2018 IL App (1st) 150682-U

No. 1-15-0682

Order filed April 27, 2018

Fifth Division

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 11 CR 15390
	)	
ULIS BOOKER,	)	Honorable
	)	John Joseph Hynes,
Defendant-Appellant.	)	Judge, presiding.

JUSTICE HALL delivered the judgment of the court.
Justices Lampkin and Rochford concurred in the judgment.

ORDER

¶ 1 *Held*: We affirm the circuit court's denial of defendant's motion to quash arrest and suppress evidence where the police officers had reasonable suspicion to stop defendant; the evidence was sufficient to sustain defendant's conviction for aggravated kidnapping; and defendant's convictions for armed robbery and aggravated kidnapping did not violate the one-act, one-crime doctrine.

¶ 2 Following a jury trial, defendant Ulis Booker was found guilty of armed robbery with a firearm (720 ILCS 5/18-2(a)(2) (West 2010)) and aggravated kidnapping (720 ILCS 5/10-2(a)(6) (West 2010)) and sentenced to concurrent terms of 21 years' imprisonment. On appeal, he

contends the trial court erred in failing to grant his motion to quash arrest where the police officers lacked reasonable suspicion to stop him, the evidence was insufficient to sustain his aggravated kidnapping conviction, and the aggravated kidnapping conviction must be vacated under the one-act, one-crime doctrine. We affirm.

¶ 3 Defendant was charged by indictment with armed robbery, aggravated kidnapping, aggravated unlawful restraint, and aggravated unlawful use of a weapon stemming from events occurring on August 29, 2011, in Oak Lawn, Illinois. Prior to trial defendant filed a motion to quash arrest and suppress evidence, arguing, *inter alia*, that the officers lacked reasonable suspicion to stop him. The trial court held a hearing on defendant's motion. At the suppression hearing, two emergency dispatchers and three police officers described the events of August 29, 2011. The following evidence was presented at the hearing on the motion.

¶ 4 On August 29, 2011 shortly before 11 a.m., Laura Skala was working as a 911 dispatcher for Oak Lawn. She received a call from Christopher Noy, the store clerk of the Game Stop store at 87th Street and Ridgeland Avenue, who indicated that an armed robbery had occurred and the offender was a six-foot two-inch tall black man with a silver handgun. The offender was wearing a Carhartt jacket and fled eastbound. Skala broadcasted this information. She received additional information regarding the offender from fellow dispatchers at the same call center, who were simultaneously gathering information about the robbery. She was able to hear descriptions put out over the radio by various police officers and also heard the dispatcher for the city of Burbank, Illinois dispatch information about the robbery. Skala's notes did not contain a description of the offender as "heavy set" but that information could have still been transmitted to other dispatchers and officers.

¶ 5 Tiffany Taylor was also working as an Oak Lawn dispatcher when she received a call about the armed robbery from a witness, Henderson Martin. Martin told Taylor that the offender was wearing a brown puffy coat, dark blue pants, and a black ski mask. Taylor entered this information into the computer, which relayed it to the other dispatchers, including the Burbank dispatcher. Taylor heard the Burbank dispatcher dispatching the information Taylor had received.

¶ 6 Oak Lawn police officer Randy Hall responded to the dispatch of the armed robbery at the Game Stop store. Hall arrived at the scene first and entered the store. He ordered anyone inside to come out with their hands up, and Noy exited from the back storage area. Hall also observed Martin outside of the store. After speaking with Noy and Martin, Hall put out a description of the offender as a six-foot two-inch tall black man wearing a Carhartt jacket, who fled eastbound. While Noy and Martin told him the Carhartt jacket was tan, Hall was not able to recall at the suppression hearing whether his description of the offender included the color of the Carhartt jacket. Noy and Martin did not indicate to Hall that the offender was wearing a mask.

