

No. 1-14-3469

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IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,) Appeal from the
) Circuit Court of
 Plaintiff-Appellee,) Cook County.
)
 v.) No. 10 CR 6324
)
 CHAUVET STIGGERS,) Honorable
) Stanley J. Sacks,
 Defendant-Appellant.) Judge Presiding.

JUSTICE CUNNINGHAM delivered the judgment of the court.
Presiding Justice Hoffman and Justice Delort concurred in the judgment.

ORDER

¶ 1 *Held:* Defendant’s convictions for aggravated criminal sexual assault with a firearm and aggravated kidnapping with a firearm are affirmed where the victim’s testimony and the circumstances under which she was able to view the gun were sufficient for a rational trier of fact to conclude that defendant possessed a firearm. We modify the mittimus to fully credit defendant for time spent in presentence custody.

¶ 2 Following a jury trial, defendant Chauvet Stiggers was convicted of two counts of aggravated criminal sexual assault (ACSA) for sexual penetrations committed during the commission of the felony offense of kidnapping (720 ILCS 5/12-14(a)(4) (West 2010)), two

counts of ACSA for sexual penetrations committed while armed with a firearm (720 ILCS 5/12-14(a)(8) (West 2010)), and one count of aggravated kidnapping with a firearm (720 ILCS 5/10-2(a)(6) (West 2010)). The trial court merged defendant's convictions for ACSA during the offense of kidnapping with his convictions for ACSA with a firearm and sentenced defendant to an aggregate term of 71 years' imprisonment, which included three mandatory 15-year firearm enhancements. Defendant appeals his convictions for ACSA with a firearm and aggravated kidnapping with a firearm, arguing that the State failed to prove beyond a reasonable doubt that he was armed with a firearm at the time of the offenses. He also contends that his mittimus should be corrected to accurately reflect the number of days he spent in presentence custody. For the following reasons, we affirm the convictions but we modify the mittimus.

¶ 3

BACKGROUND

¶ 4 Defendant was arrested in connection with a series of sexual assaults that occurred in the Ashburn neighborhood of the city of Chicago. The instant case arises from the sexual assault of then 13-year-old S.M. on March 8, 2010. Prior to trial, the court granted the State's motion to present proof of other crimes evidence for the purposes of proving defendant's identity, propensity to commit sexual assault, and lack of consent by S.M. On September 8, 2014, the case proceeded to jury trial.

¶ 5 As defendant argues only that the State failed to prove he was armed with a firearm, we will set forth in detail the testimony of S.M., the only witness who observed a firearm on the day of her assault. S.M. testified that, on March 8, 2010, she was 13 years old and in the 8th grade at Rosenwald Elementary School. She was walking to school by herself that morning when defendant drove by in a dark green minivan and shouted to get her attention. Because she did not

know defendant, she ignored his calls and kept walking. Defendant reversed the van until he was next to her, pointed a gun at her, and told her to get into the van. S.M. could only see the silver barrel of the gun. S.M. entered the van and sat in the front passenger seat.

¶ 6 Defendant drove to an alley and told S.M. to go to the back seat of the van. Defendant joined her in the back of the van with the gun in his hand. He took his pants off, and removed S.M.'s pants and underwear. He placed his mouth on S.M.'s vagina, and later engaged in vaginal intercourse. The gun remained in defendant's hand throughout the assault. When he was finished, defendant allowed S.M. to put her clothes back on and told her to return to the front passenger seat. He then dropped her off in an alley near her school.

¶ 7 S.M. attended school that day, but did not tell anyone what had happened to her because she was afraid and ashamed. When she went to the bathroom, S.M. noticed blood and semen in her underwear. When she returned home, S.M. did not tell her grandmother about the sexual assault.

¶ 8 The next day at school, S.M.'s teacher passed out a flyer to students which warned them about a man in the area who had committed sexual assaults. When she saw the flyer, S.M. started to cry and told her teacher about the sexual assault that occurred the day before. The teacher took S.M. to the principal's office, and the police were called. Police officers drove S.M. home to retrieve her underwear from the day before and then drove her to a hospital.

¶ 9 While at the hospital, S.M. viewed a photo array and identified defendant as the man that had sexually assaulted her. The next day, March 10, 2010, S.M. went to the police station to view a physical lineup, from which she again identified defendant.

¶ 10 On cross-examination, S.M. admitted that she was not knowledgeable about guns. She stated that she did not know whether the gun was loaded. When asked if she knew whether the gun was real, S.M. admitted that she did not. Defendant did not shoot the gun, and did not touch or hit S.M. with the gun.

¶ 11 On redirect examination, the following exchange took place:

“Q. Now you indicated that you may not have been familiar with guns back in March of 2010, but you knew what a gun looks like, right?

A. Yes.

Q. What the defendant had in his hand was a gun, is that right?

A. Yes.”

¶ 12 After S.M.'s testimony, a DNA analyst testified that the DNA profiles recovered from the underwear that S.M. wore on the day of the assault matched the DNA profiles of defendant and S.M.

