



in the fetal position with obvious trauma to her face, *i.e.*, her eyes were swollen shut, her mouth was so swollen that she could not speak, and "there was quite a bit of blood and stuff" on her face and on the ground around her. B.H. was also menstruating, and a tampon that she had previously inserted was lying on the ground nearby. Her purse, which contained approximately \$140 in cash, was also nearby.

¶ 5 After calling 9-1-1, Hawley communicated with B.H. as best he could, and she indicated that she was cold. Hawley then covered B.H.'s body with a sheet and tried to comfort her while they waited for the police and an ambulance to arrive. The police subsequently processed the scene, and B.H. was flown by helicopter to St. Louis University Hospital, where she was treated in the emergency room by attending physician Dr. Carl Kraemer.

¶ 6 At trial, Kraemer testified that B.H. was conscious when she arrived at the emergency room, and she had attempted to talk to him, but he could not understand her. Scans and X rays revealed that B.H. had a cerebral contusion, "some bleeding in the brain," facial fractures, and rib fractures. Sexual assault was suspected, so a "rape kit" was administered. B.H.'s genitalia appeared normal, but Kraemer explained that "[t]ypically[,] there is not injury to the genital area" in instances of rape or sexual assault. Kraemer testified that when B.H.'s underwear were removed, leaves were discovered in B.H.'s "rectal area." Kraemer testified that B.H.'s injuries were likely the result of blunt force trauma and could have been caused by a fist. He further testified that brain injuries such as the one that B.H. sustained can result in both short-term and long-term memory loss.

¶ 7 Emergency room nurse Maureen Nordike testified that B.H. was "in and out of consciousness" while she was being treated on the morning of May 1, 2008. Nordike further testified that B.H.'s face was cut and swollen, and her eyes were bruised. A sexual assault exam was performed because the paramedics who brought B.H. into the emergency room had

"stated that they [had] found a tampon next to her at the scene." During the sexual assault exam, Nordike observed nothing unusual other than the presence of "leaves and dirt" in B.H.'s "rectal area." Nordike testified that she had administered the rape kit during the exam and had "personally swabbed" B.H. The police later took possession of the underwear that B.H. had been wearing.

¶ 8 Human DNA was identified in a biological stain found on B.H.'s underwear, and DNA analysis of the stain, which was fractioned into a "sperm fraction," a "non-sperm fraction," and a "mixed fraction," was performed at two Illinois State Police crime labs. At trial, forensic scientist Jay Winters testified that PCR analysis performed on the nonsperm fraction of the stain revealed the presence of female DNA and that PCR analysis performed on the mixed fraction of the stain revealed the presence of male DNA. Although the stain had been "consumed" during Winters' testing, "extracted DNA remained from the non-sperm and mix[ed] fractions." Winters testified that when autosomal STR analysis of the stain failed to produce a DNA profile that matched "any of the individuals in this case," less-exact Y-STR analysis had been performed on the nonsperm and mixed fractions by forensic scientist Suzanne Kidd.

¶ 9 Y-STR analysis "examines the STR loci on the Y chromosomes, which only males have," and "is performed when [the] regular DNA process doesn't answer the case question." Y-STR analysis can, for instance, identify male DNA from a mixture of male and female DNA where "the female content is at such a level that it's masking the level of male DNA."

¶ 10 Kidd testified that Y-STR analysis of the nonsperm fraction of the stain found in B.H.'s underwear revealed the presence of two male Y-STR haplotypes. A comparison to standards further revealed that the Y-STR haplotype found in the "major portion" of the nonsperm fraction of the stain "matched" that of the defendant "at every loci." Y-STR analysis of the mixed fraction and a comparison to standards revealed that the defendant was

not a possible source of the DNA found in the mixed fraction and that B.H.'s ex-boyfriend, Jeffrey Reynolds, "could not be excluded" as a possible source.