¶ 7 Burbank police officer John Golden heard a dispatch regarding the armed robbery, which indicated that a heavyset black man in dark clothing was headed eastbound from behind the Game Stop. While responding, Golden stopped defendant, based on the description, in the area of 87th Street and Merrimac Avenue, which was about three blocks from the Game Stop. He did not see anyone in the area matching the description or otherwise see anyone else present on the street. When Golden heard the dispatch, he was "right around the block" from 87th and Merrimac and it took him 10 to 15 seconds to arrive. Golden used his radio to alert other officers that he had stopped a subject matching the description provided. Defendant was wearing dark

shoes, dark pants, and a dark t-shirt and was approximately 5 feet 10 inches tall and 260 pounds. At this point, defendant was not handcuffed but was not free to leave. Shortly after, Officer Fortuna arrived on scene. Golden was present when the victim and witness were brought to the scene.

¶ 8 Oak Lawn police officer Michael Fortuna observed that Officer Golden had stopped defendant and pulled over to investigate. Fortuna testified that defendant had matched the description from the dispatch, which indicated a heavyset black man wearing dark pants was involved in an armed robbery. Defendant was wearing black pants and a dark-colored t-shirt. Fortuna stated that, at some point, he heard a dispatch indicating the offender was wearing a mask and a brown or beige coat, but he did not know if that dispatch occurred before or after defendant was stopped. About three to five minutes later, other officers brought the victim and a witness to the scene.

¶ 9 The trial court denied defendant's motion to quash arrest and suppress evidence. The court found:

> "Dispatcher Skala received further information that the description was a male black, 6-2, with a Carhartt coat from the victim, and she could have said he was heavy set. That may not be in the CAD report. She did indicate eventually that his height and weight were 5-10 and 260 pounds."

It further found the description of the offender was "sufficiently detailed" and "the officer's observations based on the descriptions that were given and detention were proper under a *Terry* analysis here." It further noted that the stop was limited in duration, and the police officers had reasonable suspicion to stop and detain defendant.

¶ 10 At trial, Noy testified that, on August 29, 2011, he was working alone at the Game Stop in Oak Lawn. Around 10:45 a.m., a man wearing a yellow or mustard-colored hooded jacket, ski mask, and dark pants entered the store and pointed a small silver gun at him. The man grabbed Noy by the back of the shirt and pushed him towards the back storage room, ordering him to open the door.

¶ 11 Once the door was open, the man took Noy's keys, pushed him towards the ground, and began to tie his wrists together with wire. When Noy resisted, the man told him, "I'll kill you." Eventually, the man was able to tie Noy's hands together. The man propped open the storage room door with a vacuum cleaner and left the room.

¶ 12 Noy freed himself from the wire, grabbed his phone, and ran into the bathroom. Noy barricaded himself in the bathroom and called 911. As Noy was talking to the 911 operator, the man tried to kick open the door but was unable. Noy remained in the bathroom until Officer Hall arrived and ordered him out. Outside the store, an exterminator, Henderson Martin, was present. Eventually, Noy went with officers to 87th and Merrimac to possibly identify a suspect that police had stopped.

¶ 13 When Noy arrived at the location, he observed a man that was a "spot on" match of the offender, except for the coat and mask. Although the man was wearing a mask during the robbery, Noy recognized him as the offender because he had a "bigger build" and was "slightly shorter" than Noy. Noy also knew the offender was a black man because he could see the bridge of the offender's nose through the mask. Further, the man was wearing the same dark pants and black sneakers as the offender, which Noy saw as the offender stood over him in the back storage room. In court, Noy identified defendant.

¶ 14 Martin testified that, on August 29, 2011, he was employed as an exterminator and received an assignment at the Game Stop in Oak Lawn. Around 10:50 a.m., he entered the store and noticed the phone was off the hook but no one was present in the front of the store. Martin heard "rumbling" from the back of the store and saw a young man, about six-feet two-inches tall, wearing a mask with a hoodie on his head walk from the back room. The man was a "big guy" wearing a mustard-colored hoodie and a black mask, who walked quickly past Martin towards the front door. Martin followed the man outside of the store and observed him go left around the corner to a gangway.

¶ 15 Martin returned to his truck and called 911. A police officer arrived as he was on the phone, and he told the officer he believed that a robbery had taken place. Eventually, Martin went with police to 87th and Merrimac to possibly identify the offender. Martin identified the man as the "big guy" from the store. The man was wearing a dark shirt, but Martin was unable to see the man from the waist down because a police car was obstructing his view. Martin identified defendant in court.