¶ 13 The State introduced “other crimes” evidence from two other sexual assaults that took place a few days before the assault of S.M. The court instructed the jury that this evidence was only to be considered for the purposes of proving identity, lack of consent, and defendant’s propensity to commit sex crimes. F.W. testified that on March 4, 2010, she was 17 years old and was sexually assaulted by defendant while walking home after school. Defendant blocked F.W.’s path on the sidewalk by pulling a green minivan into a driveway. He then exited the van, picked up F.W. by the waist, and carried her into the passenger side of the van. Defendant then drove

the van into an alley, and threatened to cut F.W. with a knife. He pulled her pants and underwear down and attempted to engage in vaginal intercourse. When F.W. told defendant that she was on her period, he got off of her and she escaped from the van. F.W. subsequently identified defendant in a photo array and picked him out of a physical lineup.

¶ 14 R.B. testified that, on March 5, 2010, she was 16 years old and was sexually assaulted by defendant. She was walking alone to a bus stop on the way to school when defendant drove a green van into an alley to cut her off as she walked on the sidewalk. He pointed a silver gun at R.B. and told her to get inside of the van. R.B. got into the front passenger seat, and the defendant drove away from the alley.

¶ 15 Defendant told R.B. to get in the backseat of the van, but she refused. He then pointed the gun at R.B. and demanded that she perform oral sex. He continued to drive the van around the city while she performed oral sex on him. Defendant eventually let her out of the van near her school and told her that he would kill her if she told anyone what had happened. R.B. subsequently identified defendant in a photo array and a physical lineup.

¶ 16 A jury found defendant guilty of two counts of ACSA for sexual penetrations committed during the commission of the felony offense of kidnapping (720 ILCS 5/12-14(a)(4) (West 2010)), two counts of ACSA for sexual penetrations committed while armed with a firearm (720 ILCS 5/12-14(a)(8) (West 2010)), and one count of aggravated kidnapping while armed with a firearm (720 ILCS 5/10-2(a)(6) (West 2010)). The trial court merged the ACSA during the commission of a felony counts with the ACSA with a firearm counts. Noting that each conviction had a base sentence of six years and was subject to a mandatory 15-year firearm enhancement, the trial court sentenced defendant to 25 years' imprisonment for each of the two

ACSA with a firearm counts and 21 years' imprisonment for aggravated kidnapping with a firearm, to be served consecutively, for a total sentence of 71 years' imprisonment.

¶ 17 Defendant appeals his convictions, arguing that the State failed to prove beyond a reasonable doubt that he possessed a firearm at the time of the offenses.

¶ 18 ANALYSIS

¶ 19 A person commits the offense of criminal sexual assault if that person uses force or threat of force to commit an act of sexual penetration. 720 ILCS 5/12-13(a)(1) (West 2010). As relevant here, a person commits aggravated criminal sexual assault with a firearm if that person commits criminal sexual assault while armed with a firearm. 720 ILCS 5/12-14(a)(8) (West 2010). A person commits the offense of kidnapping when that person knowingly, by force or threat of imminent force, carries another from one place to another with intent secretly to confine that other person against his or her will. 720 ILCS 5/10-1(a)(2) (West 2010). A person commits the offense of aggravated kidnapping with a firearm if that person commits the offense of kidnapping while armed with a firearm. 720 ILCS 5/10-2(a)(6) (West 2010).

¶ 20 ACSA is a Class X felony, punishable by a sentence of 6 to 30 years' imprisonment. 720 ILCS 5/12-14(d)(1) (West 2010); 730 ILCS 5/5-4.5-25 (West 2010). However, a defendant found guilty of ACSA with a firearm is subject to a mandatory 15-year enhancement. 720 ILCS 5/12-14(d)(1) (West 2010). Similarly, aggravated kidnapping is a Class X felony punishable by a sentence of 6 to 30 years' imprisonment. 720 ILCS 5/10-2(b) (West 2010); 730 ILCS 5/5-4.5-25 (West 2010). A defendant found guilty of aggravated kidnapping with a firearm is subject to a mandatory 15-year enhancement. 720 ILCS 5/10-2(b) (West 2010).

¶ 21 For the purposes of ACSA and aggravated kidnapping, “firearm” has the meaning ascribed to it by the Firearm Owners Identification Card (FOID) Act (430 ILCS 65/1.1 (West 2010)). 720 ILCS 5/2-7.5 (West 2010); *People v. Toy*, 407 Ill. App. 3d 272, 288 (2011). The FOID Act defines a firearm as “any device, by whatever name known, which is designed to expel a projectile or projectiles by the action of an explosion, expansion of gas or escape of gas.” 430 ILCS 65/1.1 (West 2010).