¶ 11 Kidd testified that DNA can remain on an article of clothing that has been washed in a washing machine and that seminal material can transfer from one article of clothing to another when washed together. Winters indicated that PCR analysis had not been performed on the rectal or vaginal swabs that had been taken from B.H., because initial biological screening "did not identify any probative material" on the swabs. Kidd stated that although "it was inconclusive as to whether a male donor was even present in the DNA material there," Y-STR analysis had nevertheless been performed on the rectal swab, and the analysis did not indicate "a male profile at all."

¶ 12 Dr. Alan Harris, a diagnostic radiologist from Memorial Hospital in Belleville, testified that on August 15, 2008, he had examined an X ray image of the defendant's right hand and wrist. The image "showed a healing fracture of the 5th metacarpel, the 5th bone in the hand[,] with some soft tissue swelling still present." Harris testified that the type of injury the defendant had exhibited is known as "a boxer's fracture" and occurs "when someone is punching something or someone and the weight of the punch is inadequately transferred to the 5th metacarpel bone." Harris indicated that the defendant's injury was probably several months old.

¶ 13 Michael Malone testified that he used to work with the defendant at a trucking center in Caseyville. Malone testified that on April 30, 2008, at approximately 11:30 p.m., he and the defendant had clocked out at work together before meeting up at a local bar that they often frequented. The defendant's sister-in-law, Jennifer Recklein, was tending the bar that night, and Craig Carson was among the patrons present. Malone testified that he had consumed four or five beers while he was at the bar and was not intoxicated. Carson, however, had "passed out at the bar," and at closing time, the defendant had helped him

outside and into Jennifer's car. Jennifer then gave Carson a ride home, and Malone and the defendant left in their respective vehicles. Malone testified that they had "all pulled away at the same time" and that he had driven straight home. Malone indicated that Carson had not used a cell phone while he and the defendant were in the bar. Malone further indicated that when he and the defendant had parted ways, the defendant was not intoxicated and was fine to drive.

¶ 14 A few weeks later, Malone was at the bar when Jennifer told him that B.H. had been attacked on the morning of May 1, 2008. Thereafter, Malone cooperated with the police and submitted a swab for DNA testing.

¶ 15 Carson testified that he was a regular at the bar in Caseyville, and on April 30, 2008, he had gone there with a cell phone, a pack of cigarettes, and some money. He recalled that he had started drinking around 7 p.m. and had apparently passed out at some point prior to closing time. Carson testified that he did not remember the defendant helping him out to Jennifer's car, but he did remember Jennifer giving him a ride home, as she had done on previous occasions. When Carson and Jennifer arrived at his house, he realized that he did not have his cell phone, which he recalled last seeing on the bar in front of him. Carson testified that he had searched Jennifer's car, and she had called his phone with hers, but their efforts to find his phone proved unsuccessful, and he never saw it again.

¶ 16 Carson testified that he had known B.H. since he was six years old and that using their respective cell phones, they had exchanged text messages from the bar on April 30, 2008. Carson testified that he had advised B.H. that he was "staying at the bar," and she had replied that she "was just going to get a blanket and stay on the couch." Carson indicated that he might have possibly communicated with B.H. further that night, but he was too intoxicated to remember. Carson testified that he had not used his phone to call or text B.H. on May 1, 2008, and that he had gone to bed after Jennifer had driven him home.

¶ 17 The following afternoon, Carson learned what had happened to B.H. when police came to his house to question him. Carson testified that he had cooperated with the police throughout their investigation and had submitted a swab for DNA testing. Carson stated that after speaking with the police on May 1, 2008, he had gone to the defendant's house to tell the defendant's roommate what had happened. The defendant was present, and he indicated that he would not let anything happen to Carson.

¶ 18 Carson testified that to his knowledge, the defendant and B.H. had never met prior to May 1, 2008. Approximately a month later, however, when Carson, the defendant, and the defendant's roommate were at a bar in Collinsville, B.H. sent Carson a text message and then showed up at the bar with a friend. The defendant and B.H. talked for a while, and B.H. showed him and Carson pictures of her in the hospital. Carson indicated that he and the defendant had both glanced at the pictures before telling B.H. to put them away. Carson testified that the defendant had then leaned towards him asking, "[W]hy didn't you tell me that was her[?]"

