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2018 IL App (3d) 170836-U

Order filed May 1, 2018

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

2018

In re K.K.,	)	Appeal from the Circuit Court
	)	of the 9th Judicial Circuit,
a Minor	)	McDonough County, Illinois,
	)	
(The People of the State of Illinois,	)	
	)	
Petitioner-Appellee,	)	Appeal No. 3-17-0836
	)	Circuit No. 17-JD-15
v.	)	
	)	
K.K.,	)	Honorable
	)	Patricia A. VanderMeulen-Walton,
Respondent-Appellant).	)	Judge, Presiding.

JUSTICE McDADE delivered the judgment of the court.
Justice Holdridge concurred in the judgment.
Justice Schmidt concurring in part, dissenting in part.

ORDER

¶ 1 *Held*: (1) The evidence was sufficient to find respondent delinquent on the basis of unlawful restraint. (2) The unlawful restraint and criminal sexual abuse findings were both predicated on one continuous act.

¶ 2 Respondent, K.K., appeals his adjudication of delinquency, arguing that (1) the evidence was insufficient to find that he committed the offense of unlawful restraint, and (2) under the

one-act, one-crime doctrine, the adjudication of delinquency could only be based on one of the underlying offenses. We affirm in part, vacate in part, and remand for resentencing.

¶ 3 FACTS

¶ 4 On March 21, 2017, the State filed a petition for adjudication of wardship alleging that respondent was delinquent in that on March 17, 2017, he committed (1) the unlawful restraint of M.A. by "knowingly, without legal authority, detain[ing] [M.A.] by carrying [M.A.] into a bedroom, throwing her on the bed and locking the door to said bedroom, thus prohibiting her from leaving the room, in violation of 720 ILCS 5/10-3(a) [(West 2016)]," and (2) the criminal sexual abuse of M.A. by "committ[ing] an act of sexual conduct with [M.A.], who [was] at least 13 years of age but under 17 years of age, in that [respondent] touched [M.A.]'s vagina with his finger(s), and [respondent] is less than 5 years older than [M.A.], in violation of 720 ILCS 5/11-1.50(c) [(West 2016)]."

¶ 5 An adjudicatory hearing was held on September 4, 2017. M.A. testified that she was 15 years old, the same age as respondent. On the evening of March 17, 2017, she attended a party at A.R.'s house in Macomb. Respondent was also at the party. M.A. had not met respondent prior to that night. Some people at the party were drinking alcohol and taking drugs. M.A. did not consume any drugs, but she had one sip of a beverage that could have contained alcohol. At one point in the evening, A.R. became upset and went outside. Most of the people at the party went outside with him; the only people left inside were M.A., respondent, and R.F. The three of them were talking and listening to music in the common area of the basement, and then respondent carried M.A. into a bedroom in the basement. She did not want to go into the bedroom. Once in the bedroom she "got set on the bed." Respondent closed the door to the bedroom. R.F. "was trying to open up the door and then, like, push the door open," but he was unsuccessful. M.A.

stated, "When [R.F.] was trying to get in[to the bedroom, respondent] was at the door. But then when [R.F.] stopped [trying to get into the bedroom, respondent] got on top of me." M.A. tried to exit the room by approaching the door twice. The first time she told respondent that she needed to talk to her friend, K.P. Respondent was on top of her at that point and would not let her leave. M.A. said that while respondent was on top of her, he put his hand in her pants and touched her vagina. She did not want him to do that. She did not tell him that she wanted him to do that. After he touched her, M.A. again told respondent she needed to talk to K.P. She was able to push respondent off her and then left the bedroom.

¶ 6 R.F. testified that he was 15 years old and was at the party at A.R.'s house. He had been drinking, but still remembered the events that occurred that night. At one point, he saw respondent pick up M.A. R.F. had met M.A. at a track meet the week before. R.F. stated,

> "He just picked her up, like—it wasn't like he grabbed her or anything. He just picked her up. I think she was completely okay with it.
>
> * * *
>
> *** It wasn't something, like, she was trying to get out or anything. She let him carry her downstairs."