¶ 22 Defendant argues that S.M.’s testimony was insufficient to prove beyond a reasonable doubt that he possessed a “firearm” as defined by the FOID Act at the time of the offenses. Thus, he urges that his convictions for ACSA with a firearm should be reduced to criminal sexual assault and merged with his convictions for ACSA during a kidnapping, and that his conviction for aggravated kidnapping with a firearm should be reduced to simple kidnapping. He further argues that the three 15-year firearm enhancements that were applied to his sentences should be removed. Accordingly, defendant argues that his sentence should be reduced by 45 years, from 71 to 26 years’ imprisonment.

¶ 23 The due process clause of the fourteenth amendment to the United States Constitution safeguards defendants from conviction in state court except upon proof beyond a reasonable doubt of every fact necessary to constitute the crime charged. *People v. Brown*, 2013 IL 114196, ¶ 48; *Jackson v. Virginia*, 443 U.S. 307, 315-16 (1979). When considering a challenge to the sufficiency of the evidence in a criminal case, a reviewing court’s function is not to retry the defendant. *People v. Lloyd*, 2013 IL 113510, ¶ 42. Rather, a reviewing court must decide whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the offense beyond a reasonable doubt. *Id.*

¶ 24 This means that we must draw all reasonable inferences from the record in favor of the prosecution, and that “ ‘[w]e will not reverse a conviction unless the evidence is so improbable, unsatisfactory, or inconclusive that it creates a reasonable doubt of defendant’s guilt.’ ” *Id.* ¶ 42 (quoting *People v. Collins*, 214 Ill. 2d 206, 217 (2005)). It is the jury’s responsibility, as the trier of fact, “to resolve conflicts in the testimony, to weigh the evidence, and to draw reasonable inferences from basic facts to ultimate facts.” *People v. Herring*, 324 Ill. App. 3d 458, 460 (2001).

¶ 25 The State does not have to prove a gun is a firearm by direct or physical evidence. *People v. Wright*, 2015 IL App (1st) 123496, ¶ 74. The State need not present a firearm in order for the trier of fact to find the defendant possessed one. *People v. Jackson*, 2016 IL App (1st) 141448, ¶ 15. Instead, the “unequivocal testimony of a witness that the defendant held a gun is circumstantial evidence sufficient to establish that a defendant was armed during a robbery.” *Wright*, 2015 IL App (1st) 123496, ¶ 74.

¶ 26 Defendant’s main contention is that S.M.’s testimony was equivocal, and therefore insufficient to support a finding that he possessed a firearm, let alone a “firearm” as defined by the FOID Act. On direct examination, S.M. testified that defendant pointed a gun at her and told her to get into the van. She described the gun as having a silver barrel and recalled that defendant kept the gun in his hand for the duration of the assault in the back seat of the van.

¶ 27 On cross examination, S.M. admitted that, on March 8, 2010, she did not know anything about guns. She never heard defendant cock the gun. Defendant did not shoot the gun and did not touch S.M. with the gun. Most relevant for our purposes, S.M. stated that she did not know with certainty whether the defendant held a real gun.

¶ 28 However, on redirect examination, S.M. stated that, while she did not have much knowledge about guns, she did know what guns looked like, and reaffirmed that defendant had a “gun” in his hand.

¶ 29 While S.M. conceded that she did not know for certain that the gun in defendant’s hand was real, she ultimately concluded, based on her first-hand observation, that defendant was holding a gun. She had ample opportunity to observe the gun, as she testified that defendant held the gun in his hand for the duration of the assault. Her testimony “and the circumstances under which [she] was able to view the gun” were sufficient to support the jury’s finding that defendant possessed a real gun. *People v. Washington*, 2012 IL 107993, ¶ 36. Furthermore, there was no evidence suggesting that the gun was anything other than a real gun. See *People v. Malone*, 2012 IL App (1st) 110517, ¶ 52 (finding sufficient evidence that the defendant had a firearm and noting that “[t]here was no contrary evidence presented that the gun was a toy gun, a BB gun, or anything other than a ‘real gun.’ ”).

¶ 30 Viewing this evidence in the light most favorable to the State, we find that a rational trier of fact could have found beyond a reasonable doubt that defendant was armed with a firearm. Thus, we will not disturb the jury’s determination that defendant possessed a firearm.

¶ 31 Defendant also contends, and the State correctly agrees, that his mittimus should be corrected to credit him with 1,681 days of presentence incarceration. A defendant is entitled to credit for any part of any day he spends in presentence custody, excluding the day of sentencing. 730 ILCS 5/5-4.5-100 (West 2010); *People v. Williams*, 239 Ill. 2d 503, 509 (2011). Defendant was arrested on March 10, 2010, and was sentenced on October 16, 2014. Counting the day of his arrest, and excluding his sentencing date, defendant spent 1,681 days in presentence custody.

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Pursuant to Illinois Supreme Court Rule 615(b)(1), we order the clerk of the circuit court to correct the mittimus accordingly.

¶ 32 For the foregoing reasons, we affirm the defendant's convictions and order the clerk of the circuit court to correct the mittimus.

¶ 33 Affirmed as modified.