¶ 19 Jennifer testified that she had worked the night of April 30, 2008, at the bar in Caseyville, and she recalled that Carson had come into the bar around 6 p.m. that evening. Jennifer stated that she had seen Carson on his cell phone "off and on through the night." Jennifer indicated that the defendant and Malone had arrived at the bar together shortly before midnight. By closing time, Carson was extremely intoxicated, and he ended up passing out on a barstool. When Jennifer closed the bar, only she, Carson, Malone, and the defendant remained inside. Jennifer stated that the defendant had consumed four beers "at most" and was not intoxicated. Jennifer stated that she regularly gave Carson a ride home from the bar, and when it was time to go that night, the defendant had helped Carson out to her car. She, the defendant, and Malone then drove away in their cars. Jennifer testified that when she and Carson arrived at his house, he realized that he did not have his cell phone.

Jennifer called the phone twice with her phone and later checked her car and the bar for it, but it was never located.

¶ 20 The State presented evidence that on May 1, 2008, at 12:02 a.m., there was an outgoing call made from Carson's phone to B.H.'s phone and the call had lasted one minute. At 12:33 a.m., there was a second outgoing call made from Carson's phone to B.H.'s phone and that call had also lasted one minute. At 12:34 a.m., there was an incoming call made to Carson's phone from B.H.'s phone and that call had lasted 11 minutes. At 1:01 a.m., there was a third outgoing call made from Carson's phone to B.H.'s phone and that call had lasted five minutes. At 1:24 a.m., there was a fourth outgoing call made from Carson's phone to B.H.'s phone and that call had lasted 13 minutes. At 1:40 a.m., there was a second incoming call made to Carson's phone from B.H.'s phone and that call had lasted two minutes.

¶ 21 Illinois State Police Special Agent Sean King testified that on August 14, 2008, he had been assigned to investigate what had happened to B.H. at Horseshoe Lake State Park. King's captain had advised him that "the case had gone cold" and that "he wanted a fresh set of eyes to look at it." After reading the initial case reports, King reinterviewed several people, including Carson and the defendant. King also obtained Carson's phone records, because it was believed that B.H.'s attacker had used Carson's phone to lure her to the park. Swabs for DNA testing were obtained from several individuals.

¶ 22 King testified that he had interviewed the defendant twice during the investigation, once on September 3, 2008, and again on October 7, 2008. When King first interviewed the defendant, the defendant was not considered the investigation's "main" or "primary" suspect.

¶ 23 During the first interview, the defendant acknowledged that he and Malone had gone to the bar in Caseyville after work on April 30, 2008, and had stayed until closing time. The defendant noted that Carson was there, and he stated that he had not seen Carson using a cell phone. The defendant further stated that Carson had gotten "wasted" that night and had

ultimately passed out at the bar. When it was time to leave, the defendant helped Carson to Jennifer's car, and then he and Malone left in their respective vehicles. The defendant advised that he had driven straight home and that he had spoken with his wife around 1:30 a.m. before going to bed.

¶ 24 The defendant told King that after learning what had had happened to B.H. on the morning of May 1, 2008, he had stopped by to check on Carson, and Carson was "devastated." The defendant stated that he had later met B.H. at a bar but that he had never met her before then. The defendant noted that she had a tattoo on her back. The defendant denied having used Carson's cell phone on May 1, 2008, and he further claimed that he had not been at Horseshoe Lake State Park that morning. Stating that Carson was his friend, the defendant indicated that he would do whatever he could to assist in the investigation.

¶ 25 King testified that on October 7, 2008, he had interviewed the defendant again after receiving the results of the Y-STR analysis that had been performed on the stain found in B.H.'s underwear. At the outset of the interview, when King accused the defendant of being the one "who did this," the defendant denied doing anything to B.H., claiming that he had never been "around her." After being informed that his DNA had been found in B.H.'s underwear, the defendant claimed that he could not remember anything regarding the night in question. As the interview progressed, however, the defendant relayed the following version of events.