R.F. followed them to the bedroom. He saw M.A.'s face and said, "At that moment she didn't really look like she wanted to be at the party, but I can only assume that's because she's not a party girl. She doesn't do that type of stuff. She looked like she didn't want to be there." He saw and heard respondent "thr[o]w [M.A.] on the bed." R.F. stated that he and respondent "kind of had, like, a pushing thing with the door. [R.F.] was pushing the door back and forth because [he] was trying *** to go in to see what was going on." He wanted to get in to make sure "what was going on was consented." However, respondent was trying to keep R.F. out of the bedroom.

Eventually respondent managed to close the door and R.F. stated that he "couldn't get in after that." R.F. did not hear the door lock. He had talked to some police officers and told them he thought the door had locked, but at trial he stated, "I thought that I recalled it being a locked door but I don't. I don't know if it was or not. I don't want to say that for sure because I just don't want to guess."

¶ 7 Billie Joe McDonald testified that he was a detective with the McDonough County Sheriff's Office and worked part-time with the Bushnell Police. He received a telephone call two days after the party from Jerry A., M.A.'s father. Jerry told McDonald that M.A. had been assaulted at a party in Macomb. McDonald and Detective Denise Cremer called respondent's mother and asked if she and respondent would come to the Sheriff's office. They met in an interview room and the meeting was recorded. The videotape of the interview was played in court. In the videotape, respondent stated that he went to the party. He said he did not drink any alcohol, but other people were drinking alcohol. When they were upstairs at the party, respondent asked M.A., "Are you down?" M.A. replied, "I don't know. I'm a virgin." Respondent stated that M.A. was smiling when she said it. He then carried M.A. partway downstairs and then she walked the rest of the way into the bedroom. He and M.A. "made out for like 30 seconds" on the bed in the bedroom. Respondent did not state how M.A. got on the bed. At some point, R.F. entered the bedroom and was joking around, asking if they needed a condom. Respondent "put [R.F.] out of the [bed]room." He told R.F. to get out and then "popped him upside the head." Respondent did not state whether he locked the door. Once R.F. was out of the bedroom, respondent and M.A. kissed for a few seconds and then he "slid [his] hand in her pants." Respondent again asked M.A., "Are you down?" M.A. responded that she needed to go upstairs to talk to K.P., and "that was the end of it." Respondent said that M.A. never said "no."

¶ 8 After interviewing respondent, McDonald went to the home where the party took place and saw the bedroom where the incident occurred. He noted that the lock on the bedroom door was a push button on the handle and the door did lock when he pressed it. Turning the handle on the inside of the bedroom door released the lock. He did not shut the door all the way when checking the lock because he did not want to lock himself out of the bedroom. McDonald stated that he believed respondent was 15 years old. The State rested.

¶ 9 A.R. testified as the sole witness for the defense. He stated that he was 15 years old and had a party at his house while his parents were gone. He did not see respondent and M.A. together in the basement bedroom, but identified the bedroom as belonging to his sister. He stated that he was familiar with the bedroom and noted that the door did lock, but that the lock "didn't work well." He said, "if you tried hard enough, you could push it open."

¶ 10 The court stated:

> "Based upon the evidence presented, first, the Court will address 3(b) that criminal sexual abuse which I think is a clearer issue. By the minor's own admission in the interview, that he committed an act of sexual conduct with [M.A.], who is at least 13 years of age but under 17 years of age, in that he put his hand down her pants and underwear and touched her vagina with his fingers. That was [M.A.]'s testimony and that was the minor's admission during the interview. And the Court would make that finding by evidence beyond a reasonable doubt.
>
> In regard to the unlawful restraint, [M.A.] testified that the minor carried her to the bedroom, set her on the bed, closed the door and that [R.F.] was trying to get in by pushing it, that [respondent] was trying to keep him out. They

struggled with the door. [R.F.] did not get in. And, based upon his testimony, at that point he stopped trying.

[M.A.] testified that she tried to get out of the room, that she tried to go to the door, and that she said she wanted to talk to her friend. And that the minor would not allow her after—because he was laying [*sic*] on top of her then after he put his hand in her pants and underwear. After that occurred, her testimony was she pushed him off and left the room.

[R.F.]'s testimony was that he had met [M.A.] at a track meet, that he followed the minor and [M.A.] downstairs when she was being carried down. And his testimony was that [M.A.] looked like she didn't want to be there. And that's why he tried to get into the room because he wasn't sure what was going on was consented.