¶ 16 A surveillance video depicting the inside of the store at the time of the robbery was shown to the jury. The video shows the front of the store with Noy on the phone when a man wearing a yellow hooded sweatshirt walks into the store and points a gun at Noy. The man grabs Noy by the back of the shirt and pushes him to the back of the store. Another camera depicts the back storage room. The man forces Noy into the back storage room and pushes him to the ground. The man ties Noy's hands behind his back and removes keys from Noy's pocket. The man looks around the room before placing something in the doorway and exiting the room. Noy quickly frees himself, runs into a bathroom connected to the storage room, and closes the door.

The man comes back into the storage room and unsuccessfully tries to enter the bathroom. The man leaves the back storage room and proceeds to the front door, walking past Martin, who had entered the store. Eventually, a police officer enters the store and Noy walks out of the back storage room.

¶ 17 Surveillance video from a nearby convenience store, located at 8765 Ridgeland Avenue, was also played for the jury.[1] The video shows an individual walking through an alley and removing his yellow-colored coat.

¶ 18 Officers Hall and Golden testified consistently with their testimony at the suppression hearing. Hall arrived at the Game Stop and spoke with Noy and Martin. At 87th and Merrimac, Golden stopped a heavyset black man, identified in court as defendant, who was walking eastbound and wearing dark clothing. Golden asked defendant to approach the police car. Golden exited his vehicle but did not draw his gun or handcuff defendant.

¶ 19 Officer Fortuna also testified consistently with his testimony at the suppression hearing. He spoke with defendant in the presence of Officer Golden at the location where defendant had been stopped. Defendant stated that he started walking at 9:50 a.m. from 87th Street in Justice, Illinois to his sister's house located at 87th and Commercial. He explained that he did not have a car and did not have money for the bus. Other officers then brought two individuals to the scene in order to perform a show-up identification. After the show-ups were performed, defendant was transported to the police station.

¶ 20 Officers searched the Game Stop and the area around it for evidence. They recovered a silver handgun under a bush in front of an apartment building in the general vicinity of the store.

[1] The parties stipulated to the proposed testimony of the owner of the convenience store, who would establish a proper foundation for the video.

A search of the dumpsters near the Game Stop recovered a brown khaki colored hooded sweatshirt, a black ski mask, and a blue glove. Based on this discovery inside of the dumpster, an officer broadcasted that the offender might now be wearing different clothes. Further, a Dodge Durango in the parking lot of the Game Stop was discovered to be registered to Yolanda Bays Booker, and a search recovered a holster for a handgun, a coil of speaker wire, and some paperwork containing "Game Stop" on it. Inside the store, officers recovered copper speaker wire from the floor of the bathroom and a yellow glove from a desk in the storage room.

¶ 21 Forensic scientists with the Illinois State Police crime laboratory testified to analysis performed on fingerprints and other physical evidence obtained. The fingerprint expert testified that one print from the vacuum cleaner matched defendant, but prints found on the store's front door handle were not tested. Another expert testified that the major DNA profile found on the jacket and both gloves matched defendant's profile, and defendant could not be excluded as a source of the major profile found on the mask.

¶ 22 Oak Lawn police detective Michael Hudziak interviewed defendant at the police station. Prior to any questions, Hudziak gave defendant his *Miranda* warnings, and defendant agreed to speak with him. Defendant told Hudziak that he had recently been denied public assistance and that the officers would not understand what he was going through. Defendant denied being inside the Game Stop that day and stated that he was walking from his residence off 87th Street in Justice to his sister's house at 87th and Carpenter.

¶ 23 Hudziak asked defendant where he hid the gun, defendant responded, "there is no gun." Hudziak explained that if a child were to find the gun and hurt themselves or someone else, defendant would be responsible. Defendant responded, "I am willing to take that chance."

¶ 24 The jury found defendant guilty of armed robbery and aggravated kidnapping. The trial court denied defendant's written motion for a new trial. It sentenced defendant to concurrent terms of 21 years' imprisonment. Defendant filed a timely notice of appeal.

¶ 25 On appeal, defendant contends the trial court erred in denying his motion to quash arrest and suppress evidence where the police lacked reasonable articulable suspicion that he was involved in criminal activity. He further contends that the evidence was insufficient to find him guilty of aggravated kidnapping where the State failed to prove he intended to secretly confine Noy and where the asportation of Noy was merely incidental to the armed robbery. He finally contends that his aggravated kidnapping conviction must be vacated in light of the one-act, one-crime doctrine.