¶ 26 When he left the bar on May 1, 2008, he was extremely intoxicated and full of pent-up anger over an argument that he recently had with his wife. Because Carson had earlier talked about meeting up with B.H. at Horseshoe Lake State Park, the defendant had gone there to tell her that Carson had gone home drunk. The defendant stated that he did not want B.H. to be waiting in the park for hours for Carson to arrive. The defendant repeatedly denied having used Carson's cell phone to call B.H. to set up the meeting, and he indicated

that he had put Carson's phone in Carson's pocket when he helped him exit the bar.

¶ 27 The defendant claimed that when B.H. arrived at the park, he told her that Carson had gone home drunk. He then "blacked out," as he often does when he gets "irate." The next thing he remembered, it was 2 a.m., and he was at home asking himself what he had done. The following morning, his hand was swollen, so he knew that he had "hit something." The defendant indicated that a few days after meeting B.H. several weeks later, he had realized what he had done to her. Maintaining that he had no idea what B.H. might have done to "set [him] off," the defendant advised that he was "totally responsible" for what had happened. Indicating that he felt "bad" about what he had done, the defendant stated that B.H. "didn't deserve any of that." Further indicating that he had never hit a woman before, the defendant also stated that he was "ashamed of this." The defendant expressed concern that he would "lose [his] wife and kids" because of this "stupid" thing that he did.

¶ 28 When it was suggested that he had anally raped B.H., the defendant insisted that there had been "no sex" and that he was not a "sexual predator like that." He also stated that if his DNA was found inside of B.H., then he must have raped her, but he did not remember doing it, and he did not know how his DNA got inside of her underwear. He also asked what kind of DNA had actually been found there.

¶ 29 At the conclusion of the second interview, the defendant was placed under arrest, having been charged with one count of aggravated criminal sexual assault alleging anal penetration (count I), one count of aggravated criminal sexual assault alleging vaginal penetration (count II), and one count of aggravated battery (count III). The State later gave notice of its intention to seek an extended-term sentence (see 725 ILCS 5/111-3(c-5) (West 2008); 730 ILCS 5/5-8-2(a) (West 2008)) on the ground that the defendant's conduct "was accompanied by exceptionally brutal or heinous behavior indicative of wanton cruelty" (730 ILCS 5/5-5-3.2(b)(2) (West 2008)).

¶ 30 B.H. testified that on the evening of April 30, 2008, Reynolds, her on-and-off boyfriend, had "officially" broken up with her. Upset over the breakup, B.H. had gone home and exchanged text messages with her long-time friend, Carson, who was at the bar in Caseyville. B.H. indicated that they had communicated between 9 p.m. and 10 p.m., and she had advised him that she was going to stay in for the night. After falling asleep for a while, B.H. awoke to find that she had "missed a call" from Carson. B.H. testified that when she subsequently called him back, he did not answer his phone. A "minute or so" later, she received another call from Carson's phone. When she answered, a man whose voice she did not recognize was on the line telling her that Carson was "drunk and passed out in [the man's] car." The man told B.H. that Carson needed a ride home from Granite City, because he did not know where Carson lived. When B.H. indicated that she did not want to drive all the way to Granite City, the man suggested that they meet at Horseshoe Lake State Park. Although she had never been to the park before, B.H. agreed and headed out after getting dressed. B.H. testified that Carson "got wasted every night" and she did not consider his passing out drunk in someone's car "unusual or odd."

¶ 31 B.H. testified that while she was on the interstate driving toward the park, the man had called her again on Carson's phone, asking her where she was. A while later, he called her and gave her directions to the park as she drove.

