2019 IL App (1st) 152997-U

FIRST DIVISION
July 22, 2019

No. 1-15-2997

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 11 CR 11130
	)	
TYRONE HILL,	)	Honorable
	)	Thomas V. Gainer, Jr.,
Defendant-Appellant.	)	Judge Presiding.

PRESIDING JUSTICE MIKVA delivered the judgment of the court.
Justices Pierce and Griffin concurred in the judgment.

O R D E R

¶ 1 *Held*: Affirming defendant's unchallenged conviction for unlawful restraint but reversing his conviction for attempted aggravated kidnapping, where the State failed to prove beyond a reasonable doubt that the defendant intended to secretly confine his victim.

¶ 2 Following a bench trial, defendant Tyrone Hill was convicted of attempted aggravated kidnapping and unlawful restraint. The charges against Mr. Hill stemmed from an incident that occurred in 2011 at North Avenue Beach in Chicago. According to witness testimony, Mr. Hill picked up a two-year-old boy who was playing on the beach and carried him a short distance

away before the boy's father confronted Mr. Hill and took the boy back. At trial, Mr. Hill raised the affirmative defense of insanity. The trial court heard the testimony of competing experts, found that Mr. Hill was sane, though mentally ill, at the time of the incident, and sentenced him to concurrent terms of eight and six years in prison.

¶ 3 Having withdrawn his challenge to the trial court's rejection of his insanity defense, Mr. Hill now challenges only the sufficiency of the evidence supporting his conviction for attempted aggravated kidnapping. For the reasons that follow, we reverse that conviction and affirm his unchallenged conviction for unlawful restraint. We agree with Mr. Hill that the State failed to prove beyond a reasonable doubt a necessary element of the offense: that Mr. Hill intended to secretly confine the boy he was charged with attempting to kidnap. This holding, as well as the fact that Mr. Hill has served his sentence, moots the other issues raised on appeal.

¶ 4 I. BACKGROUND

¶ 5 A. Pre-Trial Fitness and Restoration Hearings

¶ 6 Although no longer directly at issue in this appeal, the trial court proceedings relating to Mr. Hill's mental health history and psychiatric condition are summarized here to the extent that they provide context for our consideration of what reasonable inferences may be drawn from the evidence presented at trial on the charge of attempted kidnapping.

¶ 7 Over three years passed between Mr. Hill's arrest and his trial in this case. During that time Mr. Hill was twice found unfit to stand trial, admitted for inpatient treatment, and, with the help of antipsychotic and mood-stabilizing medication, found by the court to be restored to fitness. A month after his arrest Mr. Hill was described as exhibiting "active psychotic symptoms" of schizoaffective disorder bipolar type. When he received treatment at an inpatient psychiatric facility and was compliant with his prescribed medications, Mr. Hill's condition

improved, to the point that he was "no longer actively psychotic," could understand the charges brought against him, and could assist his counsel in presenting his defense. When he was transferred back to jail to await trial however, where at least one psychiatrist who examined him suspected he was not taking his medication, Mr. Hill became "increasingly psychotic, defocused and derailed," with "hyperactivity of his movements and thinking," "psychomotor agitation," an affect that "varie[d] from hostility to being overly friendly or jocular in nature," speech that was "rambling and pressured," and "a thought pattern that was disorganized, disjointed and convoluted."

¶ 8 B. Trial

¶ 9 Just before trial, defense counsel acknowledged that there had been "fitness issues throughout the pendency" of the proceedings thus far, but stated that she had no present concern for her client's fitness to stand trial, as she "understood he ha[d] been taking his medications as prescribed on a daily basis." Mr. Hill waived his right to a trial by jury and a two-day bench trial was held on October 21 and 22, 2014.

¶ 10 1. The State's Case In Chief

¶ 11 The State presented just two witnesses in its case in chief: Armando and Crispin Uvalle, the victim's father and paternal grandfather.