¶ 26 When reviewing the trial court's ruling on a motion to suppress, we give deference to the court's findings of fact and will only reverse if they are against the manifest weight of the evidence. *People v. Burns*, 2016 IL 118973, ¶ 15. The ultimate legal issue of whether the trial court should have granted the motion to quash arrest and suppress evidence is reviewed *de novo*. *Id.* ¶ 16. We may consider the testimony presented at trial as well as the testimony at the suppression hearing when reviewing the trial court's ruling on a motion to suppress. *People v. Slater*, 228 Ill. 2d 137, 149 (2008).

¶ 27 The fourth amendment to the United States Constitution provides the "right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated." U.S. Const., amend. IV. Reasonableness under the fourth amendment generally requires a warrant that is supported by probable cause. *People v. Jones*, 215 Ill. 2d 261, 269 (2005). One exception to the warrant requirement arises when officers

perform an investigative stop based on reasonable suspicion that a crime has been, or is about to be, committed. *People v. Sims*, 2014 IL App (1st) 121306, ¶ 8.

¶ 28 Courts analyze the reasonableness of a temporary investigative stop pursuant to the principles set forth in the United States Supreme Court case of *Terry v. Ohio*, 392 U.S. 1 (1968). See *People v. Gherna*, 203 Ill. 2d 165, 177 (2003). Under *Terry*, "a police officer may conduct a brief, investigatory stop of a person where the officer reasonably believes that the person has committed, or is about to, commit a crime." *People v. Timmsen*, 2016 IL 118181, ¶ 9. To justify a stop, the "police officer must be able to point to specific and articulable facts which, combined with the rational inferences from those facts, reasonably warrant the intrusion." *People v. Sanders*, 2013 IL App (1st) 102696, ¶ 14.

¶ 29 Under this reasonable suspicion standard, the facts necessary to justify a *Terry* stop do not need to rise to the level of probable cause and can be satisfied even if no violation of the law is observed but must go beyond a mere hunch. *People v. Maxey*, 2011 IL App (1st) 100011, ¶ 46. An officer's decision to conduct a *Terry* stop is a practical one based upon the totality of the circumstances. *In re Elijah W.*, 2017 IL App (1st) 162648, ¶ 36. A court of review applies an objective standard to an officer's action when analyzing "whether the facts available to the officer at the time of the incident would lead an individual of reasonable caution to believe that the action was appropriate." *People v. Colyar*, 2013 IL 111835, ¶ 40.

¶ 30 Additionally, "when officers are working in concert, reasonable suspicion or probable cause can be established from all the information collectively received by the officers even if that information is not specifically known to the officer who makes the arrest." *Maxey*, 2011 IL App (1st) 100011, ¶ 54. Moreover, "arresting officers may rely upon radio transmissions to make a

Terry stop or an arrest even if they are unaware of the specific facts that established reasonable suspicion to initiate a *Terry* stop or probable cause to make that arrest." *Id.*

¶ 31 Here, given the totality of the circumstances, Officer Golden's decision to stop defendant was proper under *Terry*. Golden heard a dispatch that an armed robbery occurred at a Game Stop at 87th and Ridgeland. Golden testified that the dispatch indicated that the offender was a heavyset black man wearing dark clothing who had fled eastbound from the store. About 10 to 15 seconds later, as Golden was responding, he observed a man matching the description about three blocks from the Game Stop. There were no other individuals on the street at the time.

¶ 32 Given that Golden saw a heavyset black man three blocks from the scene of the armed robbery, wearing dark clothes with no other person matching the description or otherwise present on the street, he was justified in performing a *Terry* stop of defendant. The totality of the circumstances indicated defendant had been involved in criminal activity and the radio dispatch provided Golden reasonable articulable suspicion to stop defendant. See *Maxey*, 2011 IL App (1st) 100011, ¶ 58 (where radio dispatches regarding a crime indicated a slender African-American male, driving a red or burgundy car with distinctive license plates was involved, the officer's stop of the defendant matching this description within one mile from the crime scene was justified under *Terry*).

