

No. 1-12-3394

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

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 16362
)	
LEARNELL BROWN,)	The Honorable
)	Carol A. Kipperman,
Defendant-Appellant.)	Judge Presiding.

JUSTICE PALMER delivered the judgment of the court.
Justices McBride and Taylor concurred in the judgment.

ORDER

Held: Judgment affirmed over defendant's contention that the evidence was insufficient to prove him guilty of aggravated kidnapping beyond a reasonable doubt.

¶ 1 Following a bench trial, defendant Learnell Brown was convicted of two counts of aggravated kidnapping and one count of aggravated fleeing, then sentenced to 15 years' imprisonment. On appeal, defendant contends that he was not proved guilty of aggravated kidnapping beyond a reasonable doubt.

¶ 2 At trial, Sabrina Murphy testified that in September 2011, her sister, Tamika Murphy, had two sons, 12-year-old Keon and 11-year-old David, and was living with defendant, who was not their father. She claimed that defendant, however, acted like a father to the children, driving them around, helping them with their homework, and preparing meals for them.

¶ 3 At 7 p.m. on September 13, 2011, defendant called Sabrina and asked for Tamika. She told him that she did not know her whereabouts, and defendant told her that Tamika needed to come to him, but he did not tell her where he was located. Defendant called her again five minutes later, stating that, "Allah will forgive him about what he gonna [*sic.*] do." Sabrina testified that this was an unusual statement from defendant who was not Muslim and had never referred to Allah before. Sabrina asked defendant if she could speak to Keon, and defendant handed the phone to him. Keon told her that he was near an abandoned building in an alley, and he sounded normal to her. When Sabrina hung up, she called Tamika, and told her defendant had called and said he was going to ask Allah to forgive him for what he was going to do. Sabrina told Tamika that this was a "serious" situation, that they needed to find out where defendant had the children, that she was afraid, and that Tamika should call the police.

¶ 4 The next day, Sabrina told Assistant State's Attorney (ASA) Richard Gleason that defendant wanted to ask her and Allah for forgiveness for what he was about to do. She did not recall telling the ASA that defendant asked for forgiveness for what he was going to do to her nephews or that he was taking her nephews to see Allah, although she acknowledged that she signed a written statement which provided that defendant told her that he was going to take her nephews to see Allah. At trial, Sabrina denied saying anything about her nephews, and maintained that she signed the statement because she was told it was best for her to do so.

¶ 5 Tamika Murphy testified that defendant has been her boyfriend since her two sons were toddlers, and that he acts like a father to them. They lived together with her children at 9121

West Cermak Road in North Riverside, Illinois, and she never had to give defendant permission to drive her children, which he often did.

¶ 6 At 4:30 a.m. on September 3, 2011, defendant left their apartment in her car, which he did not have permission to use that day. Tamika planned on leaving defendant, texted him before 6 p.m. with this information, and went to court to get an order of protection against him. After receiving that order, Tamika purchased a new cellular phone with a new number, and spoke to her sister, Sabrina, who told her that defendant was trying to get in touch with her. Sabrina informed her that defendant was talking about Allah and that he is "gonna [*sic*] forgive or something." Tamika told Sabrina not to worry, and that she would call police to check on the house and see if her car and defendant were there. Tamika noted that it was out of character for defendant to talk about Allah, and that he did not tell Sabrina that he would harm her children.

¶ 7 Tamika testified that she met with police at her apartment, and called defendant several times over an hour and a half, asking him to come home with the children. Defendant refused, telling her that he was "not coming back." Defendant also asked Tamika to meet him at Cicero Avenue and Lake Street, and at that point, she was not worried about defendant harming her children. When she spoke to defendant again, he told her to meet him on 50th Avenue and Cermak Road. Tamika asked defendant to bring the children back to her apartment, but he refused, and her cousin Fabrian came over at 9:40 p.m. to drive her to the designated location.