Based upon the demeanor of the victim as she testified here today, I mean, she appears to be somewhat soft-spoken, somewhat quiet or timid type of personality. By the minor's own statement and I believe [R.F.] as well that [M.A.] was not a partyer. It appears to the Court that she ended up in a situation that she didn't want to be in and didn't know how to get herself out of it. I think, basically, it boils down to the testimony that [M.A.] stated that she tried to get out and tried to go to the door and was prevented from doing so. Then the sexual abuse occurred.

For that reason, the Court would find that the offense of unlawful restraint has been committed by evidence beyond a reasonable doubt. The minor would be adjudicated as delinquent."

Respondent was sentenced to two years' probation.

¶ 11 ANALYSIS

¶ 12 On appeal, respondent argues (1) the evidence was insufficient to find he committed the offense of unlawful restraint, and (2) the findings that he had committed both unlawful restraint and criminal sexual abuse violate one-act, one-crime principles. We will consider each argument in turn.

¶ 13 I. Sufficiency of the Evidence

¶ 14 Though the court found the evidence sufficient to prove beyond a reasonable doubt that respondent had committed both unlawful restraint and criminal sexual abuse, he solely challenges the sufficiency of the evidence regarding the unlawful restraint. As the evidence shows that respondent impaired M.A.'s freedom of movement when he carried her into the bedroom, blocked the door, and lay on top of her, we find the evidence sufficient to find respondent committed the offense of unlawful restraint.

¶ 15 When a delinquency petition is filed, the State must prove the elements of the substantive offense charged beyond a reasonable doubt. *In re Ryan B.*, 212 Ill. 2d 226, 231 (2004). We will not overturn a circuit court's delinquency finding "unless, after viewing the evidence in the light most favorable to the State, no rational fact finder could have found the offense[] proved beyond a reasonable doubt." *In re Gino W.*, 354 Ill. App. 3d 775, 777 (2005). "The fact finder, not a court of review, must assess the credibility of the witnesses, resolve conflicts in the evidence, and decide what reasonable inferences to draw from the evidence." *Id.* "[T]he testimony of a single witness, if positive and credible, is sufficient to convict, even though it is contradicted by the defendant." *People v. Siguenza-Brito*, 235 Ill. 2d 213, 228 (2009).

¶ 16 To sustain a charge of unlawful restraint, the State must prove that respondent "knowingly without legal authority detain[ed] another." 720 ILCS 5/10-3(a) (West 2016). "The key concern for unlawful restraint is whether a person was detained, that is, whether that person's 'freedom of locomotion *** was impaired.' " *People v. Daniel*, 2014 IL App (1st) 121171, ¶ 50 (quoting *People v. Satterthwaite*, 72 Ill. App. 3d 483, 485 (1979)). Stated another way, "The gist of unlawful restraint is the detention of a person by some conduct which prevents him from moving from one place to another." *People v. Bowen*, 241 Ill. App. 3d 608, 627-28 (1993). "[T]he duration of the restraint, however short, is inconsequential." *People v. Jones*, 93 Ill. App. 3d 475, 479 (1981).

¶ 17 Here, the evidence showed that respondent picked M.A. up and carried her into the bedroom. M.A. expressly testified that she did not want to go into the bedroom with respondent. This testimony alone, when viewed in the light most favorable to the State, is enough to uphold the unlawful restraint adjudication as, while respondent was carrying M.A. into the bedroom, her freedom of movement was impaired. See *id.* (where the defendant grabbed the victim on the street and began pulling her towards an abandoned building the evidence was sufficient to support a conviction for unlawful restraint, even though the encounter only lasted for three to four seconds before the victim escaped). However, respondent continued to detain M.A. The evidence further showed that, after respondent's "throwing" M.A. on the bed, R.F. tried to enter the bedroom and respondent struggled to keep him out. During this struggle, respondent blocked the door and M.A. was again detained in the bedroom and prevented from leaving. After shutting and locking the door, respondent lay on top of M.A., again restricting her movement. Each of these actions restricted M.A.'s movement.

¶ 18 In coming to this conclusion, we note that respondent places great weight on the fact that the locked door would not have kept M.A. inside the bedroom, as she only had to turn the door handle to unlock it. As stated above, even without the lock there was enough evidence to establish that respondent detained M.A. and to support a finding that respondent committed the offense of unlawful restraint.