¶ 12 a. Armando Uvalle

¶ 13 Armando Uvalle testified that at approximately 11 a.m. on Saturday, July 2, 2011, he was at North Avenue Beach in Chicago with his family—five adults and five children—including his two-year-old son Isaiah. According to Armando, Isaiah was playing with his uncles and cousins in the sand when Mr. Hill suddenly picked Isaiah up and, with Isaiah facing outward, turned around and walked with him away from Armando and his family. Armando was a couple of feet

away, on the sand and not in the water. He ran what he estimated was about 10 feet to retrieve Isaiah from Mr. Hill. Mr. Hill offered no resistance, the two did not exchange words, and Isaiah was not crying or upset. Armando stated that after he took Isaiah from Mr. Hill, Mr. Hill "started leaving fast." Armando gave Isaiah to the boy's uncle and, in "[l]ess than 30 seconds," was able to find two police officers patrolling the beach. He told them what had happened and gave them a description of Mr. Hill, including a description of a briefcase Mr. Hill had been carrying. The police located Mr. Hill about 10 minutes later and Armando positively identified him as the man who had picked up Isaiah.

¶ 14 Although, on cross-examination, Armando was shown a transcript of testimony he gave at the preliminary hearing in this case—held shortly after the incident took place—in which he testified that he was in the water when he saw Mr. Hill pick up Isaiah, at trial Armando said he did not remember giving that testimony. He was sure he was on the sand, and not in the water, when he noticed Mr. Hill pick up Isaiah. Armando maintained that his family was "around ten feet" from the water, though he acknowledged that some family members were closer to the water than others. Armando agreed that the incident, in defense counsel's words, took place "right there out in the open." He also agreed that it was only a "matter of seconds" between the moment that he saw Mr. Hill pick up Isaiah and when he retrieved Isaiah. Armando acknowledged that North Avenue Beach is a public beach, there were other people there that day, he was able to spot two police officers right away, and Mr. Hill never tried to hide Isaiah or run, but simply walked away from the water.

¶ 15 On redirect examination, Armando testified that at the time of the incident, he was not concerned for Isaiah's safety because there were several family members around him who could have helped the boy if he got too close to the water. At no point did Mr. Hill try to tell Armando

or any member of the family that Isaiah was in danger before Mr. Hill picked the boy up. Armando also stated that he used force to retrieve his son because, as he recalled telling the officers at the scene, he "snatched" the boy from Mr. Hill.

¶ 16 b. Crispin Uvalle

¶ 17 Armando's father, Crispin Uvalle, testified that he was also at North Avenue Beach on July 2, 2011. He was sitting at the edge of the lake taking care of his grandchildren, who were "[a]t the edge of the water," about six or seven feet away from him. Crispin stated that he was looking at the children when he noticed a black man walking back and forth near them. This continued for about five minutes. At one point Crispin looked toward the water and when he turned around he saw that the man had taken Isaiah away from the other children. He screamed out to Armando, saying "the boy, the child, they took him away," and Armando, who Crispin testified was not in the water but behind Crispin with other family members, ran toward the man screaming "my son, my son," and retrieved Isaiah. According to Crispin, the man then walked away.

¶ 18 On cross-examination, Crispin agreed that the place Mr. Hill carried Isaiah to was still "in the immediate vicinity within feet of where the family was." Crispin also acknowledged that Isaiah had been playing in the water:

> "[DEFENSE ATTORNEY:] Good afternoon sir, I want to ask you about the kids that you talked about that were near the edge of the water. I wasn't clear as to whether you said Isaiah was with that group of children or not. Was he?
>
> [CRISPIN UVALLE:] Well, my grandchildren, all of them.
>
> Q. The grandchildren were not only playing in the sand, they were also playing in the water?

A. They were two that were at the edge and the younger one would enter the water and walk back and go back in the water and come back.

