2019 IL App (1st) 161128-U

Sixth Division
September 20, 2019

No. 1-16-1128

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. 15 CR 6626
	)	
GABINO TORRES,	)	Honorable
	)	Lauren Gottainer-Eddidin,
Defendant-Appellant.	)	Judge, presiding.

JUSTICE CONNORS delivered the judgment of the court.
Presiding Justice Mikva and Justice Cunningham concurred in the judgment.

ORDER

¶ 1 *Held*: Defendant's conviction for child abduction is affirmed over his contention that the State failed to prove the elements of the offense beyond a reasonable doubt.

¶ 2 Following a bench trial, defendant Gabino Torres was found guilty of child abduction (720 ILCS 5/10-5(b)(10)(B) (West 2014)) and sentenced to 25 months' imprisonment. On appeal, defendant contends that the State failed to prove him guilty beyond a reasonable doubt. We affirm.

¶ 3 Defendant was charged with one count of attempt kidnapping (720 ILCS 5/10-1(a)(2) (West 2014)); one count of unlawful restraint (720 ILCS 5/10-3(a) (West 2014)); and two counts of child abduction (720 ILCS 5/10-5(b)(10)(A), (B) (West 2014)). Defendant waived his right to a jury trial and the case proceeded to a bench trial.

¶ 4 At trial, the victim, B.T. testified that on January 20, 2015, she was 13 years old and in eighth grade at Old Orchard Junior High School. While in class, she received a message that her mother was unable to pick her up due to car trouble and she was to meet her sisters at Niles North High School. She left school at approximately 3:20 p.m. and began walking west on Golf Road toward the high school. B.T. was carrying a backpack. When she crossed the intersection of Skokie Boulevard and Golf, a man approached her and asked her for directions to the Cheesecake Factory. B.T. identified defendant in court as the man that approached her for directions. She described defendant as being in his mid thirties, "heavyset" with brown or black hair and "little facial hair." Defendant was wearing blue jeans with paint on them and Timberland shoes. He was not wearing glasses and spoke with an accent. B.T. noticed that defendant was missing a "finger or two."

¶ 5 As B.T. explained to defendant where the Cheesecake Factory was located, he told her "oh I have a car, so you can get in it." B.T. thought that "was weird" and testified that it "immediately made [her] think, like he was trying to take [her]." B.T. described defendant's car as a "blue and gray box car." Defendant told B.T. his name but she could not recall it because she was not "paying attention to his name." As B.T. backed up, defendant grabbed her left arm close to her hand and wrist, and tried to "yank her or tug her wrist a little bit." Defendant tugged B.T. toward his car and said "no, you come in my car." B.T. reached into her pocket and

retrieved two locks tied together with a shoelace that she carries around "in case something happens." She swung the locks at defendant and thought that she may have hit him. B.T. "blinked out" and stood still "to see what [defendant] was going to do." Defendant walked back to his car and B.T. walked to a store nearby. When she looked behind her, she did not see defendant or his car.

¶ 6 B.T. walked to the high school. There, she told her sisters what happened. Once her mother arrived at the school, she told her mother what had happened. When B.T. arrived at school the next day, she met with two detectives from the Skokie police department. B.T. described defendant and told the detectives what occurred the day before. On January 26, 2015, two other detectives came to the school and asked B.T. additional questions. A few days later, B.T. was shown different color swatches of car paint.

¶ 7 On February 9, 2015, B.T. went with her mother to the Skokie police department where she was shown pictures of a car and recognized the car as the same kind defendant drove on January 20, 2015. B.T. also viewed a photo array and identified defendant as the person who approached her, asked her for directions to the Cheesecake Factory and tried to pull her into his car. On February 11, 2015, B.T. went to the Skokie police department with her father and viewed a lineup. B.T. identified defendant in the lineup. B.T. testified defendant was wearing the same boots as he had on January 20, 2015. B.T. recognized defendant's boots and face.

¶ 8 On cross-examination, B.T. testified that the stores and bank where she first encountered defendant were open for business. She did not see defendant driving before he approached her and did not see him park his car. Defendant did not ask B.T. her age. B.T. told the police

defendant was missing two fingers and that she hit defendant with the padlocks. On redirect examination, she testified that she considers a thumb to be a finger.