¶ 19 II. One-Act, One-Crime

¶ 20 Respondent next argues that, under the one-act, one-crime doctrine, the adjudication of delinquency may only be based on either the commission of the offense of criminal sexual abuse or unlawful restraint where they both stemmed from the same acts. The State responds that both should stand because respondent engaged in multiple acts. Using, as guidance, the six-factor test used by our supreme court in *People v. Sienkiewicz*, 208 Ill. 2d 1, 7 (2003), we find that the conduct, here, constituted one single, continuous act and, therefore, the adjudication of delinquency may only be based on the commission of one of the offenses. Respondent and the State agree that, upon finding that the one-act, one-crime doctrine was violated, the unlawful restraint finding must be vacated. Therefore, we vacate the finding that respondent committed the offense of unlawful restraint.

¶ 21 The general rule for one-act, one-crime challenges is that, where multiple charges arise out of the same act, a respondent may be convicted and sentenced only for the most serious offense. *People v. King*, 66 Ill. 2d 551, 565 (1977). " 'Act,' when used in this sense, is intended to mean any overt or outward manifestation which will support a different offense." *Id.* at 566. In determining whether there are one or more acts underlying the charges, the supreme court has recognized a six-factor test:

> "(1) whether the defendant's actions were interposed by an intervening event; (2) the time interval between the successive parts of the defendant's conduct; (3) the identity of the victim; (4) the similarity of the acts performed; (5) whether the conduct occurred in the same location; and (6) the prosecutorial intent, as shown by the wording of the charging instruments." *Sienkiewicz*, 208 Ill. 2d at 7 (citing *People v. Baity*, 125 Ill. App. 3d 50 (1984)).

We will, therefore, apply this test.

¶ 22 The first factor is whether an intervening event was present. Here, there was no intervening event. Respondent carried M.A. into the bedroom, "threw" her on the bed, shut and locked the door, and then lay on top of M.A. on the bed where he put his hand in her pants. Though R.F. tried to enter the bedroom when respondent shut and locked the door, we do not believe this action constituted an intervening event. Along the same lines, the second factor is the time interval between the successive parts of respondent's conduct. The conduct, here, took place in rapid succession over an unbroken time interval. Factors one and two weigh in favor of finding one single, continuous act.

¶ 23 The third factor is the identity of the victim. Here, M.A. was the sole victim in both charges, which supports finding that only one act occurred. Fourth, we look at the similarity of the acts performed. Carrying M.A., putting her on the bed, closing and locking the door, and then lying on her is dissimilar to placing his hand down her pants. The fourth factor thus does not support the proposition that one act occurred. The fifth factor considers the location of the conduct. All of the conduct here occurred in the same place, the basement of A.R.'s house. Though an argument could be made that part of the carrying occurred outside the bedroom and everything else happened inside the bedroom, the supreme court "discourage[s] a hypertechnical

approach to parsing this factor." *Id.* at 9. Moreover, carrying M.A. into the bedroom was only one basis for unlawful restraint. As discussed above (*supra* ¶ 17), the conduct in the bedroom can also support the unlawful restraint adjudication. We, therefore, find that this factor supports the finding that only one act occurred. The prosecutorial intent in the sixth factor shows that the State intended to charge these as separate offenses based on separate acts. The sixth factor, therefore, does not support a finding of a single act.

¶ 24 Accordingly, we find that four of the six factors are met, which leads us to the conclusion that both charges stem from a single, continuous course of conduct. Stated another way, both charges are based on one act. Thus, the one-act, one-crime doctrine was violated in the instant case.[1]

¶ 25 We find further credence for this conclusion in the Sex Offender Registration Act (Act). 730 ILCS 150/1 *et seq.* (West 2016). Under the Act, a sex offender is anyone who has been convicted or adjudicated of a sex offense. *Id.* § 2(A). The Act sets forth a list of offenses that are considered sex offenses, including criminal sexual abuse. *Id.* § 2(B)(1). The Act further provides that unlawful restraint is included as a sex offense "when the victim is a person under 18 years of age, the defendant is not a parent of the victim, the offense was sexually motivated ***, and the offense was committed on or after January 1, 1996." *Id.* § 2(B)(1.5). Here, M.A. was under 18 years of age, respondent was not her parent, and the offense was committed after January 1, 1996. The only question is whether the offense was "sexually motivated." *Id.* An offense is sexually motivated if "one or more of the facts of the underlying offense indicates conduct that is of a sexual nature or that shows an intent to engage in behavior of a sexual nature." 20 ILCS

[1]Respondent admits that he failed to preserve the issue. However, we review one-act, one-crime violations under the second prong of the plain error doctrine. *People v. Nunez*, 236 Ill. 2d 488, 493 (2010); *In re Samantha V.*, 234 Ill. 2d 359, 378 (2009).

