*, 232 Ill. 2d at 281. A criminal conviction will not be reversed based upon insufficient evidence unless the evidence is so improbable or unsatisfactory that it creates a reasonable doubt as to the defendant's guilt. *People v. Siguenza-Brito*, 235 Ill. 2d 213, 225 (2009).

¶ 17 A person commits kidnapping when he, *inter alia*, knowingly and secretly confines another against her will. 720 ILCS 5/10-1(a)(1) (West 2010). Aggravated kidnapping occurs where the kidnapping is accompanied by great bodily harm or the commission of another felony

upon the victim or is committed while the kidnapper is armed with a dangerous weapon other than a firearm. 720 ILCS 5/10-2(a)(3), (5) (West 2010).

¶ 18 Here, defendant contends that the State failed to prove that he secretly confined the victim. He argues that he made no "overt" attempts to conceal the victim's presence in his home, that is, he left several times and "even allowed" the victim to speak to her mother on his phone. He further argues that even if the victim was confined to the house because she did not have keys to the security gates, the evidence did not establish that this confinement was "secret."

¶ 19 Our supreme court has defined the term "secret" as "concealed, hidden, or not made public," and the term "confinement" as "the act of imprisoning or restraining someone." *People v. Gonzalez*, 239 Ill. 2d 471, 479 (2011). The secret confinement element may be established by evidence of the secrecy of the confinement or the secrecy of the location of the confinement. *Siguenza-Brito*, 235 Ill. 2d at 227. Confinement includes, but is not limited to, enclosure within something, most commonly a building or an automobile. *Siguenza-Brito*, 235 Ill. 2d at 227. Our supreme court has noted that "secret confinement can be shown through evidence that the defendant isolated the victim from meaningful contact with the public." *Gonzalez*, 239 Ill. 2d at 480.

¶ 20 Here, the evidence at defendant's trial, viewed in the light most favorable to the State, established that defendant contacted the victim on her mother's cell phone and told her to come and pick up items that he had purchased for their daughter. When she arrived, defendant had to unlock the security gate to admit the victim into the apartment because the victim did not have a key to the padlock locking it. Once inside the apartment, the victim was unable to leave because she did not have keys to the locked security gates, the kitchen window was boarded up and

defendant lived in a multi-story building. Additionally, defendant struck and punched her multiple times, used his body to keep her on a bed, and told her, when he left the apartment, that if she moved, got off the bed, or went to the window he would know and "fu\*\*\* [her] up." The victim explained that she did not try to leave when defendant left the apartment because she heard him lock the door and the security gate and she did not have keys. She also testified that she was scared for her life. This court cannot say that no rational trier of fact could have found defendant secretly confined the victim against her will when the victim testified that she did not have keys to unlock the security gates and defendant threatened to "fu\*\*\* [her] up" if she left the bedroom. *Baskerville*, 2012 IL 111056, at ¶ 31.

¶ 21 Defendant, however, contends that he made no effort to conceal the victim's presence at his apartment and did not isolate her from meaningful contact with the public. He argues that the victim's mother knew that the victim was at his apartment because the two women spoke on the phone and the victim's mother could have discovered the victim's location. He also argues that the victim could have made enough noise in his apartment to alert the neighbors that she needed help.

¶ 22 The record reveals that the victim's mother did not know where defendant lived, and, although the victim and her mother spoke on the phone, the call was on speaker and defendant held the phone. Our supreme court has held that the element of "secret confinement can be shown through evidence that the defendant isolated the victim from meaningful contact with the public." *Gonzalez*, 239 Ill. 2d at 480. Here, defendant isolated the victim from meaningful contact with the public when he locked her inside the apartment and threatened to "fu\*\*\* [her] up" if she left the bed, *i.e.*, walked around the apartment or went to the windows.

¶ 23 We are unpersuaded by defendant's reliance on cases where a defendant's conviction for aggravated kidnapping was reversed because other people were aware of the victim's location. See, e.g., *People v. Pasch*, 152 Ill. 2d 133, 156, 187-88 (1992) (the defendant's aggravated kidnapping conviction was reserved because the State failed to prove that the confinement of the victim was "secret" when the defendant was involved in a hostage standoff, communicated with hostage negotiators, and "made it well known" that he was holding the victim as a hostage). Here, although the victim spoke to her mother on the phone, no one but defendant was aware of the victim's exact location and defendant prevented the victim from leaving the apartment. See *Siguenza-Brito*, 235 Ill. 2d at 227 (the secret confinement element of kidnapping may be shown by proof of the secrecy of either the confinement or the place of confinement). The victim's confinement was no less secret simply because that secrecy was enforced by threats, intimidation and physical violence.

