

No. 1-14-2354

**NOTICE:** This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST DISTRICT

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THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County
	)	
v.	)	No. 12 CR 21663
	)	
DERRICK BALDWIN,	)	Honorable
	)	Maura Slattery Boyle,
Defendant-Appellant.	)	Judge, Presiding.

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PRESIDING JUSTICE HOFFMAN delivered the judgment of the court.  
Justices Rochford and Delort concurred in the judgment.

**ORDER**

- ¶ 1 *Held:* The trial judge improperly denied the defendant's timely motion for a substitution of judges. The State confessed error, and we reversed the defendant's conviction and remanded the case to the circuit court for a new trial before a different judge on the charges of aggravated criminal sexual assault (both counts), home invasion and residential burglary.
- ¶ 2 Following a jury trial, the defendant, Derrick Baldwin, was convicted of two counts of aggravated criminal sexual assault and one count each of home invasion, residential burglary, and unlawful restraint. He was sentenced to 29 years' imprisonment on each charge to run concurrently. On appeal, the defendant seeks a reversal of his convictions, arguing that: (1) the

trial judge improperly denied his timely motion for a substitution of judges; (2) the trial court failed to give him the requisite admonitions before allowing him to waive his right to counsel; (3) the State failed to prove him guilty of unlawful restraint beyond a reasonable doubt; (4) the one-act one-crime rule prohibits his conviction on all but one of the offenses for which he was charged; and (5) the 29-year sentences which he received for residential burglary and unlawful restraint exceeded the statutory sentencing range for those offenses. The State has conceded both that the trial judge improperly denied the defendant's timely motion for a substitution of judges and failed to give him the requisite admonitions before allowing him to waive his right to counsel. Based upon the State's concessions and the following analysis, we reverse the defendant's convictions on each of the offenses of which he was charged and remand this matter to the circuit court for a new trial before a different judge on the charges of aggravated criminal sexual assault (both counts), home invasion and residential burglary.

¶ 3 The defendant was charged with two counts of aggravated criminal sexual assault, and one count each of home invasion, residential burglary, and unlawful restraint based upon allegations that he entered the apartment of M.R. on October 28, 2012, without authority to do so and committed an act of sexual penetration upon her. The defendant's case was assigned to Judge Maura Slattery Boyle on December 10, 2012, and he was arraigned on that date. On December 19, 2012, the assistant public defender (APD) who was then representing the defendant filed a "Petition for Substitution of Judges" pursuant to section 114-5(a) of the Code of Criminal Procedure of 1963 (Code) (725 ILCS 5/114-5(a) (West 2010)) with the clerk of the circuit court, alleging that the defendant feared that he would not receive a fair trial before Judge Slattery Boyle because she was prejudiced against him. That motion was noticed for hearing on January 23, 2013. When the matter came before Judge Slattery Boyle on January 23, 2013, she

denied the defendant's motion for a substitution of judge, finding that it was untimely, but gave the APD leave to submit additional authority in support of the motion and continued the case to February 23, 2013. On February 23, 2013, Judge Slattery Boyle again addressed the defendant's motion for a substitution of judge, acknowledging that it was file-stamped within 10 days of the case being assigned to her call, but again denying the motion as untimely because it was not presented for hearing within that 10-day period.

¶ 4 On August 1, 2013, the APD advised the court that the defendant had informed her that he wanted to represent himself. Judge Steven Goebel, who was presiding in Judge Slattery Boyle's stead on that date, cautioned the defendant against representing himself, suggested that he think about what he wished to do, and told him to speak to Judge Slattery Boyle about the matter. When the case came before Judge Slattery Boyle on August 26, 2013, she acknowledged that the defendant had indicated that he wished to represent himself and stated that she would allow him to do so when she was convinced of his ability. On December 20, 2013, Judge Slattery Boyle asked the defendant if he wished to represent himself, and he responded "Yes, ma'am." The court then allowed the office of the public defender to withdraw as the defendant's counsel. Thereafter, the defendant proceeded *pro se*.

¶ 5 On January 21, 2014, the date set for the commencement of trial, Judge Slattery Boyle told the defendant that she was going to transfer the case to the presiding judge for reassignment based on his previously filed motion for substitution of judge. The defendant objected on the basis that he was ready for trial and stated: "I don't mind you being my judge." The assistant state's attorney then stated: "Just so the record is clear you're withdrawing the SOJ; is that correct?" The defendant responded: "Yes, Ma'am." At that time, Judge Slattery Boyle advised the defendant that, although he had a right to represent himself, he would be held to the same

standard as an attorney and would be required to state the basis for any objections. She inquired whether the defendant still wished to represent himself. He stated: "I want to represent myself." After addressing the State's motion *in limine* relating to other-crimes evidence, the trial court proceeded to *voir dire* the venire. The defendant participated in the questioning of prospective jurors, challenging two for cause, and exercising a peremptory challenge as to another.