Q. When you say the younger one are you talking about little Isaiah?

A. Yes.

* * *

Q. Now, directing your attention to Isaiah specifically, was he wearing any kind of floaties or life preserver that day while he played in the water?

A. No. No. No."

¶ 19 Crispin could not remember if Lake Michigan had been "a little wavy" that day. When asked if any adults had actually been in the water with the children, Crispin asked "Which adults?" and stated that "[t]here were a lot of adults there." Crispin claimed never to have talked to the police about the incident but later claimed he did not remember whether he had or not.

¶ 20 The State rested, and defense counsel moved for a directed finding on the attempted kidnapping charge, on the basis that the State had failed to prove that Mr. Hill had any intent to secretly confine Isaiah. The circuit court denied the motion and the case went forward on both charges.

¶ 21 2. Defendant's Case

¶ 22 a. Detective Cheryl Bronkema

¶ 23 The parties stipulated that if called to testify, Detective Cheryl Bronkema would recount how she interviewed Crispin Uvalle on July 2, 2011, and he told her that he was with his family at the beach when he heard his son Armando yelling at a male black subject who he observed holding his grandson Isaiah. Crispin told Detective Bronkema that Armando grabbed Isaiah from the man and the man walked away.

¶ 24 b. Dr. Roni Seltzberg

¶ 25 Defense counsel then called Dr. Roni Seltzberg, a stipulated expert in the area of forensic psychiatry. Dr. Seltzberg recounted Mr. Hill's lengthy mental health history, beginning in 1994, when Mr. Hill was 20 years old and his father died suddenly of a heart attack. At the age of 21, Mr. Hill attempted suicide by drinking bleach, after he was charged with sexually assaulting his seven-year-old niece, a crime he was convicted of and for which he served time in prison. Mr. Hill was admitted to various mental health facilities 10 times between 1994 and 2011.

¶ 26 When asked whether she thought Mr. Hill had been taking his prescribed medication on July 2, 2011, when he interacted with the Uvalle family, Dr. Seltzberg noted that Mr. Hill had apparently been given a two-week supply of his medication when he was discharged from the Cook County Jail on June 3, 2011. Then, at 3 a.m. on July 2, 2011, he was seen at Northwestern Memorial Hospital (Northwestern), where he told the hospital staff that he had not taken any medication in a week. The resident who interviewed Mr. Hill indicated in the report that Mr. Hill was cooperative but had a flat affect or appearance, was not homicidal, suicidal, or psychotic, but was masturbating under a sheet during the interview. According to Dr. Seltzberg, nothing in the records indicated that Mr. Hill was seen by a psychiatrist before he was released at 5:45 a.m. with a prescription but without any medication.

¶ 27 In an interview on September 21, 2012, Mr. Hill told Dr. Seltzberg that on the day in question he saw Isaiah getting pushed by the waves, thought the child looked scared, and put down his things to walk over and pick the child up. According to Mr. Hill, the boy's father then swam from about 15 feet away and confronted him, at which point Mr. Hill put Isaiah down, said he was sorry, that he had intended no harm, and walked away.

¶ 28 Dr. Seltzberg noted that Mr. Hill had a history of minimizing his psychiatric symptoms.

Although Mr. Hill denied hearing voices, for example, he was sometimes observed talking to himself and expressing paranoid delusions. According to Dr. Seltzberg, Mr. Hill eventually admitted that, on the day in question, he "had been hearing the voices of Jehovah, of Jesus, his father, his nephew, and that they were all inside of him telling him things would be okay," but that sometime later " 'they were all telling [him] to leave the beach *** because God knew something bad would happen.' " Mr. Hill told Dr. Seltzberg that he " 'thought at first it would be best to see if the child was all right,' " and so he " 'picked up the child, put him down and left.' "

¶ 29 Dr. Selzberg believed that, when Mr. Hill picked up Isaiah at the beach "he was acting on his own delusional thought that he was helping or saving the child and because of his psychotic mental disorder and the acute exacerbation that was driving him at that time to do what he did ***, he did not have [an] appreciation for the criminality of his conduct."