¶ 33 Defendant contends that, because the State did not identify the specific source of the dispatch that Golden testified he relied on to stop defendant, it cannot be proven whether the person who issued the dispatch had reasonable articulable suspicion to allow for a stop of defendant. We disagree. At the suppression hearing, Skala testified that she was working as a dispatcher when Noy, the victim, called to report the armed robbery. Noy told her that the

offender was a six-foot two-inch tall black man with a silver handgun and wearing a Carhartt jacket, who fled eastbound. She further received additional information regarding the offender from her coworkers, who were simultaneously gathering information about the robbery. Moreover, she heard the dispatcher for Burbank dispatch information regarding the robbery.

¶ 34 Taylor testified she received a call from eyewitness Martin who described the offender as wearing a brown puffy coat, dark blue pants, and a black ski mask. She entered this information into her computer, which relayed the information to other dispatchers. She also heard the dispatcher for Burbank dispatching the information.

¶ 35 Officer Hall testified that, after speaking with Noy and Martin, he put out a description of the offender as a six-foot two-inch black man wearing a Carhartt jacket fleeing eastbound. Given the information that was shared by the dispatchers and Hall, along with defendant's presence three blocks away matching the description, we find the *Terry* stop of defendant was justified. Therefore, the State did not need to call the Burbank dispatcher, as defendant claims, because the testimony of Skala, Taylor, and Hall provided specific and articulable facts which, under the totality of the circumstances, Golden could have properly relied on in order to stop defendant. See *Sanders*, 2013 IL App (1st) 102696, ¶ 14.

¶ 36 We find *People v. Lawson*, 298 Ill. App. 3d 997 (1998), relied on by defendant, to be distinguishable. In *Lawson*, the defendant was arrested by an officer responding to a radio dispatch that included a description of a robbery offender. *Lawson*, 298 Ill. App. 3d at 998. At the suppression hearing, only the arresting officer testified, and he explained that he arrested defendant, who matched the description given in the dispatch. *Id.* Specifically, he observed a

black man, six feet tall, wearing dark clothes about 800 feet from the scene of the crime. *Id.* at 999.

¶ 37 On appeal, the court in *Lawson* held that, although the arresting officer could rely on the radio description to arrest the defendant, the State failed to present evidence regarding the underlying facts known by the officer who issued the radio broadcast. *Id.* at 1001-02. Because the officer who issued the dispatch did not testify to sufficient facts satisfying probable cause to arrest the defendant or even reasonable suspicion to stop the defendant, the court affirmed the grant of defendant's motion to quash arrest and suppress evidence. *Id.* at 1003-05.

¶ 38 However, *Lawson* is distinguishable because, here, the State did provide evidence of the underlying basis for the dispatch through the testimony of Hall, who responded to the scene and spoke with the victim Noy and eyewitness Martin. See *People v. Matous*, 381 Ill App. 3d 918, 924 (2008) (distinguishing *Lawson* on this point, where "the evidence included the basis of the dispatcher's broadcast, *i.e.*, a pharmacist from Hy-Vee"). The State further offered the testimony of two dispatchers who each testified to the information they learned from either Noy or Martin. Accordingly, the State provided adequate evidence regarding the underlying basis of the information sent to Golden, and therefore *Lawson* does not persuade us that the *Terry* stop of defendant was improper.

¶ 39 Defendant argues that, even if Golden relied on the dispatch and information provided, the stop was nevertheless unlawful because defendant did not match the description given. Specifically, defendant notes that contrary to the dispatch, he is 5 feet 10 inches tall as opposed to 6 feet 2 inches tall. Further, he contends that he was not wearing a Carhartt jacket and did not have a ski mask when he was stopped. However, defendant overlooks the fact that he matched

the description of being a heavyset black man in dark clothing who fled eastbound from the store, and was observed roughly three blocks away. He was discovered roughly 10 to 15 seconds after Golden heard the dispatch matching the description and was the only person on the street. Given the totality of the circumstances, the fact that defendant was actually slightly shorter than the description and was no longer wearing a removable jacket or possessing a ski mask do not affect Golden's reasonable articulable suspicion to stop defendant.