¶ 6 Following the selection of a jury, trial began on January 22, 2014. M.R. testified that she lived on the thirty-seventh floor of an apartment building on Kinzie Street. She stated that she returned to her apartment at around 2:45 a.m. on October 28, 2012, and went to bed at about 3:30 a.m., wearing a pink t-shirt and underwear. After falling asleep, M.R. awoke when she felt a finger or tongue on the lips of her vagina. She testified that she jumped up immediately, saw a man in the bedroom looking at her, and screamed. M.R. stated that the man began to run toward the door of her apartment, and she chased after him. According to M.R., the man tripped at the door of the apartment and fell into the well-lit hallway. It was at that time that she saw the man's face. M.R. identified the defendant in court as the man who was in her apartment. Realizing that she no longer was wearing underwear, M.R. put on a pair of pants; and after waiting several seconds, ran to the elevator. When she arrived in the lobby of the building, she told the doorman what had happened. The doorman showed M.R. and another tenant who had seen a man in his apartment, a surveillance video of the vestibule and garage area, but M.R. did not recognize anyone shown in the video. As she was looking at the video, the police arrived. M.R. returned to her apartment accompanied by the police and discovered that the electronic lock to her apartment door was not working. Upon entering the bedroom, M.R. found her underwear on the floor near her bed along with a pillow which had not been there before.

¶ 7 On October 31, 2012, M.R. met Chicago police Detective Robert Rose in the lobby of her apartment building. She was shown a photo array at that time which contained a photograph of the defendant, but was not 100% sure from his picture that the defendant was her assailant. On November 1, 2012, at the request of Detective Rose, M.R. went to the police station and viewed a physical lineup. After viewing the lineup, M.R. identified the defendant as the man who was in her bedroom on October 28, 2012.

¶ 8 On December 7, 2012, Detective Rose again contacted M.R. and requested that she come to the police station to look at some photographs. M.R. testified that she was shown two photographs on a computer. She stated that she identified herself, her vagina, and her legs along with her duvet and bed sheets appearing in the photographs. According to M.R., she had no knowledge of the existence of the photographs prior to that date and never gave anyone permission to take the pictures.

¶ 9 Chicago police Officer Luis Novalez testified that he arrested the defendant on November 1, 2012, after recognizing him from an investigative alert. Among the items in the defendant's possession at the time of his arrest was a cellphone and a bag containing a laptop computer and a USB drive. The items were inventoried and turned over to Detective Rose for further investigation.

¶ 10 Detective Rose testified that he met with M.R. on October 31, 2012, and showed her a photo array containing a picture of the defendant, but she was unable to identify anyone whose picture was contained in the array. He stated that M.R. told him that she would be able to identify her assailant if she saw him in person. According to Detective Rose, he learned on November 1, 2012, that the defendant had been arrested and requested that M.R. come to the

police station and view a physical lineup. After viewing the lineup, M.R. identified the defendant as the man who was in her bedroom on October 28, 2012.

¶ 11 Detective Rose testified that he obtained a search warrant and thereafter searched the cellphone, computer and USB drive found in the possession of the defendant at the time of his arrest. The search of the cellphone revealed two photographs which were time-stamped after 5 a.m. on October 28, 2012. One of the photos depicted a woman's crotch and legs and the other was of bedding. According to Detective Rose, he showed the photos to M.R. and she identified the photos as depicting her vagina, legs, buttocks, pink t-shirt, and bedding.

¶ 12 Following the introduction of other-crimes evidence, the State rested. Thereafter the defendant moved for a directed verdict, which was denied. The defendant chose not to testify and rested without calling any witnesses.

¶ 13 Following closing argument, the jury was instructed and began its deliberations. The jury found the defendant guilty of all charges; namely, two counts of aggravated criminal sexual assault and one count each of home invasion, residential burglary, and unlawful restraint.

¶ 14 The defendant filed two post-trial motions, arguing, *inter alia*, that his motion for a substitution of judge was wrongly denied. The defendant's post-trial motions were denied on March 18, 2014, and he was sentenced to 30 years' imprisonment on each of the charges. However, on April 15, 2014, the trial court vacated the defendant's sentences and continued the matter for another sentencing hearing. On June 16, 2014, the trial court conducted a second sentencing hearing at which the defendant was given an opportunity to present mitigation evidence. Following that hearing, the trial court imposed a sentence of 29 years' imprisonment on each of the five charges of which the defendant was convicted to run concurrently. This appeal followed.