¶ 30 3. The State's Rebuttal

¶ 31 a. Detective Bronkema

¶ 32 Detective Cheryl Bronkema testified in rebuttal that at approximately 3:20 p.m. on July 2, 2011, she and her partner spoke for about 15 minutes with Mr. Hill in lockup, where Mr. Hill answered their questions regarding his involvement in the alleged kidnapping. She had no concerns at that time regarding his mental state. He did not appear to be hearing voices and his answers were not "non-sensical."

¶ 33 On cross-examination, Detective Bronkema acknowledged that Mr. Hill told her he was a practicing attorney representing himself in a case, which she said she did find concerning. She also acknowledged that, at the time, she had no reason to inquire about Mr. Hill's mental state.

¶ 34 b. Dr. Mermigas

¶ 35 The State then called its own forensic psychologist, Dr. Alexis Mermigas. Dr. Mermigas

largely concurred with Dr. Seltzberg's description of Mr. Hill's behavior during an acute episode. She found it unlikely, however, that Northwestern staff would have released Mr. Hill if he was exhibiting symptoms of such an episode. And although Mr. Hill told Dr. Mermigas in their interview that he heard the voices of "spirits" that day, it was her opinion that he was "not particularly bothered by them." Functioning with auditory hallucinations was a "baseline state" for Mr. Hill. Although the voices were telling him to pick up Isaiah and help him, and although he "went back and forth" on whether to intervene, in the end Mr. Hill's decision to pick up Isaiah and carry him away from the water was made "primarily on his own initiative." When asked why he picked up the boy, Dr. Mermigas said Mr. Hill told her "[he] just wanted to make sure that he was all right. It didn't come down to thinking [he] was an angel or an order from God. None of that." Dr. Mermigas viewed Mr. Hill's actions as "very reasonable responses to what he perceived to be the threat of a child near the water without parental supervision." She said, "[w]hat he described to me was that he had a genuine concern on his own irregardless [*sic*] of the voices, and he chose to take action in response to that concern. He reported to me that he would have taken that action even without the voices." In Dr. Mermigas's opinion, the evidence was insufficient to show that Mr. Hill's mental illness was what caused him to pick up Isaiah.

¶ 36 C. The Trial Court's Rulings

¶ 37 The trial court found that the State proved beyond a reasonable doubt each of the elements of attempted aggravated kidnapping and unlawful restraint. The court stated that it believed the testimony of Armando and Crispin Uvalle that Mr. Hill "walked up, took [Isaiah], and started to walk away from the area where they were located." In particular, the court believed Armando's testimony, "even though it wasn't in the police report," that Mr. Hill "walked fast." The court noted that both Crispin and Armando immediately started yelling at Mr.

Hill to put the boy down, which the court found was "consistent with [Mr. Hill's] attempt to commit the offense of aggravated kidnapping and unlawful restraint, and inconsistent with any other explanation."

¶ 38 The trial court also found that Mr. Hill had failed to prove by clear and convincing evidence that he was legally insane at the time of his crimes. It found Mr. Hill guilty—though mentally ill—of both charges and denied his motion to reconsider those findings.

¶ 39 Mr. Hill was found unfit and restored to fitness one last time in this case, just after trial but before sentencing. The trial court ultimately sentenced him to concurrent terms of eight years for the attempted aggravated kidnapping and six years for the unlawful restraint.

¶ 40 II. JURISDICTION

¶ 41 Mr. Hill was sentenced on September 9, 2015, and filed his notice of appeal the same day. We have jurisdiction pursuant to article VI, section 6, of the Illinois Constitution (Ill. Const. 1970, art. VI, § 6) and Illinois Supreme Court Rules 603 (eff. Feb. 6, 2013) and 606 (eff. Dec. 11, 2014), governing appeals from final judgments of conviction in criminal cases.