¶ 40 Having determined the officers had reasonable suspicion to conduct a *Terry* stop of defendant, we need not address his argument that the evidence obtained should be suppressed as a result of an unlawful stop.

¶ 41 Defendant next argues that the evidence was insufficient to sustain his conviction for aggravated kidnapping where the State failed to prove he intended to secretly confine Noy and where the asportation of Noy was merely incidental to the armed robbery. The standard of review when challenging the sufficiency of the evidence 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 offense proven beyond a reasonable doubt. *People v. Baskerville*, 2012 IL 111056, ¶ 31. "A reviewing court will not substitute its judgment for that of the trier of fact on issues involving the weight of evidence or the credibility of witnesses." *People v. Siguenza-Brito*, 235 Ill. 2d 213, 224-25 (2009). Although the determinations of the trier of fact are afforded great deference, they are not conclusive. *People v. Ortiz*, 196 Ill. 2d 236, 259 (2001). A conviction will not be overturned unless the evidence is so improbable, unsatisfactory, or inconclusive that a reasonable doubt of defendant's guilt exists. *People v. Belknap*, 2014 IL 117094, ¶ 67.

¶ 42 The State charged defendant with aggravated kidnapping under section 10-2(a)(6) of the Criminal Code of 1961, where a person commits aggravated kidnapping when he commits kidnapping while armed with a firearm. See 720 ILCS 5/10-2(a)(6) (West 2010). The offense of kidnapping may be committed in one of three ways: (1) confinement of the victim, (2) asportation of the victim, or (3) inducement of the victim. *Siguenza-Brito*, 235 Ill. 2d at 225. The indictment charged defendant with kidnapping under a confinement theory, where he "knowingly and secretly to confined [*sic*] Christopher Noy against his will, and he committed the offense of kidnapping while armed with a firearm." See 720 ILCS 5/10-2(a)(6), 10-1(a)(1) (West 2010). However, the jury was instructed as to an asportation theory of kidnapping in that "defendant, by force or threat of imminent force, carried Christopher Noy from one place to another" and when he did so, "defendant intended to secretly confine Christopher Noy against his will." See 720 ILCS 5/10-1(a)(2) (West 2010).

¶ 43 Based on the asportation theory of kidnapping presented at trial, defendant argues that the evidence was insufficient to show that his intent in pushing Noy was to secretly confine him. We disagree. Here, the evidence established that, on August 29, 2011, Noy was working as a clerk at a Game Stop. Defendant then entered the store and pointed a gun at him. Defendant grabbed Noy by the back of the shirt and pushed him towards the back storage room, ordering him to open the door. After the door was open, defendant took Noy's keys, pushed him towards the ground, and began to tie his wrists together. When Noy resisted, defendant told him, "I'll kill you." Defendant was ultimately able to tie Noy's hands together. Viewing the evidence in the light most favorable to the State, we cannot conclude no rational jury could find defendant intended to secretly confine Noy when he pushed him from the front area of the store into the back storage

room. Defendant asserts that the pushing of Noy was done in order to prevent him from interfering with the robbery, not his intent to secretly confine Noy. However, defendant was armed with a gun and there was no evidence that Noy was defying defendant's orders. Therefore the record does not support defendant's claim that the pushing was only done to prevent Noy from interfering in the robbery, especially when defendant was already pointing a handgun at Noy to ensure compliance with his demands.

¶ 44 Defendant contends that the asportation of Noy was merely incidental to the armed robbery such that his conviction for aggravated kidnapping cannot be sustained. See *People v. Enoch*, 122 Ill. 2d 176, 197 (1988) ("an aggravated kidnapping conviction should not be sustained where the asportation or confinement may constitute only a technical compliance with the statutory definition but is, in reality, incidental to another offense"); see also *People v. Cole*, 172 Ill. 2d 85, 104 (1996). He argues that, given the facts presented, the evidence cannot support a separate aggravated kidnapping conviction.

¶ 45 When determining whether the asportation was merely incidental to another offense or whether it was sufficient to support an independent offense of kidnapping, courts look at four factors. *Siguenza-Brito*, 235 Ill. 2d at 225. "These factors include (1) the duration of the asportation or detention, (2) whether the asportation or detention occurred during the commission of a separate offense; (3) whether the asportation or detention is inherent in the separate offense; and (4) whether the asportation or detention created a significant danger to the victim independent of that posed by the separate offense." *Id.* at 225-26.