¶ 32 B.H. testified that upon entering the main gates of the park, she had seen a man standing next to a car. It was dark out, and the area around him was not well-lit. When B.H. pulled up next to the man's car and asked him where Carson was, the man pointed to a "pitch black" wooded area and replied that Carson was "over puking on a tree." At that point, B.H. got out of her car, and she and the man walked along the tree line calling out Carson's name. When Carson did not reply, B.H. became worried. She then saw an ambulance parked in the distance "[l]ike if it got a call or something, it would be able to go out," so she suggested to

the man that they ask the occupants of the ambulance for help. The man told her "no," stating they should not " 'make it a big deal.' " When they subsequently approached an area of tall grass that B.H. did not want to walk through, she suggested to the man that they ask the occupants of the ambulance for a flashlight. B.H. testified that the man had advised against it, stating that "there might be cops that would come and make it a big deal." B.H. then started "looking around the lake," fearing that Carson might have fallen in and drowned. After walking for several more minutes, B.H. turned around and started heading back. As she was walking up a hill, the man "grabbed [her] from behind" and put her in a headlock, choking her. B.H. tried using self-defense moves to loosen the man's grip around her neck, and she thrice asked him why he was " 'doing this' " to her. B.H. testified that she was "having trouble breathing" and that she ultimately passed out. She stated that the last thing she remembered before waking up in the hospital 11 days later was the man "lowering [her] to the ground."

¶ 33 B.H. testified that she had spent two weeks in the hospital but could only recall the last three days that she was there. B.H. described her various injuries and treatments, and she testified that she now has "pretty bad short-term memory." B.H. acknowledged that she had been menstruating and wearing a tampon on the night she was attacked.

¶ 34 B.H. testified that several weeks after she had been released from the hospital, she met the defendant for the first time while hanging out at a bar with Carson. B.H. told the defendant that she had been attacked in the park, and when she tried to show him pictures of her injuries, "he didn't even want to look at them" and "pushed them away." He had also said, " 'I would kill somebody that would do that.' " The defendant's behavior with regard to the pictures made B.H. "really suspicious of him," and when he subsequently tried to give her a hug, she felt "really, really awkward." B.H. testified that she had a tattoo on her back that was not visible when she was clothed, and she knew of no reason why the defendant

would have knowledge of it. B.H. identified the defendant as the man who had choked her at the park, but she stated that she had no memory of being sexually assaulted.

¶ 35 On October 15, 2009, the trial court returned a verdict finding the defendant guilty as charged. The court further found that the defendant's conduct was "exceptionally brutal and heinous, indicative of wanton cruelty." On April 26, 2010, the court sentenced the defendant to serve consecutive 25-year terms of imprisonment on the aggravated criminal sexual assault counts (counts I and II) and a concurrent 5-year term on the aggravated battery count (count III). The present appeal followed.

¶ 36

#### DISCUSSION

¶ 37 In pertinent part, count I alleged that the defendant "placed his penis in the anus of B.H.," and count II alleged that he "placed his penis in the vagina of B.H." The defendant argues that the State failed to prove beyond a reasonable doubt that he committed either act of penetration and that the judgment entered on his aggravated criminal assault convictions must therefore be reversed. We agree that the State failed to satisfactorily establish that either alleged act of penetration occurred, and with respect to count I, we reverse the defendant's conviction. With respect to count II, however, we find that the evidence was sufficient to support a conviction for the lesser-included offense of attempted aggravated criminal sexual assault, and we reduce his conviction on that count accordingly.

¶ 38 When reviewing the sufficiency of the evidence supporting a criminal conviction, it is not the function of the reviewing court to retry the defendant. *People v. Ward*, 215 Ill. 2d 317, 322 (2005). Rather, "[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." *Id.* Under this standard, a reviewing court "will not reverse a conviction unless 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).

¶ 39 To sustain a conviction for aggravated criminal sexual assault, the State must prove an act of "sexual penetration." 720 ILCS 5/12-13(a), 12-14(a), (b), (c) (West 2008).