¶ 9 Cheon Johnson, B.T.'s mother, testified that when B.T. entered her car on January 20, 2015, she told her what had happened earlier that day. B.T. told Johnson "[T]his man tried to kidnap me. He grabbed me and I hit him with my lock." B.T. was "shaking" when she described the incident to Johnson. Johnson explained that because she was on the expressway heading toward their home she was unable to turn around. Johnson phoned the school the next morning and explained what had happened to B.T. Johnson also contacted the police.

¶ 10 Margaret Ward testified that defendant was her handyman and had done some work on her house. Defendant had a Honda Element that she liked and asked defendant to help her find a car like it. On January 22, 2015, Ward received a text message from defendant asking if she was still looking for a car and that he may be selling his car. Defendant told Ward that he needed money to pay the bills. On January 31, 2015, Ward received a text from defendant asking if she wanted to test drive his car. Ward learned of a suspect wanted in a possible child abduction case in Skokie and the offender was missing a finger. Ward thought of defendant because he was missing a thumb.

¶ 11 On cross-examination, Ward testified that defendant did not sell his car to her nor did he tell her what specific bills he needed money to pay. Ward identified copies of text messages she received from defendant on January 14, 2015, asking her what type of car she was looking for.

¶ 12 Nelson Melendez testified that he was a mechanic and worked at Nuno's Complete Car Care. Sometime in 2014, either November after Thanksgiving or December before Christmas, defendant came into his shop because he could not start his car. Melendez drove defendant to his

home to get a spare key. Along the way, defendant told Melendez about a storage facility nearby and how defendant had a unit in the storage facility. Melendez noticed defendant was missing a finger on his right hand. Defendant and Melendez exchanged phone numbers. Sometime in January, Melendez learned of an attempted child abduction that occurred in the Skokie area. A description of the offender was given as well as the type of car driven. Melendez recognized that defendant fit the description. He called the police and provided them with defendant's information, including a home address and phone number.

¶ 13 On cross-examination, Melendez testified that he believed defendant was missing two fingers. He did not know what occurred between defendant and B.T. on January 20, 2015.

¶ 14 Detective Katarzyna Koziol of the Skokie police department testified she was on duty on January 21, 2015, when Johnson came to the station to make a complaint. Koziol asked Johnson if she could speak to B.T. at the school. After speaking to B.T., Koziol went to the M.B. Bank located on Golf Road near Skokie Boulevard and obtained a surveillance video from January 20. She also went into the Golf Galaxy store and obtained a similar video. She viewed the videos in court, explaining that each showed a person parking his car in the MB parking lot then walking to meet another person. After walking together a short distance, one person gets into their car and drives away while the second person continues walking.

¶ 15 Koziol also went to the Cheesecake Factory and learned that the restaurant did not conduct any interviews nor hire anyone on January 20, 2015. Koziol testified to receiving information from Melendez, then driving to a storage facility at 3501 West Touhy Avenue. After speaking to the manager of the facility, Koziol obtained defendant's name and birth date. She drove to defendant's address in Chicago and observed a blue and gray Honda Element parked in

the spot that coincided with defendant's apartment number. Koziol contacted the Secretary of State and obtained a driver's license number and photo of defendant. She also requested a "hand search" from the Illinois State Police. She explained that a hand search is a search for owners of a particular car in a particular county. Based on the search, Koziol learned that defendant was the owner of a 2003 Honda Element. She then prepared: a photo array that included defendant's photo; swatches of car paint colors that coincided with the Honda Element; and a photo of a Honda Element. Koziol arranged for B.T. to view the photo array and photo of the vehicle. B.T. identified defendant from the photo array and also identified the Honda Element. Koziol arrested defendant on February 10, 2015. On February 11, B.T. identified defendant from a lineup.

¶ 16 On cross-examination, Koziol testified that the video from Golf Galaxy looks northbound onto Golf Road and the video from MB Bank looks mostly westbound. In both videos, the faces or ages of the people in the video cannot be determined and the two people in the video are not seen touching. Koziol did not receive information that defendant sold his car.

¶ 17 On redirect examination, Koziol testified that the videos showed two people, however there were obstructions. In the Golf Galaxy video a door frame as well as bushes and trees obstructed the view while in MB video bushes and trees obstructed the view.

¶ 18 Prior to resting their case in chief, the State *nolle prosequi* one count of child abduction (720 ILCS 5/10-5(b)(10)(A) (West 2014)). Defendant's motion for a directed finding on the remaining counts was denied.