¶ 8 Tamika further testified that an unmarked police car was supposed to meet up with them, but as they were driving, she called police and learned that her car had been in an accident, and that her children were on Gladys and Karlov Avenues. When she arrived there, she noticed that her son Keon had a scratch under his right eye.

¶ 9 Tamika also testified that defendant has taken her children without her permission, which is not a problem. She further stated that, "I don't know where these charges came from, because

they didn't come from me." Tamika admitted that this was the first time that defendant did not bring her children home when she asked him to do so.

¶ 10 Tamika then testified that on the following day, September 14, 2011, she met with ASA Gleason, but she did not tell him that she was worried because she was not. She also denied telling him that she begged defendant for an hour and a half to bring her children home. Tamika stated that ASA Gleason told her that she would be liable for damages to the parked car defendant hit, and her children could be placed in DCFS custody if she did not sign a statement.

¶ 11 Tamika further testified that defendant had permission to drive her children on the day in question, that he did not refuse to bring her children home, and that they agreed to meet at Lake Street and Cicero Avenue. She acknowledged, however, that defendant refused to bring the children back to the apartment as she asked, but that she was "fine" with the children being with defendant. Tamika claimed that her statement to the ASA that she never gave defendant permission to take her children in her car was "false," and that he has "general permission" to do so. Tamika further testified that she did not recall telling an officer that her children were being threatened with physical harm.

¶ 12 North Riverside police detective Carlos Garcia testified that on the evening of September 13, 2011, he was assigned to investigate the kidnapping. After he was given a photograph of defendant and a description of the vehicle he was in, he followed Tamika on her way to meet defendant. As he approached the intersection of Madison Street and Cicero Avenue, he observed defendant in the vehicle in question, and two children in the back of the car. Tamika turned west onto Madison Street, and defendant turned east onto the same street. Officer Garcia followed defendant, then activated his lights and siren and attempted to curb his vehicle. Defendant swerved around him, continued at a high rate of speed, and drove through three red light intersections. Defendant then turned south onto Karlov Avenue, drove through three stop signs

without stopping, and when he reached the intersection of Karlov and Gladys Avenues, he struck a large planter in the middle of the intersection, went airborne over the planter, and crashed into a parked vehicle. Defendant then exited the vehicle, and fled into a nearby alley. He was approached by police as he tried to climb a fence there, and was very combative, and refused to follow their orders and instructions. Defendant continued to be combative, after he was placed in a police wagon.

¶ 13 ASA Richard Gleason testified that on September 14, 2011, he met with Tamika who agreed to provide a statement which he memorialized. The ASA reviewed the written statement with Tamika who signed each page, and initialed her changes. He never told Tamika that she would be liable for the car accident and DCFS would remove her children if she did not sign the statement, and in her statement, Tamika indicated that no one threatened or promised her anything in exchange for it. Tamika also stated therein that she procured an order of protection against defendant because she was afraid about what he might do when he found out she was leaving him, and was very worried about her children. Tamika also indicated in her statement that she "begged" defendant to return the children, but he refused, and that she unsuccessfully called him for an hour and a half, trying to get him to return her children, and that she never gave defendant permission to take her children in her car.

¶ 14 ASA Gleason further testified that he met with Sabrina who gave a written statement, and signed each page. Sabrina indicated therein that defendant asked her and Allah for forgiveness for what he was about to do to her nephews, and that he was going to take them to see Allah. Sabrina further stated that when she spoke to Keon, he sounded scared.

¶ 15 North Riverside police officer Christopher Devine testified that he met with Tamika at 8:30 p.m. on the day in question, and she told him that defendant had taken her children in her vehicle and was threatening them with physical harm. Tamika was very concerned for the safety

of her children. He accompanied Tamika to her apartment to see if her children were there, but they were not. While there, Tamika received a phone call from defendant and placed the phone on speaker. During the conversation that followed, defendant refused to return the children or elaborate on his location, then hung up. Tamika received multiple calls from defendant, and during each call she placed the phone on speaker and he heard defendant refuse to return the children. Defendant told Tamika that he wanted her to meet him at Cicero Avenue and Lake Street in Chicago and demanded that she be there in three minutes. Officer Devine testified that they devised a plan where other officers would follow Tamika to that location while he waited at a nearby gas station to be the pursuit officer if defendant fled. Officer Devine later learned that defendant was detained after crashing the car.