¶ 42 III. ANALYSIS

¶ 43 Mr. Hill argues the State failed to prove beyond a reasonable doubt that he was guilty of attempted aggravated kidnapping. Section 10-1(a) of the Criminal Code of 2012 (Code) provides that "[a] person commits the offense of kidnapping when he or she knowingly: (1) and secretly confines another against his or her will; (2) 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; or (3) by deceit or enticement induces another to go from one place to another with intent secretly to confine that other person against his or her will." 720 ILCS 5/10-1(a) (West 2010). For purposes of this section, confinement of a child under the age of 13 is considered against that

child's will if the child's parent or legal guardian has not consented to the confinement. 720 ILCS 5/10-1(b) (West 2010). If the victim is under the age of 13, the charge is also elevated to aggravated kidnapping. 720 ILCS 5/10-2(a)(2) (West 2010). "A person commits the offense of attempt when, with intent to commit a specific offense, he or she does any act that constitutes a substantial step toward the commission of that offense." 720 ILCS 5/8-4(a) (West 2010).

¶ 44 Mr. Hill argues that the evidence presented at trial was insufficient to establish that he intended to secretly confine Isaiah, an element the State must prove beyond a reasonable doubt to establish an attempted kidnapping of any of the three varieties set out in section 10-1(a) of the Code. Although Mr. Hill initially argued that the State also failed to prove he took a substantial step toward the commission of a kidnapping, he has abandoned that argument on appeal, focusing strictly on the lack of evidence establishing an intent to secretly confine.

¶ 45 When the sufficiency of the evidence supporting a criminal conviction is challenged, "[t]he relevant inquiry is whether, viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *People v. Ward*, 215 Ill. 2d 317, 322 (2005). We will only reverse a conviction if "the evidence is so unreasonable, improbable or unsatisfactory that it raises a reasonable doubt of [the] defendant's guilt." *People v. Evans*, 209 Ill. 2d 194, 209 (2004).

¶ 46 " 'Secret confinement,' " what we have called "the gist of kidnapping," is demonstrated "by either the secrecy of confinement or the place of confinement" (*People v. Banks*, 344 Ill. App. 3d 590, 593 (2003)), with "secret" meaning "concealed, hidden, or not made public" (*People v. Siguenza-Brito*, 235 Ill. 2d 213, 227 (2009)). "Confinement includes, but is not limited to, enclosure within something, most commonly a structure or an automobile." *Id.*

¶ 47 Mr. Hill points out that the events in question took place in the middle of a public beach

over the Fourth of July weekend, there were a number of other people around, including Isaiah's other family members, and at least two police officers were patrolling the beach in the immediate vicinity. As Crispin testified, "[t]here were a lot of adults there." And nothing in the record suggests that there was any accessible structure or more secluded area nearby where Mr. Hill could have hoped to take Isaiah.

¶ 48 The State points out that, pursuant to subsection (b) of the attempt statute, "[i]t is not a defense to a charge of attempt that because of a misapprehension of the circumstances it would have been impossible for the accused to commit the offense attempted." 720 ILCS 5/8-4(b) (West 2010). This is true; the inability of Mr. Hill to carry through with a kidnapping under the circumstances would not prevent him from being guilty of *attempting* to kidnap Isaiah if the State proved that was, in fact, what he intended to do. But we agree with Mr. Hill that the State failed to prove such an intent beyond a reasonable doubt.

