2015 IL App (2d) 131161-U
No. 2-13-1161
Order filed August 24, 2015

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court of Kane County.
Plaintiff-Appellee,	)	
v.	)	No. 11-CF-2225
CHARLES FLEMING,	)	Honorable John A. Barsanti,
Defendant-Appellant.	)	Judge, Presiding.

PRESIDING JUSTICE SCHOSTOK delivered the judgment of the court.
Justices Hutchinson and Burke concurred in the judgment.

ORDER

¶ 1 *Held*: There was sufficient evidence for a rational trier of fact to find the essential elements of aggravated kidnapping beyond a reasonable doubt.

¶ 2 The defendant, Charles Fleming, appeals from the October 16, 2013, order of the circuit court of Kane County sentencing him to natural life in prison based on convictions for armed violence (720 ILCS 5/33A-2(a) (West 2010)), two counts of armed robbery (720 ILCS 5/18-2(a)(2) (West 2010)), and two counts of aggravated kidnapping (720 ILCS 5/10-2(a)(7) (West 2010)). On appeal, the defendant argues that his convictions for aggravated kidnapping should

be reversed because he did not secretly confine the victims and because any kidnapping was incidental to the commission of the armed robbery. We affirm.

¶ 3 BACKGROUND

¶ 4 On October 16, 2013, following a jury trial, the defendant was found guilty of one count of armed violence, two counts of armed robbery, and two counts of aggravated kidnapping. The charges arose from an incident that occurred at a Little Caesars restaurant in Elgin on October 2, 2011.

¶ 5 On that date, the Little Caesars restaurant closed at 10 p.m. By approximately 11 p.m., two employees, Aldo Mendoza and Esmaerlda Quiroz, finished cleaning the restaurant and were preparing to leave. Mendoza, with Quiroz following, opened the door to exit the restaurant when the defendant confronted the two with a gun. The defendant told them that they were not leaving and to go back inside. Inside the restaurant, the defendant locked the door and demanded money from the two employees and from the restaurant's safes. There were three safes positioned under the counter register, not visible to the public. Mendoza opened one small safe, but the other two were locked. The small safe contained approximately $200-$300, which Mendoza gave to the defendant. When the defendant demanded the money from the other two safes, Mendoza stated several times that they were time-locked and could not be opened until the next morning. As a result of Mendoza's inability to open the safes, the defendant struck Mendoza numerous times, causing him major bruising and injuries. The defendant also forced Mendoza to use multiple objects to try to break open the safes, such as a scraper and an electrical drill. When these attempts failed, the defendant used the objects to repeatedly strike Mendoza.

¶ 6 Subsequently, while constantly pointing a gun at the victims, the defendant led Mendoza and Quiroz to the bathroom and placed a plastic bag around Mendoza's head. The bathroom was

located in the back of the restaurant, not visible to anyone passing the restaurant. He pointed the gun at Mendoza's head and demanded money, but to no avail. He then took both victims' cell phones and threw them in the garbage. When his demands failed yet again, he led the victims back to the area where the safes were located. The victims testified that while Mendoza was attempting to open the safes, the defendant pointed the gun at Mendoza and then fired a shot at the ground.

¶ 7 As for Quiroz, the defendant forced her to stay up against the wall for a majority of the time. He did this by pointing the gun at her and telling her not to move. Additionally, the defendant took her to the bathroom at one point and "touched her all over."

¶ 8 At approximately 2:30 a.m., the defendant told Quiroz at gun point not to move and then went into the back of the restaurant. After a few minutes had passed, Quiroz gestured to Mendoza that the defendant may have fallen asleep. Mendoza ran out of the restaurant in order to call the police. When the police arrived, the defendant awoke and attempted to escape. The police caught the defendant and found $346 in his pockets, $160 in his wallet, and a black .38 caliber revolver.

¶ 9 At trial, the victims testified that, shortly after the defendant was apprehended, they went back to the restaurant and identified the defendant as the offender. They both testified that during the encounter they believed they were never going to leave the restaurant alive. At the close of the trial, the jury found the defendant guilty of two counts of aggravated kidnapping, two counts of aggravated robbery, and one count of armed violence. Following the denial of his motion for judgment notwithstanding the verdict, the defendant filed a timely notice of appeal.

¶ 10 ANALYSIS

¶ 11 On appeal, the defendant argues that his convictions for aggravated kidnapping should be reversed because the State did not provide sufficient evidence to prove that he "secretly confined" the victims. Additionally, he contends that the kidnapping was merely incidental to the aggravated robbery.

¶ 12 In evaluating the sufficiency of the evidence, it is not the province of this court to retry the defendant. *People v. Collins*, 106 Ill. 2d 237, 261 (1985). The relevant question is "whether, after reviewing 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.* (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)); see also *People v. Mills*, 356 Ill. App. 3d 438, 444 (2005). The trier of fact has responsibility for determining the weight to be given to the witness testimony, the determination of witness credibility, and the reasonable inferences to be drawn from the evidence. *People v. Smith*, 185 Ill. 2d 532, 542 (1999). However, if after careful examination of the evidence, this court is of the opinion that the evidence is insufficient to establish the defendant's guilt beyond a reasonable doubt, we must reverse the conviction. *Id.* at 541.

