2019 IL App (2d) 170436-U
No. 2-17-0436
Order filed June 21, 2019

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IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court of Lake County.
Plaintiff-Appellee,	)	
v.	)	No. 16-CF-1168
SURGENE J. CABELL,	)	Honorable Mark L. Levitt,
Defendant-Appellant.	)	Judge, Presiding.

PRESIDING JUSTICE BIRKETT delivered the judgment of the court.
Justices Burke and Hudson concurred in the judgment.

ORDER

¶ 1 *Held*: The State proved defendant guilty beyond a reasonable doubt of aggravated kidnapping: as to the State's confinement theory, defendant's confinement of the victim by force in a bathroom with a closed door was sufficient; as to the State's asportation theory, the evidence showed that defendant intended to secretly confine her and that the asportation was not merely incidental to his offense of domestic battery.

¶ 2 Defendant, Surgene J. Cabell, appeals from a judgment by the circuit court of Lake County finding him guilty of two counts of aggravated kidnapping (720 ILCS 5/10-1(a)(1), (a)(2); 10-2(a)(3) (West 2016)). Because he was proved guilty beyond a reasonable doubt of both secretly confining and asporting the victim, we affirm.

¶ 3 I. BACKGROUND

¶ 4 Defendant was indicted on two counts of domestic battery based on punching the victim (720 ILCS 5/12-3.2(a)(2) (West 2016)), two counts of domestic battery based on grabbing the victim's neck (720 ILCS 5/12-3.2(a)(2) (West 2016)), one count of aggravated domestic battery (strangulation) (720 ILCS 5/12-3.3(a-5) (West 2016)), one count of aggravated kidnapping based on secretly confining the victim (720 ILCS 5/10-1(a)(1); 10-2(a)(3) (West 2016)), and one count of aggravated kidnapping based on carrying the victim from one place to another with the intent to secretly confine her (720 ILCS 5/10-1(a)(2); 10-2(a)(3) (West 2016)). Defendant opted for a bench trial.

¶ 5 The following facts were established at the trial. At about 2 p.m. on April 27, 2016, Veronica Brown was working in housekeeping on the third floor of the Advocate Condell clinic in Gurnee. As Brown worked, defendant, who was her live-in boyfriend, approached her in the hallway. According to Brown, she and defendant began to argue.

¶ 6 A video surveillance recording showed that at one point Brown entered a public bathroom and defendant followed her. The door remained open. Shortly thereafter, Brown exited the bathroom and defendant followed.

¶ 7 As the two continued to argue in the hallway, the argument escalated into a physical altercation. At one point, defendant pinned Brown against a hallway wall. Then the two fell to the floor, and defendant punched Brown twice. Defendant then grabbed Brown by the hair and dragged her back into the bathroom. The door closed behind them. Approximately one minute later, the door opened and the two exited.

¶ 8 Cindy Seamon was working in a doctor's office adjacent to the bathroom. At around 2 p.m., Seamon heard banging outside the office. When she went into the hallway to investigate,

she heard a female screaming and crying in a bathroom. Seamon returned to her office and told other employees to call 911. She then reentered the hallway. As she went to knock on the bathroom door, a large man exited and walked toward the elevator. When Seamon looked in the bathroom, she saw Brown leaning back against the sink. Brown was crying and bleeding from the side of her neck.

¶ 9 Seamon took Brown to her office. While Brown was in the office, Seamon saw a chunk of Brown's hair on the floor and scratches on her neck.

¶ 10 Officer Kevin Schreiner of the Gurnee Police Department responded to the scene. He observed a large red abrasion on each side of Brown's neck. He identified a photograph that showed redness and marks on Brown's neck.

¶ 11 John Rikji, a paramedic who responded to the scene, treated Brown and transported her to the hospital. Rikji observed red marks and abrasions on Brown's neck. According to Rikji, Brown told him that defendant had choked her.

¶ 12 Kamilla Kawecki, an emergency room nurse at Condell Hospital, examined Brown. Kawecki observed strangulation marks on both sides of Brown's neck. According to Kawecki, Brown told her that her boyfriend had choked her in the bathroom at the clinic.

¶ 13 Brown admitted that defendant had dragged her into the bathroom, but she repeatedly denied that he had choked her. According to Brown, she had told defendant that they needed to go into the bathroom because of the noise that they were creating in the hallway. She admitted that in the bathroom defendant bit her arm and stepped on her hand. She also admitted that she kicked the wall, although she claimed she did so to get defendant to stop.