¶ 49 No evidence was presented that Mr. Hill tried to avoid detection as he approached Isaiah. Indeed, Crispin testified that Mr. Hill attracted his attention by walking back and forth in the general area for about five minutes before he picked up Isaiah. There was also no evidence that Mr. Hill tried to conceal Isaiah. Armando testified that Mr. Hill picked up Isaiah with the child's back to his chest, such that Isaiah's face would still have been visible. There was also no evidence that Mr. Hill made any plans to ensure his escape with Isaiah, or that he even had a means of transporting the child to a more remote location. Mr. Hill also set down his briefcase full of legal files in order to pick up Isaiah—materials relating to proceedings that were apparently very important to Mr. Hill, and which it seems he would have been quite unwilling to leave behind. In addition, both the State and the defense experts agreed, based on their interviews with Mr. Hill, that Mr. Hill picked up Isaiah out of a belief that the child was in danger—their

disagreement being only whether or not Mr. Hill's belief that Isaiah was in danger was delusional. Taken together, these circumstances fail to give rise to an inference that Mr. Hill intended to secretly confine Isaiah.

¶ 50 The State relies heavily on *People v. Gonzalez*, 239 Ill. 2d 471 (2011), for the proposition that a kidnapping victim may be secretly confined even while in plain view. But all that *Gonzalez* holds is that the element of confinement is satisfied where the *fact* of confinement is secret, even if the victim is not hidden from view or confined in a secret location. *Gonzalez*, 239 Ill. 2d at 481-82. The defendant in *Gonzalez* faked her own pregnancy for several months and then went to a nearby hospital waiting room, asked a man there if she could help him by holding his infant daughter while he completed paperwork, and then left the building with the baby, at some point purchasing a baby towel from the hospital gift shop that she wrapped the baby in to disguise it as her own. *Id.* at 474-77. *Id.* There was ample evidence in *Gonzalez* that the defendant had been planning for months to kidnap a baby and pass it off as her own. *Id.* In contrast, there was no direct evidence of intent or a plan to kidnap in this case and Mr. Hill made absolutely no effort to disguise Isaiah or pass him off as his own child.

¶ 51 The trial court rejected the experts' conclusion that Mr. Hill was trying to rescue Isaiah, viewing this instead as Mr. Hill's self-serving explanation for his actions. The trial court relied instead on what it viewed as circumstantial evidence that Mr. Hill was guilty of attempted aggravated kidnapping. The trial court pointed to the testimony of Armando and Crispin Uvalle that Mr. Hill was walking away "fast" from the area where Isaiah's family members were located when he was confronted. The trial court may have incorrectly believed that Armando testified Mr. Hill "walked fast" while holding Isaiah. Armando's actual testimony was that Mr. Hill walked away fast *after* Armando took Isaiah from him. Either the trial court misunderstood the

evidence or it may have viewed Mr. Hill's act of walking fast from the scene as evidence that he knew he had done something wrong. According to Crispin, when Mr. Hill walked away both Crispin and Armando had screamed at him. The fact that Mr. Hill walked away quickly from two angry men is certainly not evidence that he had any intent to confine Isaiah, particularly in light of Mr. Hill's own mental health issues.

¶ 52 The State's argument is that Mr. Hill's intent to secretly confine Isaiah can be inferred and the trial court's finding of guilt can be affirmed based only on the fact that Mr. Hill picked up and moved Isaiah. But the State's reliance on cases like *People v. Kittle*, 140 Ill. App. 3d 951 (1986), and *People v. Banks*, 344 Ill. App. 3d 590 (2003), for the broad proposition that an intent to secretly confine may be manifested by the mere "act of grabbing and moving the victim" is misplaced. The defendant in *Kittle* accepted a ride in his victim's car, grabbed the wheel to steer the car off the road, and then actively prevented her from leaving the car. *Kittle*, 140 Ill. App. 3d at 953, 955. The court relied on "evidence that the defendant physically prevented the complaining witness from exiting her car when she attempted to do so and allowed her to continue driving under the belief that she was taking him to a place where they could be alone" to "support [its] finding that [the] defendant intended to secretly confine the complainant against her will." *Id.*