¶ 13 Based on our review, we believe that sufficient evidence was presented for a rational trier of fact to find the essential elements of the crime of aggravated kidnapping beyond a reasonable doubt. The defendant argues that the evidence was insufficient to support a finding of "secret confinement." The offense of kidnapping occurs when a defendant "secretly confines another against his or her will." 720 ILCS 5/10-1(a)(1) (West 2010). The offense of aggravated kidnapping occurs when a defendant "commits kidnapping and, during the commission of the offense of kidnapping, personally discharges a firearm." 720 ILCS 5/10-2 (a)(7) (West 2010). Our supreme court has defined the term "secret" as "concealed, hidden, or not made public," and

the term "confinement" as "the act of imprisoning or restraining someone." *People v. Gonzalez*, 239 Ill. 2d 471, 479 (2011). Confinement includes enclosure within a building. *People v. Siguenza-Brito*, 235 Ill. 2d 213, 227 (2009). Moreover, our supreme court has stated that "secret confinement can be shown through evidence that the defendant isolated the victim from meaningful contact with the public." *Gonzalez*, 239 Ill. 2d. at 480.

¶ 14 Here, for a majority of the three-hour encounter, the defendant held the two victims behind the counter of a take-out restaurant. Even if an individual walked by the restaurant, there was little opportunity to see the victims because a large counter would block their view. The defendant locked the door so no outsiders could enter and threw away the victims' cell phones, preventing any meaningful contact with the public. In addition, the defendant forced the two victims to the bathroom located in the back of the restaurant. The bathroom was not visible to the public. Throughout the encounter, the defendant made sure that both victims did not leave his sight and were away from the windows to the restaurant. Additionally, the defendant told them they could not leave. The defendant's actions made it more difficult for the victims to get help and decreased the likelihood that they would be seen from the outside. In light of this evidence, a rational trier of fact could find that the defendant secretly confined the two victims.

¶ 15 The defendant next argues that the kidnapping was merely incidental to the robbery and that the *Levy-Lombardi* doctrine therefore bars his convictions for aggravated kidnapping. Generally, this doctrine stands for the proposition that a conviction for aggravated kidnapping should not be sustained when the confinement of the victim was incidental to the robbery. *People v. Eyler*, 133 Ill. 2d 173, 199 (1989). There are four factors that courts consider in determining whether the *Levy-Lombardi* doctrine applies: (1) the duration of the detention; (2) whether the detention is inherent in the separate offense; (3) whether the detention occurred

during the commission of a separate offense; and (4) whether the detention created a significant danger to the victims independent of that posed by the separate offense. *People v. Smith*, 91 Ill. App. 3d 523, 529 (1980). Whether the detention constitutes a kidnapping is fact specific and depends on the circumstances of each case. *People v. Quintana*, 332 Ill. App. 3d 96, 105 (2002).

¶ 16 We find that the confinement of the two victims was not merely incidental to the robbery. As to the first *Levy-Lombardi* factor, we note that after the defendant received over $200 from the safe and the victims, he continued to confine the victims for over three hours. This time frame is sufficient to support a separate kidnapping conviction. See *People v. Jackson*, 331 Ill. App. 3d 279, 294 (an asportation of less than one block and a detention of a few minutes were sufficient to support a separate kidnapping conviction).

¶ 17 As to the second factor, the detention is only inherent in the separate offense if it constitutes an element of that offense. *People v. Sumler*, 2015 IL App (1st) 123381, ¶ 59 (2015). Here, the separate offense was armed robbery. A defendant commits armed robbery when he knowingly takes property from a person by the use of force or by threatening the use of force, and the defendant is armed with a firearm. 720 ILCS 5/18-2(a)(2) (West 2010). Therefore, because secret confinement of a victim is not an element of the offense of armed robbery, the kidnapping was not inherent in the robbery.

¶ 18 As to the third factor, we note that the detention occurred during the commission of the armed robbery. However, a rational fact finder could have determined that defendant's confinement of the victims in the bathroom, where he physically assaulted each of them, was a secret confinement unrelated to the armed robbery. In this case, the offenses could rationally be viewed as sequential, as opposed to coincidental. See *Siguenza-Brito*, 235 Ill. 2d at 226-27, *Sumler* at ¶ 58. To commit armed robbery, the defendant did not have to bring Mendoza and

Quiroz to the bathroom, place a bag over Mendoza's head, throw away their cell phones, touch Quiroz "all over," and then tell the victims at gunpoint that they could not leave while he went to the back of the restaurant.

¶ 19 As to the fourth factor, the secret confinement created a significant danger to the victims beyond that posed by the armed robbery. A significant danger arises when a victim is forced out of a public area and into a private space because, thereafter, a victim's signal for help is less likely to be detected and the chance of being seen by a passerby is greatly diminished. *People v. Lloyd*, 277 Ill. App. 3d 154, 164 (1995). Here, in addition to bringing the victims into the restaurant and locking the door, the defendant created a danger beyond that posed by the armed robbery when he brought the victims to the bathroom, put a plastic bag over Mendoza's head, groped Quiroz, and told them at gunpoint that they could not leave before he retreated to the back of the restaurant.

¶ 20 Accordingly, weighing these factors and considering the specific facts of this case, we find that there was sufficient evidence for a rational trier of fact to find the defendant guilty of the independent offense of aggravated kidnapping. The *Levy-Lombardi* doctrine does not bar the defendant's convictions for aggravated kidnapping as those offenses were not merely incidental to the armed robbery.

¶ 21 CONCLUSION

¶ 22 For the foregoing reasons, we affirm the judgment of the circuit court of Kane County.

¶ 23 Affirmed.