

No. 1-09-3356

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 08 CR 17359
	)	
ADISO SEFER,	)	Honorable
	)	Mary Margaret Brosnahan,
Defendant-Appellant.	)	Judge Presiding.

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JUDGE EPSTEIN delivered the judgment of the court.

Justices Joseph Gordon and Howse concurred in the judgment.

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ORDER

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*HELD:* There was sufficient evidence that defendant made a substantial step towards the offense of aggravated criminal sexual assault, where he clearly expressed his intent to commit sexual assault against the victim and then dragged her across a street towards bushes in a park while she struggled to escape.

¶ 1 Following a 2009 bench trial, defendant Adiso Sefer was convicted of attempted aggravated criminal sexual assault, robbery, and unlawful restraint and was sentenced to concurrent prison terms of 14, 10, and 3 years. On appeal, defendant contends that the State failed to prove beyond a reasonable doubt that he committed attempted aggravated criminal sexual assault when there was insufficient evidence that he took a substantial step towards

committing criminal sexual assault.

¶ 2 The indictment alleged in relevant part that defendant, on August 23, 2008, attempted to commit aggravated criminal sexual assault against Judith V. by trying to remove her shirt and beating her, thus bruising her face.

¶ 3 At trial, Judith V. testified that, at about 10:30 p.m. on the day in question, she was walking home from a store when defendant approached her from behind, startling her. He asked her for a cigarette, and as she reached for her pack of cigarettes she dropped some money to the ground. After she bent over to pick up the money, defendant grabbed her by the neck and took the money from her hand. As defendant continued to hold her neck, he ripped her shirt and told her that "I'm going to rape you." As defendant dragged her across Kedzie Avenue, a main street, to a group of bushes in a park, she struggled to escape and screamed for help. In keeping hold of Judith and dragging her, defendant touched her "all over [her] body" including her breasts. When defendant reached the park, he lay on top of her and tried to pull her into the bushes. He stopped pulling her and fled when passers-by in vehicles on Kedzie stopped and signaled by honking their horns and flashing their lights. He had not put his hand under her shirt or unfastened or removed her pants. As a result of defendant's attack, Judith had bruises, cuts, and scratches, including a bleeding cut on her nose, and her new shirt was "pulled" or stretched. A few minutes after defendant fled, police returned him to the scene, where Judith identified him as her attacker.

¶ 4 Steven Krauss testified that he was driving along Kedzie on the evening in question when he saw a man and woman in the grass on the side of the road. When he saw that the woman was struggling against the man, he honked his horn and phoned the police. After Krauss honked, the man stood up and ran away, and Krauss could see that the man was defendant. Krauss stayed at the scene, and the police returned several minutes later with

defendant in custody, whereupon Krauss identified defendant as the man he saw struggling with the woman.

¶ 5 Marcio Fehrmann testified that he was driving along Kedzie on the evening in question when he saw a man and woman arguing or fighting on the side of the road. When Fehrmann stopped his car and went over to investigate, he saw defendant "hugging" a woman who was struggling and yelling. As he got closer, he saw that the woman's shirt was "ripped" or "untied," her hair was disheveled, and she had blood on her nose and neck. Fehrmann told defendant to stop, and defendant told him that he was friends with the woman but Fehrmann did not believe him. Defendant let the woman go and said that he was going to leave, but Fehrmann told him that he was going to stay until the police arrived. He tried to restrain defendant, but defendant punched him and fled. Fehrmann stayed at the scene, and the police returned a few minutes later with defendant in custody, whereupon Fehrmann identified defendant as the assailant.

¶ 6 Police officer Michael Amato testified that he responded to a report of a robbery in progress on Kedzie. After hearing Judith describe the incident to other officers and being provided a description of the attacker, Officer Amato searched the neighborhood for a man matching the description. About six blocks away from the scene, Officer Amato saw defendant, who fit the description, and arrested him. He brought defendant to the scene, where Judith and the other witnesses identified him.

¶ 7 Defendant made a motion for a directed finding, arguing in relevant part that there was no evidence of sexual contact with Judith and that her shirt was not torn despite some testimony to that effect. The court denied the motion.

¶ 8 Following closing arguments, the court found defendant guilty of attempted aggravated criminal sexual assault, robbery, and unlawful restraint. Noting defendant's statement

to the victim that he was going to rape her, the court found that taking her across the street while she was struggling was an act in furtherance of his clearly-expressed intent.