" 'Sexual penetration' means any contact, however slight, between the sex organ or anus of one person by an object, the sex organ, mouth or anus of another person, or any intrusion, however slight, of any part of the body of one person or of any animal or object into the sex organ or anus of another person, including but not limited to cunnilingus, fellatio or anal penetration. Evidence of emission of semen is not required to prove sexual penetration." 720 ILCS 5/12-12(f) (West 2008).

¶ 40 As the State notes on appeal, "a victim is not required to recall an act of penetration to sustain a conviction for aggravated criminal sexual assault." Where a victim is unable to recall the act, however, the State must present sufficient proof otherwise establishing that sexual penetration actually occurred. See, e.g., *People v. Hogan*, 388 Ill. App. 3d 885, 898-99 (2009) (where the victim acknowledged that she had "blacked out" and had been unconscious during the sexual assault, evidence of semen found in her vagina and statements she made to her emergency room physician sufficiently established that an act of vaginal penetration had occurred); *People v. Franzen*, 251 Ill. App. 3d 813, 817, 823 (1993) (where the victim was sexually assaulted while unconscious, evidence that a "segment of plant stalk had been inserted into her rectum," that her vaginal area had been bruised and "contained plant-type material and mud," and that when examined on the morning after the assault, "old blood present in the vaginal orifice" had been indicated, the trier of fact could have inferred that "some plant-type material [had been] used to penetrate the victim's vagina, even if only slightly"); *People v. Holmes*, 234 Ill. App. 3d 931, 949 (1992) (where "the evidence showed that the victim's blouse was pulled up, that she was naked from the waist down, that there was mud on the left side of her abdomen and on her inner thigh, that there were bruises on

her thighs and groin[,] and that there was semen present in her vagina," the evidence supported a finding that the defendant had penetrated the victim's vagina before murdering her). Although "the trier of fact is entitled to draw all reasonable inferences from both direct and circumstantial evidence, including an inference of penetration" (*People v. Raymond*, 404 Ill. App. 3d 1028, 1041 (2010)), the evidence offered to prove penetration must amount to more than "pure speculation" (*People v. Richmond*, 341 Ill. App. 3d 39, 46 (2003)).

¶ 41 Here, maintaining that it presented sufficient circumstantial evidence to sustain the defendant's convictions on counts I and II, the State suggests that the evidence that B.H.'s tampon had been removed proved vaginal penetration, that the presence of leaves and dirt in B.H.'s "rectal area" proved anal penetration, and that the presence of the defendant's DNA in B.H.'s underwear "proved both vaginal and anal penetration." We disagree.

¶ 42 First of all, with respect to the DNA found in B.H.'s underwear, Kidd testified that the defendant's Y-STR haplotype had been identified in the "non-sperm" fraction of the stain. Winters indicated that the "non-sperm" fraction of a sample is what remains when sperm-cell DNA is separated from "DNA that comes from other body cells," but there was no testimony as to what the "other body cells" in the present case were or might have been. Moreover, even assuming, as the State suggests, that the defendant's DNA found in B.H.'s underwear originated from "seminal residue," semen found near, but not inside, a victim's vagina or anus is not evidence of penetration. See *People v. Spicer*, 379 Ill. App. 3d 441, 457 & n.9 (2007).

¶ 43 Next, we fail to see how the presence of leaves and dirt in B.H.'s "rectal area" proves that an act of penile-anal penetration occurred. We also note the absence of trauma to B.H.'s anus and the lack of "probative material" on the rape-kit swabs. We further note that other than the fact that the leaves and dirt were discovered in B.H.'s "rectal area" when her underwear was removed, exactly where the leaves and dirt were located is not clear from the record. Cf. *Franzen*, 251 Ill. App. 3d at 823 (where the victim's treating physician testified

that he had "observed bruises and plant-type material and mud in the vaginal area" and "[a] photograph depicting these observations was identified by the doctor and entered into evidence").