¶ 19 Defendant testified that he is 36 years old and lives in Chicago with his girlfriend and his two children. Defendant is a painter and handyman. In January of 2015, he was looking for jobs and contacts and was passing out fliers. He had been doing painting, drywall, plastering,

flooring, carpentry, and basic plumbing and electronics for ten years. Defendant testified he heard that the Cheesecake Factory was looking for help so he decided to go there. On January 20, 2015, defendant was passing out fliers and stopped for lunch at Panera Bread. He was in Panera Bread for about an hour. As he walked to his car, he saw B.T. walking down the street. She was the first person he saw, and asked her if she knew how to get to the Cheesecake Factory. B.T. told defendant it was located behind the mall. Defendant walked to his car and got in. As B.T. was passing in front of his car, she said "there's my sister." Defendant thanked B.T. and left. Defendant testified he never touched B.T. or asked her to get into his car. He was not aware there was a school nearby. Defendant denied any illegal or unlawful purpose for B.T. He testified that B.T. did not try to hit him with padlocks.

¶ 20 When defendant returned to his car, he decided that he did not want to go to the Cheesecake Factory that day because he was afraid he was going to "catch traffic." On January 21, defendant watched the news and learned of an incident of a child abduction that occurred in Skokie and the suspect was a male "Hispanic with a blue SUV and he tried to kidnap a girl." Defendant thought the wanted person may be him. On January 22, 2015, he phoned his friend James Ward, an attorney, and asked for advice. Defendant went to Ward's home and after speaking to Ward returned home where his wife took pictures of him holding a newspaper. Defendant continued to look for work into February. He testified he still owns the Honda Element.

¶ 21 On cross-examination, defendant testified that a man in a grocery store told him the Cheesecake Factory was looking for help. He acknowledged that he did not ask anyone in Golf Galaxy or the bank if they knew where the Cheesecake Factory was located. He also did not ask

anyone in Panera Bread for directions nor did he ask if Panera Bread was hiring. He did not call the Cheesecake factory and did not remember telling his name to B.T. He did not go to the police after seeing the alert on the television.

¶ 22 On redirect examination, defendant testified he thought B.T. was about 15 years old. He explained that he wanted to sell his car because he had problems paying bills and he also knew if he were arrested, his bond would be high. Defendant did not go to the police because "he didn't trust the police." He testified he never asked B.T. to get into his car.

¶ 23 James Ward testified he was a licensed attorney and also a certified public accountant. Ward did mostly tax work and did not practice criminal law. He knew defendant for about ten years. Ward invited defendant to his home after defendant called and said he may be in trouble. When defendant arrived, Ward observed he did not have any injuries to his face. Ward told defendant to take a picture with a newspaper to show the date of the picture.

¶ 24 In announcing its ruling, the court noted that B.T. was a very credible witness and the State's other witnesses were also credible. The court found defendant incredible**.** The court recounted the evidence presented and noted that defendant "gets into his car, and he drives to Golf Galaxy. And you see from the videos, he pulls in. And he's in the car that was described very detailed by the complaining witness (B.T.). And it's at this time that he chooses to get out of his car and approach an individual with a backpack who was clearly alone, who is female, and asks where the Cheesecake Factory is. But, that's not where it ends because that is not the end of the testimony and the information that I have. *** [B.T.] stated clearly and unequivocally that he grabbed her arm. *** [H]e grabbed her arm and she said that over and over again. She didn't change. And he said here's my car. Get in and show me." The court pointed out that "there are

some slight differences in some of the facts that were presented but basically, those facts were the same throughout and consistent." The court found defendant guilty of child abduction and not guilty of attempt kidnapping and unlawful restraint.

¶ 25 Defendant's motion for new trial was denied. In denying defendant's motion the court noted that the cases cited by defendant, *People v. Velez,* 2012 IL App (1st) 101325 and *People v. Sweigart*, 2013 IL App (2d) 110885, had less evidence than defendant's case since "defendant got out of his car and made physical contact" with the victim.

¶ 26 After a sentencing hearing, the court found that defendant's act was not sexually motivated and sentenced him to 25 months' imprisonment with the requirement that he register as a violent offender against youth. 730 ILCS 154/5 *et seq.* (West 2014).