¶ 9 In his post-trial motion, defendant argued that there was insufficient evidence of a substantial step towards criminal sexual assault because there was no evidence that he had contact of a sexual nature with Judith. The court denied the motion.

¶ 10 At sentencing, the court gave defendant concurrent prison terms of 14, 10, and 3 years for attempted aggravated criminal sexual assault, robbery, and unlawful restraint respectively. Defendant made an unsuccessful post-sentencing motion, and this appeal followed.

¶ 11 On appeal, defendant contends that his conviction for attempted aggravated criminal sexual assault must be reversed because the State failed to prove beyond a reasonable doubt that he took a substantial step towards committing criminal sexual assault.

¶ 12 When presented with a challenge to the sufficiency of the evidence, this court must determine whether, after taking 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. Beauchamp*, 241 Ill. 2d 1, 8 (2011). On review, we do not retry the defendant and we accept all reasonable inferences from the record in favor of the State.

*Beauchamp*, 241 Ill. 2d at 8. The trier of fact is not required to disregard inferences that flow normally from the evidence nor to seek all possible explanations consistent with innocence and elevate them to reasonable doubt. *People v. Jackson*, 232 Ill. 2d 246, 281 (2009). A conviction will be reversed only where the evidence is so unreasonable, improbable, or unsatisfactory that a reasonable doubt of defendant's guilt remains. *Beauchamp*, 241 Ill. 2d at 8.

¶ 13 "A person commits the offense of attempt when, with intent to commit a specific offense, he \*\*\* does any act that constitutes a substantial step toward the commission of that offense." 720 ILCS 5/8-4(a) (West 2008). A person commits aggravated criminal sexual assault

when he commits an act of sexual penetration by the use of force or threat of force while causing bodily harm to the victim. 720 ILCS 5/12-13(a)(1), 12-14(a)(2) (West 2008).

¶ 14 What constitutes a substantial step is determined by the facts and circumstances of the particular case. *People v. Perkins*, 408 Ill. App. 3d 752, 758 (2011). Generally, a defendant's acts constitute an attempt where those acts fell short of the complete offense for reasons other than the defendant voluntarily relenting; however, a defendant's abandonment of his criminal purpose after taking a substantial step is not a defense. *People v. Grathler*, 368 Ill. App. 3d 802, 810 (2006), citing *People v. Dogoda*, 9 Ill. 2d 198, 203 (1956). A substantial step puts the defendant in dangerous proximity to "success": mere preparation is insufficient, but the defendant need not have completed the last proximate act to actual commission of the offense. *Perkins*, 408 Ill. App. 3d at 758. Conduct that exceeds mere preparation, when it is strongly corroborative of the defendant's criminal purpose, includes: (1) lying in wait, searching for, or following the contemplated victim of the crime; (2) enticing, or seeking to entice, the victim to go to the place contemplated for commission of the crime; (3) reconnoitering the contemplated scene of the crime; and (4) unlawful entry of a structure or vehicle in which the defendant contemplates committing the crime. *Perkins*, 408 Ill. App. 3d at 758. In determining whether a substantial step was taken, the court's emphasis is upon the nature of the steps taken rather than on what remained to be done to commit a crime, so that the fact that further major steps had yet to be taken before the crime could be completed does not preclude a finding that the steps already undertaken were substantial. *Perkins*, 408 Ill. App. 3d at 758-59.

¶ 15 Here, after unambiguously expressing his intent to sexually assault Judith, defendant dragged her across a street into a park as she struggled to escape his grasp and screamed for help. Passers-by intervened as defendant was trying to pull her into bushes, before he could take any further steps towards his clear goal. Since enticing a victim to the scene of a

contemplated crime goes beyond mere preparation to constitute a substantial step towards completion of that crime, as stated above, defendant's act of forcing the victim to the scene of the contemplated sexual assault was clearly a substantial step towards its completion.

¶ 16 To counter this conclusion, defendant relies upon *People v. Montefolka*, 287 Ill. App. 3d 199 (1997); and *People v. Decaluwe*, 405 Ill. App. 3d 256 (2010). He argues that these cases support his argument that the focus of a substantial-step analysis should be upon the steps that the defendant had not completed as well as, if not in preference to, the ones he had. For the reasons set forth below, we find that these cases do not support his contention of error.