4026/10(e) (West 2016). Here, the "underlying offense" would be criminal sexual abuse. Respondent's unlawful restraint of M.A. was motivated by the sexual conduct that made up the criminal sexual abuse offense. The fact that criminal sexual abuse would be the "underlying offense" for purposes of requiring respondent to register when committing the offense of unlawful restraint presupposes that both offenses stem from a single, continuous course of conduct.

¶ 26 Having found the one-act, one-crime doctrine has been violated, we now turn to the question of which adjudication should be vacated here on appeal. Where only one conviction may stand, we must uphold the more serious offense. *People v. Paulick*, 174 Ill. App. 3d 868, 870 (1988). Respondent argues that we should vacate the unlawful restraint adjudication because "[t]he most serious act[ion] in this case was [respondent's] touching of [M.A.'s] vagina." The State confesses that, "[s]hould this court find that the one act[,] one crime rule is applicable and has been violated, *** the unlawful restraint conviction should be vacated, while the criminal sexual abuse conviction should stand." We accept the State's concession and find that the unlawful restraint adjudication should be vacated. See *People v. Yeast*, 236 Ill. App. 3d 84, 90-91 (1992).

¶ 27 CONCLUSION

¶ 28 The judgment of the circuit court of McDonough County is affirmed in part, vacated in part, and remanded.

¶ 29 Affirmed in part and vacated in part.

¶ 30 Cause remanded.

¶ 31 JUSTICE SCHMIDT, concurring in part and dissenting in part:

¶ 32 The majority finds that the one-act, one-crime doctrine applies and, therefore, vacates defendant's conviction for unlawful restraint. I concur in the majority's finding that the evidence was sufficient to find that defendant committed the offense of unlawful restraint. I dissent from the finding that defendant's convictions for both unlawful restraint and criminal sexual abuse violate the one-act, one-crime principal.

¶ 33 The majority relies on *People v. Sienkiewicz*, 208 Ill. 2d 1, in its analysis. *Supra* ¶¶ 20-24. *Sienkiewicz* simply has no application here. That case involved a motorcycle driver charged with both reckless homicide and reckless driving based on speeding down a section of I-94. Applying the six-factor test to that, the court found that the reckless driving conviction and the reckless homicide charges arose from the same act.

¶ 34 In *Sienkiewicz*, the supreme court stated:

> "At the outset, we note that we have previously cautioned the appellate court not to rely too heavily on the above-cited factors. See *People v. Rodriguez*, 169 Ill. 2d 183, 188 (1996) (a court must not lose sight of the forest for the trees since the definition of an act under the *King* doctrine remains simply *** any overt or outward manifestation which will support a different offense), quoting *King*, 66 Ill. 2d at 566). In *Rodriguez*, we did not, however, comment on the merits of the six-factor test enunciated in *Baity*. *Rodriguez*, 169 Ill. 2d at 188. While we continue to advocate the *King* doctrine as the guiding principal on this issue, we acknowledge the utility of the six-factor test in many instances. Finding that test particular useful in such cases as the one at bar,

> we employ it here." (Internal quotation marks omitted.) *Sienkiewicz*, 208 Ill. 2d at 8.

¶ 35 The six-factor test simply has no utility in the case before us. Obviously, the act or acts of carrying the victim into the bedroom, locking the door and lying on top of her are separate and distinct acts from those involved in the sexual assault. It is beyond dispute that we have multiple acts that will separate multiple convictions. See *People v. Coats*, 2018 IL 121926. Having found multiple acts, we are then required to look and see whether any of the offenses are lesser-included offenses. *Id.* ¶ 12. If none of the offenses are lesser-included offenses, then multiple convictions are proper. *Id.* Obviously, unlawful restraint is not a lesser-included offense of criminal sexual abuse and vice versa.

¶ 36 We should affirm the trial court and, therefore, I respectfully dissent.