¶ 16 Keon testified that defendant was his "stepfather," and that at 7 p.m. on the day in question defendant drove him and his brother behind a building, and called Sabrina. Keon testified that at this point he was a "little" scared, but they then went to McDonalds and to the park, and defendant did not threaten them. After a stop at a tattoo parlor, they went looking for his mother. Defendant spoke to her twice on the phone, and while they were driving on Madison Street, an unmarked police car swerved in front of them, and they eventually crashed. Keon testified that he has visited defendant since the incident.

¶ 17 At the close of evidence, the court found defendant guilty of two counts of aggravated kidnapping and one count of aggravated fleeing. In doing so, the court found, in relevant part, that although the mother now denies in court that defendant did not have permission to take her children, her actions at the time of the occurrence indicate that there was no permission. The court noted that Tamika called police, gave a statement to the ASA, and her conversations with defendant were overheard by police. The court explained that all of Tamika's actions that day, including changing her phone, getting an order of protection, and texting defendant that she was

leaving him, indicate that there was no permission. The court further found that defendant was not a *de facto* father as he claimed, that it was the mother's decision as to whether her children could be with him and that she had not given consent in this instance. The court further found that the children were secretly confined where defendant would not tell their mother where they were and led her on a "wild goose chase," and refused to return them to her.

¶ 18 On appeal, defendant solely contends that he was not proved guilty of aggravated kidnapping beyond a reasonable doubt given the totality of the circumstances and the evidence presented by the State. He maintains that he is a *de facto* parent of the children, that he had the consent and permission of their mother to have custody of them, that the duration of the episode was short, and the children were not secluded.

¶ 19 As an initial matter, we observe that defendant has failed to satisfy the requirements of Supreme Court Rule 341(h) (eff. Feb. 6, 2013), by failing to provide relevant authority for his argument. *People v. Ward*, 215 Ill. 2d 317, 332 (2005). Aside from a single reference to a purportedly analogous situation, defendants' brief is bereft of any authority, and accordingly, he has waived consideration of his argument on appeal. *People v. Land*, 2011 IL App (1st) 101048, ¶163 (and cases cited therein.)

¶ 20 As presented, defendant merely reargues the facts, requesting that this court reach a different conclusion. This is not our function. *People v. Collins*, 106 Ill. 2d 237, 261 (1985); *People v. Siguenza-Brito*, 235 Ill. 2d 213, 228 (2009).

¶ 21 When defendant challenges the sufficiency of the evidence to sustain his conviction, the proper standard of review is whether, after viewing the evidence in the light most favorable to the State, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *People v. Cunningham*, 212 Ill. 2d 274, 279-80 (2004). This standard recognizes the responsibility of the trier of fact to resolve conflicts in the testimony, to weigh the

evidence and to draw reasonable inferences therefrom. *People v. Campbell*, 146 Ill. 2d 363, 375 (1992). A criminal conviction will be reversed only if the evidence is so unsatisfactory as to raise a reasonable doubt of guilt. *Campbell*, 146 Ill. 2d at 375. For the reasons that follow, we do not find this to be such a case.

¶ 22 To sustain the conviction for aggravated kidnapping in this case, the State was required to prove beyond a reasonable doubt that defendant knowingly and secretly confined the children, who were under the age of 13 years, against their will. 720 ILCS 5/10-2(a) (West 2012). Confinement of a child under the age of 13 years is against that child's will if that confinement is without consent of the child's parent or legal guardian. 720 ILCS 5/10-1(b) (West 2012). Secret confinement occurs when one person holds another in a car (*People v. Goodwin*, 381 Ill. App. 3d 927, 935 (2008), citing *People v. Bishop*, 1 Ill. 2d 60, 64 (1953)), and a kidnapping conviction is not precluded by the brevity of the asportation or the limited distance of the movement (*People v. Jackson*, 331 Ill. App. 3d 279, 294 (2002)).