¶ 14 Brown further admitted that, in the signed statement she had given the police, she said that defendant had choked her while they were in the bathroom. She also admitted that she told

Kawecki and the emergency room doctor that defendant had choked her. She also included in a petition for an order of protection an allegation that defendant had choked her.

¶ 15 On cross-examination, Brown testified that the bathroom door had a lock but that the door was not locked while she and defendant were inside. According to Brown, she could have left the bathroom at any time and defendant never prevented her from doing so.

¶ 16 At the close of the State's case, the trial court directed a not-guilty finding on the charge of aggravated domestic battery.

¶ 17 Defendant testified that, when he went into the bathroom with Brown, he did so to apologize and stop their fighting. Defendant denied having locked the door or having prevented Brown from leaving the bathroom. He denied choking Brown or trying to hurt her in the bathroom. According to defendant, Brown was the one who wanted them to go into the bathroom.

¶ 18 The trial court found, among other things, that defendant was not credible and that the record, including the video, did not support his version of the events. The court noted that, when testifying, Brown appeared intimidated by defendant. As for aggravated kidnapping, the court found that the evidence was clear that defendant secretly confined Brown in the bathroom, that defendant intended to do so, and that defendant forcefully moved Brown against her will from the hallway into the bathroom. Thus, the court found defendant guilty of both counts of aggravated kidnapping.

¶ 19 The trial court denied defendant's motion to vacate the judgment and for a new trial. The court merged the four domestic-battery convictions into one, merged the aggravated-kidnapping conviction based on confinement into the aggravated-kidnapping conviction based on asportation, and sentenced defendant to concurrent terms of 7 years and 14 years in prison,

respectively. Following the denial of his motion to reconsider the sentence, defendant filed this timely appeal.

¶ 20 II. ANALYSIS

¶ 21 On appeal, defendant contends that he was not proved guilty beyond a reasonable doubt of aggravated kidnapping, because: (1) the evidence did not establish either that he secretly confined Brown or intended to do so, and (2) the asportation of Brown was merely incidental to the offense of domestic battery.

¶ 22 The State carries the burden of proving beyond a reasonable doubt each element of an offense. *People v. Siguenza-Brito*, 235 Ill. 2d 213, 224 (2009). Where a conviction is challenged based on insufficient evidence, a reviewing court, considering all of the evidence in the light most favorable to the prosecution, must determine whether any rational trier of fact could have found beyond a reasonable doubt the essential elements of the offense. *Siguenza-Brito*, 235 Ill. 2d at 224. Under that standard, it is the responsibility of the trier of fact to fairly resolve conflicts in the testimony, to weigh the evidence, and to draw reasonable inferences from basic facts to ultimate facts. *Siguenza-Brito*, 235 Ill. 2d at 224. Therefore, a reviewing court will not substitute its judgment for that of the trier of fact on issues involving the weight of the evidence or the credibility of the witnesses. *Siguenza-Brito*, 235 Ill. 2d at 224-25. A conviction will not be set aside unless the evidence is so improbable or unsatisfactory as to create a reasonable doubt of the defendant's guilt. *Siguenza-Brito*, 235 Ill. 2d at 225. That standard of review applies to both bench and jury trials. *Siguenza-Brito*, 235 Ill. 2d at 225.

¶ 23 A defendant can commit kidnapping in one of three ways: confinement, asportation, or inducement. *Siguenza-Brito*, 235 Ill. 2d at 225; see also 720 ILCS 5/10-1(a) (West 2016). Here, defendant was convicted under both confinement and asportation theories.

¶ 24 We first address whether defendant was properly convicted based on confinement. He was.

¶ 25 Secret confinement is a necessary element under the confinement theory of kidnapping. *Siguenza-Brito*, 235 Ill. 2d at 227; see 720 ILCS 5/10-1(a)(1) (West 2016). Secret confinement may be shown by proof of either the secrecy of the confinement or the secrecy of the place of confinement. *Siguenza-Brito*, 235 Ill. 2d at 227. Isolation of the victim from the public is central to secret confinement. *People v. Gonzalez*, 239 Ill. 2d 471, 480 (2011).