¶ 15 For his first argument, the defendant contends that the trial court erroneously denied his motion for a substitution of judge filed on December 19, 2012, nine days after his case was assigned to Judge Slattery Boyle's call. And as a result, his convictions must be reversed and the matter remanded for a new trial before a different judge. On this argument, the State has confessed error, acknowledging that the defendant's motion for a substitution of judge was timely filed and contained all of the statutory requisites. We agree with the defendant's argument and the State's concession.

¶ 16 Section 114-5(a) of the Code provides that, within 10 days of a criminal case being placed on a judge's trial call, the defendant may move the court in writing for a substitution of trial judge on the ground that the judge "is so prejudiced against him that he cannot receive a fair trial." 725 ILCS 5/114-5(a) (West 2010). In this case, the defendant's motion for substitution of judge contained the necessary statutory assertion of prejudice on the part of Judge Slattery Boyle and was filed within the 10-day period following the assignment of the defendant's case to her trial call. As a consequence, the defendant's motion was erroneously denied as untimely and his convictions must be reversed. *People v. McDuffee*, 187 Ill. 2d 481, 490-91 (1999).

¶ 17 Next, the defendant argues that his convictions must be reversed because the trial court failed to admonish him as required by Illinois Supreme Court Rule 401(a) (eff. July 1, 1984) before allowing him to waive counsel and represent himself. Again, the State has confessed error, agreeing that the trial judge failed to substantially comply with Rule 401(a). We agree with the defendant's argument and the State's concession.

¶ 18 Illinois Supreme Court Rule 401(a) provides that a trial court shall not permit a waiver of counsel by a person, such as the defendant, accused of an offense punishable by imprisonment without first "informing him of and determining that he understands the following:

- (1) the nature of the charge;
- (2) the minimum and maximum sentence prescribed by law, including, when applicable, the penalty to which the defendant may be subjected because of prior convictions or consecutive sentences; and
- (3) that he has a right to counsel and, if he is indigent, to have counsel appointed for him by the court.”

The purpose of Rule 401(a) is to ensure that a defendant’s waiver of counsel is knowingly and intelligently made. *People v. Haynes*, 174 Ill. 2d 204, 241 (1996). Substantial compliance with the rule is required for an effective waiver of counsel. *Id.* at 236.

¶ 19 In this case, there is no indication in the record that, from the time that the defendant first indicated his desire to represent himself to December 20, 2013, when the trial court permitted the public defender to withdraw as the defendant’s counsel and he was allowed to represent himself, the trial court gave the admonitions required by Rule 401(a). As a consequence, his convictions must be reversed on that basis also. See *People v. Campbell*, 224 Ill. 2d 80, 87-88 (2006).

¶ 20 The defendant argues that his conviction for unlawful restraint must be reversed outright because the State failed to prove him guilty of the offense beyond a reasonable doubt. He contends that there is no evidence in the record establishing that M.R.’s freedom of movement was impaired or restrained physically or otherwise. We agree.

¶ 21 “A person commits the offense of unlawful restraint when he or she knowingly without legal authority detains another.” 720 ILCS 5/10-3(a) (West 2010). In the context of the statute, “detains” means that a person has been prevented from moving from one place to another. *People v. Brians*, 315 Ill. App. 3d 162, 174-75 (2000).



¶ 22 The evidence of record fails to establish that M.R.'s freedom of locomotion was ever restrained by the defendant. There is no evidence that he in any way impaired M.R.'s freedom of movement, either physically or by threat of force. As the defendant correctly points out, the evidence supports an opposite conclusion. As soon as M.R. awoke and discovered a man who she identified as the defendant standing in her bedroom, she immediately jumped up and began chasing him. The State did not introduce any evidence establishing that M.R. was in any way detained, an essential element of the offense of unlawful restraint. See *id.* at 174. We find, therefore, that the evidence presented by the State was insufficient to prove the essential elements of the offense of unlawful restraint beyond a reasonable doubt, and the defendant's conviction of that offense is reversed.

¶ 23 As the totality of the evidence at the defendant's trial was sufficient for a rational trier of fact to find that the State proved beyond a reasonable doubt each of the essential elements of the charges against him for the offenses of aggravated criminal sexual assault (both counts), home invasion and residential burglary, there would be no double jeopardy impediment to the retrial of the defendant on those charges. *People v. Ward*, 2011 IL 108690, ¶ 50. Based upon the foregoing analysis, we reverse the defendant's convictions for each of the offenses of which he was charged, and remand the matter back to the circuit court for a new trial before a different judge on the charges of aggravated criminal sexual assault (both counts), home invasion and residential burglary.

¶ 24 As the parties recognize, based upon our reversal of the defendant's convictions on each of the charges and our order remanding the matter to the circuit court for a new trial, we need not address the defendant's arguments relating to the propriety of his sentence for residential burglary or the implications of the one-act one-crime rule.

No. 1-14-2354

¶ 25 Reversed and remanded.