¶ 27 On appeal, defendant challenges the sufficiency of the evidence to sustain his conviction. In setting forth this argument, defendant argues that we should apply a *de novo* standard of review because he is not contesting the credibility of the witnesses, but is instead arguing whether the uncontested facts were sufficient to convict. The State responds that we should follow the *Jackson v. Virginia*, 443 U.S. 307 (1979), standard of review to determine the sufficiency of the evidence. We agree with the State.

¶ 28 Although defendant argues that the facts of the case are uncontested, he is essentially arguing that on the day in question, his actions with B.T. did not constitute an unlawful purpose or luring. Hence, defendant is challenging the inferences the trial court drew from the evidence presented. Since defendant is challenging the inferences drawn from the evidence regarding his mental state, "which presents disputed questions of fact," we decline to apply *de novo* review. *People v. Lattimore*, 2011 IL App (1st) 093238, ¶ 35 (citing *People v. Stewart*, 406 Ill. App. 3d

518, 525 (2010)) (no *de novo* review where defendant challenged "the inferences that can be drawn from the evidence" by claiming the evidence failed to establish he acted "knowingly."); *People v. Hinton*, 402 Ill. App. 3d 181, 183 (2010) (no *de novo* review where defendant "contest[ed] the inferences that can be drawn from the evidence" by claiming he had no knowledge.); *People v. Moore*, 365 Ill. App. 3d 53, 58 (2006) (no *de novo* review because the element of knowledge is a "question of fact" and where "conflicting inferences could be drawn from the undisputed but circumstantial evidence *** questions of fact rather than law are presented.").

¶ 29 In considering a challenge to the sufficiency of the evidence to sustain a conviction, Illinois courts have adopted the *Jackson* standard of review. Under that standard, the question for a reviewing court to determine is 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 crime beyond a reasonable doubt. *People v. Wheeler,* 226 Ill. 2d 92, 114 (2007). This standard is applicable in all criminal cases regardless whether the evidence is direct or circumstantial. *People v. Herring,* 324 Ill.App.3d 458, 460 (2001); *People v. Campbell,* 146 Ill. 2d 363, 374-75 (1992). The trier of fact is responsible for assessing the credibility of the witnesses, weighing the testimony, and drawing reasonable inferences from the evidence. *People v. Hutchinson,* 2013 IL App (1st) 102332 ¶ 27; *People v. Ortiz,* 196 Ill. 2d 236, 259 (2001). When considering the sufficiency of the evidence, it is not the reviewing court's duty to retry the defendant. *People v. Beauchamp,* 241 Ill. 2d 1, 8 (2011); *People v. Collins,* 106 Ill. 2d 237, 261 (1985). A reviewing court will only reverse a criminal conviction when the evidence is so improbable or

unsatisfactory that there remains a reasonable doubt as to the defendant's guilt. *Beauchamp,* 241 Ill. 2d at 8; *People v. Collins*, 214 Ill. 2d 206, 217 (2005).

¶ 30 In this case, defendant was found guilty of child abduction. In order to sustain his conviction, the State was required to prove beyond a reasonable doubt that he "intentionally lure[d] or attempt[ed] to lure a child under the age of 16 in to a motor vehicle *** without the consent of the parent *** of the child for other than a lawful purpose." (720 ILCS 5/10-5(b)(10)(B) (West 2014); *People v. Siguenza-Brito*, 235 Ill. 2d 213, 224 (2009) (the State must prove each element of an offense beyond a reasonable doubt).

¶ 31 Defendant argues that the State failed to show that he had an unlawful intent in approaching B.T. Our supreme court has held that "[C]riminal intent is a state of mind that is usually inferred from the surrounding circumstances." *People v. Woodrum*, 223 Ill.2d 286, 286, 316 (2006). "The required showing that a defendant had 'other than an unlawful purpose'[in child abduction] is essentially a statement of the criminal intent, or *mens rea*." *Id*. The question of a defendant's state of mind is a fact to be determined by the trier of fact. *People v. Carlisle*, 2015 IL App (1st) 131144, ¶ 59. "The phrase 'other than a lawful purpose' in the child abduction statute implies actions which violate the Criminal Code of 1961 (720 ILCS 5/1-1 *et seq*. (West 2008))." *People v. Velez*, 2012 IL App (1st) 101325, ¶ 30. "For the purposes of this item (10), the trier of fact may infer that luring or attempted luring of a child under the age of 17 into a motor vehicle, building, housetrailer, or dwelling place without the express consent of the child's parent or lawful custodian or with the intent to avoid the express consent of the child's parent or lawful custodian was for other than a lawful purpose." 720 ILCS 5/10-5(b)(10) (West 2016) (eff. July 27, 2015)