¶ 26 In this case, defendant dragged Brown from the hallway into the bathroom and closed the door. The bathroom provided a place where Brown was isolated from any meaningful contact with the public. Although there was no evidence that the door was locked, it was closed. Further, the evidence showed that defendant necessarily prevented her from leaving as he was choking her, biting her, and stepping on her hand. Additionally, the fact that Brown screamed and kicked the wall evinced that she was not free to leave. Although both Brown and defendant testified that she was free to leave, the trial court found defendant not credible and noted that Brown appeared intimidated by defendant. We will not substitute our judgment for that of the trial court on issues of credibility. See *Siguenza*-Brito, 235 Ill. 2d at 224-25. Because the evidence, viewed in the light most favorable to the State, established beyond a reasonable doubt that defendant secretly confined Brown in the bathroom, he was proved guilty of kidnapping under a confinement theory.

¶ 27 We next address whether the evidence was sufficient to prove beyond a reasonable doubt that defendant committed kidnapping under an asportation theory. It was.

¶ 28 We begin by noting that the evidence clearly established beyond a reasonable doubt that defendant intended to secretly confine Brown in the bathroom. See 720 ILCS 5/10-1(a)(2) (West

2016). As discussed, he dragged Brown into the bathroom, closed the door, and prevented her from leaving through the use of physical force. Thus, that element of the asportation theory was satisfied.

¶ 29 Next, we must determine whether the asportation of Brown from the hallway into the bathroom was merely incidental to the offense of domestic battery. It was not.

¶ 30 The supreme court has identified four factors to apply in determining whether an asportation or confinement is merely incidental to another offense or rises to the level of the independent crime of kidnapping. *Siguenza-Brito*, 235 Ill. 2d at 225. Those factors are: (1) the duration of the asportation or confinement; (2) whether the asportation or confinement occurred during the commission of the separate offense; (3) whether the asportation or confinement was inherent in the separate offense; and (4) whether the asportation or confinement created a significant danger to the victim independent of that posed by the separate offense. *Siguenza-Brito*, 235 Ill. 2d at 225-26.

¶ 31 First, although the asportation was brief, and defendant moved Brown a short distance, this did not necessarily preclude his conviction. See *Siguenza-Brito*, 235 Ill. 2d at 226; *People v. Ware*, 323 Ill. App. 3d 47, 54-56 (2001) (where a defendant forced a sexual assault victim from a hallway into a bathroom, the limited distance of the movement did not preclude a finding of the separate offense of kidnapping).

¶ 32 Second, the asportation did not occur during the offense of domestic battery. Rather, it occurred between the two charged instances of domestic battery. The first battery occurred in the hallway when defendant punched Brown. After battering Brown in the hallway, defendant dragged her into the bathroom. After she was in the bathroom, defendant committed the second

battery when he choked her. Thus, the asportation did not occur during either charged instance of domestic battery.

¶ 33 Third, asporation is not inherent in the offense of domestic battery. *People v. Sumler*, 2015 IL App (1st) 123381, ¶ 59.

¶ 34 Fourth, the asportation posed a significant danger to Brown independent of domestic battery. That danger arose from the potential for more serious harm due to the privacy of the final destination–the closed bathroom. See *Siguenza-Brito*, 235 Ill. 2d at 226-27. Indeed, Brown's signal for help was more difficult to detect, and the likelihood that she would be observed by a passerby was greatly diminished. See *Ware*, 323 Ill. App. 3d at 56.

¶ 35 When we view the four factors collectively, we conclude that the asportation was not merely incidental to the domestic battery.[1] Thus, defendant was proved guilty beyond a reasonable doubt of aggravated kidnapping under an asportation theory.

¶ 36 Although defendant relies on this court's decision in *People v. Young*, 115 Ill. App. 3d 455 (1983), that reliance is misplaced. In *Young*, this court held that the act of restraining the victim during a rape did not support the offense of kidnapping. *Young*, 115 Ill. App. 3d at 470. We did so because the duration of the restraint was only for the time necessary to complete the rape, the restraint was necessary to accomplish the rape, and the restraint did not create a significant danger independent of the rape. *Young*, 115 Ill. App. 3d at 470. As discussed, the facts here are simply distinct from those in *Young*; thus, *Young* does not support defendant.

¶ 37 III. CONCLUSION

[1] We note that defendant has not contended that the confinement was merely incidental to the domestic battery. Thus, he has forfeited that issue. See Ill. S. Ct. R. 341(h)(7) (eff. May 25, 2018).

¶ 38 For the reasons stated, we affirm the judgment of the circuit court of Lake County. As part of our judgment, we grant the State's request that defendant be assessed $50 as costs for this appeal. 55 ILCS 5/4-2002(a) (West 2016)); see also *People v. Nicholls*, 71 Ill. 2d 166, 178 (1978).

¶ 39 Affirmed.