¶ 23 Here, viewed in the light most favorable to the prosecution (*Campbell*, 146 Ill. 2d at 374), the evidence at trial shows that on September 13, 2011, Tamika texted defendant that she was leaving him, changed her cell phone and number, and got an order of protection against him. Defendant subsequently called Tamika's sister, Sabrina, and told her he was taking Tamika's children, who were under the age of 13 years, to Allah and asked for her and Allah's forgiveness for what he was about to do to them. Sabrina talked to Keon, who was scared, and told her they were in an alley near an abandoned building. Sabrina called Tamika about this "serious" situation, and Tamika called police. Tamika met with Officer Devine, told him that defendant was threatening her children with physical harm, and that she was very concerned. A police officer was present when she talked to defendant several times over the phone over a period of an hour and a half, begging him to return her children. Defendant refused to do so, and would

not give Tamika a clear indication of where her children were. He then told her to meet him at a certain location, but changed it.

¶ 24 From this evidence, a rational trier of fact could find that Defendant secretly confined the children as he drove them around in the car without providing Tamika his exact location (*People v. Calderon*, 393 Ill. App. 3d 1, 8-9 (2009)), and refused her requests to bring the children home when she asked him to do so (720 ILCS 5/10-1(b) (West 2012)). The trier of fact could also find from Tamika's statement to the ASA that defendant did not have permission to drive her children, and was confining them without her consent. 720 ILCS 5/10-1(b) (West 2012). In addition, when police located defendant in the car with the children, and attempted to curb him, he sped away at a high rate of speed, went through three red lights, failed to stop at three stop signs, and ultimately crashed the car. He then fled on foot, and when he was apprehended, he was very combative. These actions clearly showed defendant's consciousness of guilt. *People v. Hart*, 214 Ill. 2d 490, 519 (2005). In sum, the evidence, in total, was sufficient to allow the trial court to conclude that defendant was proved guilty of aggravated kidnapping beyond a reasonable doubt. *Calderon*, 393 Ill. App. 3d at 10.

¶ 25 Defendant contends, however, that he did not tell Sabrina that he was asking for Allah's forgiveness for what he was about to do to her nephews, that Tamika was not worried about her children, that he was emotionally distraught over Tamika leaving him and acted somewhat illogically, and that they eventually would have talked the matter out. He also claims that Tamika gave her statement to the ASA because she was threatened, and that he did not commit kidnapping. He further contends that he had no intention of harming the children, that the only condition that needed to be satisfied for their return was for Tamika to return his call, that he was trying to work out a meeting place for them, and that Tamika had given him permission to drive the children.

¶ 26 Those arguments relate to the credibility of the witnesses, which is a matter within the purview of the trier of fact (*People v. Berland*, 74 Ill. 2d 286, 305-06 (1978)), and were decided adversely against defendant. The trial court specifically found the officers and the ASA more credible than the trial testimony of defendant's girlfriend, Tamika, and her sister, Sabrina, and the record before us provides no reason to second-guess that determination. *People v. Hernandez*, 278 Ill. App. 3d 545, 551, 553 (1996).

¶ 27 This conclusion includes our consideration of the single case defendant cited in support of his contention that he should be found not guilty based on his relationship with the children, as a *de facto* father, and that he should be given the same legal protection as an absentee father who had no contact with his child since birth, *i.e.*, *People v. Algarin*, 200 Ill. App. 3d 740 (1990). The court here rejected this premise, and we further note that unlike *Algarin*, defendant was not the biological father of the children, nor their adopted father or legal guardian, and thus could not consent to their confinement.

¶ 28 In light of the foregoing, we affirm the judgment of the circuit court of Cook County.

¶ 29 Affirmed.