¶ 24 Ultimately, although defendant continues to argue the victim was not secretly confined because she spoke to her mother on defendant's cell phone and could have made enough noise to alert his neighbors of her presence, a trier of fact is not required to disregard the inferences that flow from the evidence or search out all possible explanations consistent with a defendant's innocence and raise them to a level of reasonable doubt. *Jackson*, 232 Ill. 2d at 281. This court reverses a defendant's conviction only when the evidence is so improbable or unsatisfactory that it creates a reasonable doubt as to his guilt (*Siguenza-Brito*, 235 Ill. 2d at 225); this is not one of those cases. Accordingly, we affirm defendant's conviction for aggravated kidnapping.

¶ 25 Defendant next contends that his conviction for aggravated domestic battery must be vacated because it violated the one-act, one-crime rule. Defendant argues that his convictions for

aggravated kidnapping predicated upon the commission of aggravated domestic battery and aggravated domestic battery cannot stand when each conviction is based upon the same physical act, *i.e.*, beating the victim with his hands.

¶ 26 Although defendant concedes that he failed to raise this one-act, one-crime argument before the trial court, a reviewing court may consider an argument raised for the first time on appeal if plain error occurred. *People v. Carter*, 213 Ill. 2d 295, 299 (2004). A violation of the one-act, one-crime rule satisfies the fundamental-fairness prong of the plain error doctrine, because it affects the integrity of the judicial process. *Carter*, 213 Ill. 2d at 299-300. Therefore, we will address the merits of defendant's one-act, one-crime contention.

¶ 27 In *People v. King*, 66 Ill. 2d 551, 566 (1977), our supreme court held that multiple convictions are improper if they are based on precisely the same physical act.

¶ 28 Here, defendant was charged with three counts of aggravated kidnapping in that he knowingly and secretly confined the victim while: committing aggravated domestic battery upon her (count 5); committing criminal sexual assault (count 6); and armed with a knife (count 7). He was also charged with one count of aggravated domestic battery by causing great bodily harm to the victim in that he beat the victim, a member of his household, with his hands. The record reveals that the trial court found defendant guilty as to all counts, and then entered conviction and sentence for, *inter alia*, aggravated kidnapping based upon the commission of aggravated domestic battery (count 5) and aggravated domestic battery (count 8). The court also merged "the balance of counts" with counts 2, 5, and 8.

¶ 29 Thus, defendant is correct, both his conviction for aggravated kidnapping and his conviction for aggravated domestic battery are based upon his act of beating the victim with his

hands. See *People v. Segara*, 126 Ill. 2d 70, 76-77 (1988) (only one conviction and sentence may be imposed if the same physical act forms the basis for more than one offense). Therefore, one of the two convictions must be vacated. *King*, 66 Ill. 2d at 566 (the one-act, one-crime rule prohibits multiple convictions when the convictions are based on the same physical act).

¶ 30 Although the State does not explicitly concede that defendant's convictions for aggravated kidnapping based upon the commission of aggravated domestic battery and aggravated domestic battery violate the one-act, one-crime rule, the State requests that this court "correct" defendant's mittimus to reflect a finding of guilt as to all counts, and a judgment and sentence on count 7 aggravated kidnapping based upon the possession of a knife, rather than count 5 aggravated kidnapping based upon the commission of aggravated domestic battery. In other words, by correcting the mittimus to reflect a conviction for aggravated kidnapping based upon defendant's use of a knife, rather than aggravated kidnapping based upon the commission of aggravated domestic battery, his conviction for aggravated domestic battery would no longer run afoul of the one-act, one-crime rule.

¶ 31 We reject the State's contention that we may "correct" the mittimus to reflect a conviction for aggravated kidnapping on count 7 rather than count 5. Although the State has the right to elect which conviction should be retained when there are multiple convictions based upon the same act (*People v. Eubanks*, 279 Ill. App. 3d 949, 963 (1996)), in the case at bar, although the trial court found defendant guilty as to all counts, it did not enter a conviction and sentence for count 7. Therefore, there is nothing for this court to correct. In this unusual situation, the State is essentially asking this court to "correct" the one-act, one-crime issue by vacating the greater offense of aggravated kidnapping based upon the commission of aggravated domestic battery

rather than the lesser offense of aggravated domestic battery, and to remand the cause for sentencing on a different aggravated kidnapping count. To the extent that the State argues that the trial court found defendant guilty of count 7 but failed to impose a sentence, this court is empowered to remand the matter to the trial court for the imposition of a sentence. See *People v. Scott*, 69 Ill. 2d 85, 88 (1977) ("in remanding the cause to the circuit court for entry of a sentence on [an unsentenced] conviction the appellate court acted within the scope of its powers.").

¶ 32 Accordingly, we vacate defendant's conviction for count 5 aggravated kidnapping based upon the commission of aggravated domestic battery, and remand to the trial court for the imposition of sentence on count 7 aggravated kidnapping based upon the possession of a knife. We affirm the circuit court of Cook County in all other aspects.

¶ 33 Affirmed in part; vacated in part; remanded for resentencing.