¶ 44 Lastly, while we agree with the State's contention that a rational trier of fact could have concluded that the defendant removed B.H.'s tampon to "facilitate vaginal penetration," the removal of a victim's tampon does not establish beyond a reasonable doubt that vaginal penetration necessarily followed. See *People v. Childs*, 407 Ill. App. 3d 1123, 1126 (2011).

¶ 45 Under the circumstances, we find that the State failed to prove either of its allegations of penetration beyond a reasonable doubt, and we reverse the defendant's conviction on count I. With respect to count II, however, we further find that the evidence adduced at trial was sufficient to find the defendant guilty of attempted aggravated criminal sexual assault, a lesser-included offense of aggravated criminal sexual assault. See *People v. Durr*, 215 Ill. 2d 283, 300 (2005); *People v. Abernathy*, 189 Ill. App. 3d 292, 295 (1989); *People v. Green*, 130 Ill. App. 2d 609, 613 (1970).

¶ 46 Supreme Court Rule 615(b)(3) (eff. Aug. 27, 1999) provides that a reviewing court may reduce the degree of the offense for which the defendant was charged and convicted when the evidence fails to prove beyond a reasonable doubt an element of the greater offense. *People v. Thomas*, 266 Ill. App. 3d 914, 926 (1994); *People v. Sims*, 245 Ill. App. 3d 221, 225 (1993). "This authority is only available where a lesser-included offense is involved." *Sims*, 245 Ill. App. 3d at 225.

¶ 47 To find that the defendant attempted to commit the aggravated criminal sexual assault charged in count II, a trier of fact would have to find that with the intent to commit an act of vaginal penetration with B.H. while she was "unable to understand the nature of the act or was unable to give knowing consent" (720 ILCS 5/12-13(a)(2) (West 2008)), the defendant did "any act" constituting a "substantial step toward the commission of that offense" (720

ILCS 5/8-4(a) (West 2008)) and "caused bodily harm" to B.H. (720 ILCS 5/12-14(a)(2) (West 2008)). "Precisely what is a substantial step must be determined by evaluating the facts and circumstances of each particular case." *People v. Smith*, 148 Ill. 2d 454, 459 (1992). When determining whether a crime was attempted, one must "concentrate on the steps a defendant has taken toward the commission of the crime rather than on what steps remain." *People v. Jiles*, 364 Ill. App. 3d 320, 334 (2006).

¶ 48 Here, viewing the evidence adduced at trial in the light most favorable to the State, a rational trier of fact could readily conclude that with the intent to commit an act of vaginal penetration with B.H. while she was unable to give knowing consent, the defendant took a substantial step toward the commission of that offense. That the defendant caused B.H. bodily harm is undisputed.

¶ 49 If strongly corroborative of a criminal purpose, luring a victim to the place contemplated for the commission of an offense can in and of itself constitute a substantial step toward the commission of that offense. See *People v. Grathler*, 368 Ill. App. 3d 802, 809-10 (2006). Here, the evidence established that not only did the defendant lure B.H. to the park in the middle of the night using Carson's purported need for a ride as a ruse, once she arrived, the defendant essentially led her into the woods, where he choked her unconscious, pulled down her underwear, and removed her tampon. These acts were demonstrative of the defendant's intent and undoubtedly constituted a substantial step towards the commission of the offense set forth in count II. See *People v. Scott*, 318 Ill. App. 3d 46, 54-55 (2000); *People v. Hawkins*, 311 Ill. App. 3d 418, 426-27 (2000). Accordingly, we reduce the defendant's conviction on count II to a conviction for attempted aggravated criminal sexual assault (720 ILCS 5/8-4(a), 12-14(a)(2) (West 2008)) and remand for resentencing. See *Sims*, 245 Ill. App. 3d at 225.

¶ 50

## CONCLUSION

¶ 51 For the foregoing reasons, we reverse the trial court's judgment finding the defendant guilty on count I, reduce the defendant's conviction on count II to a conviction for attempted aggravated criminal sexual assault, and remand for resentencing.

¶ 52 Reversed and remanded.