¶ 32 After viewing the evidence in the light most favorable to the prosecution, we conclude that a rational trier of fact could have found that defendant had the requisite unlawful intent. Here, the facts adduced at trial show that B.T. was walking along Golf Road to meet her sisters at their high school. B.T. was 13 years old at the time and was walking alone. B.T. had a backpack. As she neared an intersection, defendant approached her and asked her for directions to the Cheesecake factory. He also told her that he had a car and that she could get in it. B.T. thought that was "weird" and that defendant was trying to "take" her. As she was explaining where the restaurant was located, defendant grabbed her arm and started "tugging" her towards his car. He said "no, you come in my car." 720 ILCS 5/10-5(b)(10) (West 2016) (eff. July 27, 2015) (the trier of fact may infer that luring or attempted luring of a child under the age of 17 into a motor vehicle without the express consent of the child's parent of lawful custodian was for other than a lawful purpose). B.T. was able to break free by hitting defendant with two padlocks that she kept with her "in case something happens." This evidence and the reasonable inferences therefrom was sufficient for the trial court to infer that defendant had unlawful intent. *Siguenza-Brito*, 235 Ill.2d at 228 (the testimony of a single witness if credible is sufficient to convict).

¶ 33 Defendant also contends that the State failed to show that his actions constituted luring as defined by the statute.

¶ 34 "The child abduction statute criminalizes the act of luring a child, whether or not the act is successful, in order to protect children from further acts of violence. Under the statute, there is no requirement that a defendant must actually touch or harm the child in order to be guilty of the crime of child abduction." *People v Velez*, 2012 IL App (1st) 101325, ¶ 34. Luring is defined as "any knowing act to solicit, entice, tempt, or attempt to attract [a] minor." 720 ILCS 5/10-

5(a)(2.2) (West 2014). To "attract" can be defined as "to cause to approach" or "to pull to or draw toward oneself." *Merriam-Webster's Collegiate Dictionary* (10th ed. 2000).

¶ 35 After viewing the evidence in the light most favorable to the prosecution, we conclude that a rational trier of fact could have found that defendant lured B.T. The record shows that defendant knowingly attempted to attract B.T., a minor, by approaching her, asking her for directions to the Cheesecake Factory, and inviting her into his car. B.T. thought defendant was trying to "take" her. When these efforts failed, defendant grabbed B.T. and tried to pull her towards his car. B.T. broke free from defendant by hitting him with a lock. This evidence was sufficient for the court to conclude that defendant lured B.T. toward his car.

¶ 36 Defendant nevertheless argues that the State failed to show that he was luring B.T. when he grabbed her by the wrist and asked her to come with him in his car to show him where the Cheesecake factory was located.

¶ 37 Defendant's arguments are, essentially, asking us to reweigh the evidence in his favor and substitute our judgment for that of the trier of fact. This we cannot do. See *People v. Abdullah*, 220 Ill. App. 3d 687, 693 (1991) ("A reviewing court has neither the duty nor the privilege to substitute its judgment for that of the trier of fact"). As mentioned, it is the responsibility of the trier of fact to resolve conflicts in the testimony, to weigh evidence, and to draw reasonable inferences therefrom. *People v. Brown*, 2013 IL 114196, ¶ 48. In doing so, the trier of fact is not required to disregard inferences that flow from the evidence or search out all possible explanations consistent with innocence and raise them to a level of reasonable doubt (*Brown*, 2013 IL 114196, ¶ 71 (citing *Wheeler*, 226 Ill. 2d at 117). Based on its decision, it is clear that the court found the testimony of B.T. credible. "[T]he testimony of a single witness, if

positive and credible, is sufficient to convict, even though it is contradicted by the defendant." *Siguenza-Brito*, 235 Ill.2d at 228. A defendant's conviction will be overturned only if the evidence is so unreasonable, improbable, or unsatisfactory that there remains a reasonable doubt of defendant's guilt. *Brown*, 2013 IL 114196, ¶ 48. This is not one of those cases.

¶ 38 For the reasons stated, we affirm the judgment of circuit court of Cook County.

¶ 39 Affirmed.