Defendant also argues that his steps-not-taken approach is supported by the aforementioned axiom that a substantial step puts the defendant in dangerous proximity to "success." It does not. As stated above in *Perkins*, this court has both repeated the axiom and rejected the steps-not-taken approach. As our supreme court stated in affirming a conviction for attempted armed robbery in *People v. Terrell*, 99 Ill.2d 427, 435 (1984), "[i]t should not be necessary to subject victims to face to face confrontation with a lethal weapon in order to make a positive finding of the essential element of a substantial step." Similarly, it should not be necessary for a victim to face imminent sexual penetration in order to find a substantial step towards criminal sexual assault.

¶ 17 In *Montefolka*, a defendant entered the victim's home, dragged her into another room, and told her to take off her underwear but then left the home after the victim paid him to leave. On such evidence, the reviewing court reversed the defendant's conviction for attempted aggravated criminal sexual assault. However, the instant case is distinguishable from *Montefolka*: while that defendant arguably relented voluntarily from his intent, our defendant did not carry his professed intent to sexually assault Judith to fruition only because other people intervened.

¶ 18 Moreover, this court has consistently and expressly rejected the aspect of *Montefolka* relied upon by defendant: a focus on what a defendant did not do (the *Montefolka* defendant did not touch the victim's genitals, caress or fondle any part of her body, use force to remove her clothing, or expose himself) rather than upon what he did. *Grathler*, 368 Ill. App. 3d at 810-12; *People v. Childress*, 321 Ill. App. 3d 13 (2001); *People v. Scott*, 318 Ill. App. 3d 46 (2000); *People v. Hawkins*, 311 Ill. App. 3d 418 (2000); *People v. Cosby*, 305 Ill. App. 3d 211 (1999). "We find this emphasis on what the defendant did *not* do to be an inappropriate test for determining whether a substantial step was taken. \*\*\* A substantial step can be the very first step beyond mere preparation. That more steps could conceivably have been taken before actual commission of a crime does not render that first step insubstantial." (Emphasis in original.) *Hawkins*, 311 Ill. App. 3d at 428.

¶ 19 In *Decaluwe*, a defendant picked up a 14-year-old boy on the pretense that he was going to help the defendant move boxes. As they drove to the defendant's home, the defendant touched the boy on his thigh and told him that they were "going to have a fun time." When they reached the home, the defendant gave the boy a camera and told him that he was going to take pictures of defendant. When the defendant left the room and returned with a gun in his waistband, the boy tried to flee. The defendant pursued the boy, grabbing him by his clothing and pointing the gun at him while telling him that he "better come back in before I kill you," but the boy then escaped the defendant's grasp and fled. *Decaluwe*, 405 Ill. App. 3d at 258-59. After his arrest, the defendant admitted to police that he wanted the boy to take naked photographs of him and have sex with him but claimed that he "was able to stop himself." *Decaluwe*, 405 Ill. App. 3d at 261. In his written statement, defendant admitted to his intent regarding naked photographs but did not mention an intent to have sex with the boy. *Decaluwe*, 405 Ill. App. 3d at 261-62, 265.

¶ 20 In relevant part, the *Decaluwe* reviewing court reversed the defendant's conviction for attempted aggravated criminal sexual assault, expressing doubt that intent had been shown and finding that the taking of a substantial step had not been shown. The court noted that the boy did not testify, as was alleged in the charging instrument, that the defendant told him that he would take naked photographs of defendant. *Decaluwe*, 405 Ill. App. 3d at 265-66.

"The defendant had not disrobed, had not asked the victim to disrobe, and had not told the victim that he wanted to commit a sexual act with him, nor had the defendant committed an act which would have indicated that he intended to have sex with the victim. The only acts which the State alleged in the indictment were 'while armed with a handgun, [the defendant] demanded verbally and physically that the victim take naked pictures of him.' However, the record reveals that there was no testimony presented at trial in which [the boy] testified that the defendant demanded that he take nude photographs of the defendant." *Decaluwe*, 405 Ill. App. 3d at 266.

*Decaluwe* is distinguishable from the instant case insofar as the evidence of intent was ambiguous there but clear and unambiguous here. Moreover, the substantial-step analysis in *Decaluwe* shares the *Montefolka* flaw of erroneously focusing on what steps the defendant had not taken rather than the steps he had taken.

¶ 21 Accordingly, the judgment of the circuit court is affirmed.

¶ 22 Affirmed.