¶ 53 The defendant in *Banks* enticed a 12-year-old boy to go down an alley with him, then tried to drag the boy into a gangway between two buildings. *Banks*, 344 Ill. App. 3d at 592-94. Although the *Banks* court noted that a kidnapping conviction is not precluded by the fact that the victim was only transported a short distance (*id*. at 595-96), in each of the cases the court referenced it was clear that the distance traveled also had the effect of increasing the victim's isolation. See *People v. Thomas*, 163 Ill. App. 3d 670, 672-73 (1987) (victim forced into a

vehicle and told to lie down in the back); *People v. Pugh*, 162 Ill. App. 3d 1030, 1031-32 (1987) (same); *People v. Rush*, 238 Ill. App. 3d 806, 808 (1992) (victim dragged into an alley and forced into the basement of an abandoned building); *People v. Lloyd*, 277 Ill. App. 3d 154, 156 (1995) (victim forced from the street into an abandoned building). Notably, the *Banks* court distinguished the case before it from *People v. Lamkey* 240 Ill. App. 3d 435, 438 (1992), in which a defendant was not guilty of kidnapping where he had pulled his victim into a hallway to assault her but remained at all times "within public view and clearly visible to anyone walking or driving down the street." *Banks*, 344 Ill. App. 3d at 595.

¶ 54 None of the cases that the State cites or that this court has found suggest that merely transporting a victim is enough to prove any intent to secretly confine that victim. As Mr. Hill's counsel pointed out at argument on this appeal, the act of moving a victim from one place to another and the intent to secretly confine that victim are two separate elements of kidnapping by asportation, as defined in a subsection (a)(2) of the kidnapping statute. Supplemental authority cited by the State following argument notes that asportation is but one of three types of kidnapping set out in section 10-1(a). The State insists that Mr. Hill was charged and convicted of aggravated attempted kidnapping based on a subsection (a)(1), kidnapping by confinement. As such, the State argues it was not required to prove asportation at all. As an initial matter, it is not entirely clear from the record what subsection of the kidnapping statute Mr. Hill's attempt charge was based on. But in any event, we think the State has missed the point of defense counsel's argument. It is undisputed that an intent to secretly confine the victim is a necessary element of attempted kidnapping, no matter which of the three types of kidnapping that charge is predicated on. The fact that asportation and an intent to secretly confine are two separate elements of one version of the completed offense of kidnapping—whether or not that is the version Mr. Hill was

charged with attempting—demonstrates that an intent to secretly confine cannot be inferred simply from asportation. When Mr. Hill picked up and carried Isaiah this may have been sufficient to prove that Mr. Hill unlawfully restrained Isaiah but it does not prove that he had any intent to secretly confine him. Beyond vague references to "the totality of the circumstances," at argument the State was unable to point to any other evidence from which a trier of fact could reasonably have inferred that Mr. Hill had such an intent.

¶ 55 We agree with Mr. Hill that, taken in the light most favorable to the State, the evidence presented at trial was insufficient to prove beyond a reasonable doubt that he had the specific intent necessary to convict him of aggravated attempted kidnapping.

¶ 56 We need not consider the remaining issues raised on appeal. Although Mr. Hill initially asked us to decide whether his unlawful restraint conviction should also be reversed because the trial court improperly rejected his insanity defense, he has since withdrawn that argument. And although the State concedes that Mr. Hill's convictions for attempted aggravated kidnapping and unlawful restraint violated the one-act, one-crime doctrine because they were based on the same physical act (*People v. Johnson*, 237 Ill. 2d 81, 97 (2010)), our reversal of Mr. Hill's conviction for attempted aggravated kidnapping moots this issue. Mr. Hill likewise concedes that, having served his sentence, his argument that it was excessive is now moot.

¶ 57 IV. CONCLUSION

¶ 58 For the reasons above, we affirm Mr. Hill's conviction for unlawful restraint and reverse his conviction for attempted aggravated kidnapping.

¶ 59 Affirmed in part and reversed in part.