¶ 46 Turning to the first factor, we note that the duration of the asportation was a very short duration over a short distance. However, a conviction for kidnapping is not precluded by a short

period of time or a small distance of movement. See *id.* at 226. Here, we find that when defendant dragged Noy from the front of the store to the back storage area of the store, the first factor was satisfied. See *People v. Banks*, 344 Ill. App. 3d 590, 596 (finding asportation supported a separate offense where it lasted "only a few minutes" and the defendant dragged the victim 10 feet down an alley).

¶ 47 Moreover, the second factor weighs in favor of a finding that an independent offense of kidnapping occurred. Here, defendant grabbed and pushed Noy to the back storage room of the store before he took Noy's keys. Therefore, the asportation occurred before the armed robbery, not during it. See *Siguenza-Brito*, 235 Ill. 2d at 226 ("The second factor is satisfied because the asportation occurred prior to, rather than during, the criminal sexual assault").

¶ 48 The third factor, whether the asportation or detention is inherent in the separate offense, also favors a finding that a separate offense of kidnapping was committed. Asporation is not an element of the offense of armed robbery with a firearm. See 720 ILCS 5/18-2(a)(2) (West 2010). Therefore, defendant committed a separate offense when he grabbed and pushed Noy from the front of the store to the back storage area as the offense of armed robbery did not require this act. See *People v. Thomas*, 163 Ill. App. 3d 670, 678.

¶ 49 Finally, with respect to the fourth factor, the asportation posed a significant danger to Noy, independent of the danger created by the armed robbery. Defendant pushed Noy from the open, publicly-accessible front of the store to the secluded, private back storage area. See *Siguenza-Brito*, 235 Ill. 2d at 226-27 ("The danger arose from the potential for more serious activity due to the privacy of the final destination—the closed garage"). Accordingly, a rational

jury could have found the independent offense of kidnapping under a theory of asportation and that it was not merely incidental to the armed robbery offense.

¶ 50 Defendant argues that his conviction for aggravated kidnapping must be vacated under the one-act, one-crime doctrine. Although defendant did not raise this claim in the trial court, "forfeited one-act, one-crime arguments are properly reviewed under the second prong of the plain-error rule because they implicate the integrity of the judicial process." *People v. Nunez*, 236 Ill. 2d 488, 493 (2010).

¶ 51 Under the one-act, one-crime doctrine, "a defendant may not be convicted of multiple offenses that are based upon precisely the same physical act." *People v. Johnson*, 237 Ill. 2d 81, 97 (2010). An act refers to " 'any outward or overt manifestation which will support a different offense.' " *Nunez*, 236 Ill. 2d at 494 (quoting *People v. King*, 66 Ill. 2d 551, 566 (1977)). When a challenge is raised under the one-act, one-crime doctrine, the court first determines whether the defendant's conduct consisted of a single physical act or separate acts. *People v. Coats*, 2018 IL 121926, ¶ 12. If only one physical act was undertaken, then multiple convictions are improper. See *id.* If the conduct consists of multiple acts, courts proceed to the second step in the analysis. *People v. Miller*, 238 Ill. 2d 161, 165 (2010). Under the second step, the court determines whether any of the offenses are lesser-include ones. *Coats*, 2018 IL 121926, ¶ 30. We review *de novo* the application of the one-act, one-crime doctrine. *Id.* ¶ 12.

¶ 52 Here, viewing the evidence, defendant's conduct consisted of multiple acts. While both the armed robbery conviction and aggravated kidnapping involved "force or the treat of imminent force," defendant's armed robbery conviction required an additional element of taking property from the person or presence of Noy. Further, defendant's aggravated kidnapping

conviction required the element of asportation with the intent to secretly confine Noy. Accordingly, the two convictions are not carved out of precisely the same physical act. See *Coats*, 2018, IL 121926, ¶ 17 (finding that, although the two offenses shared the common act of possession of a handgun, the defendant's armed violence conviction involved a separate act, possession of drugs).

¶ 53 Having determined that defendant's conduct consisted of multiple acts, we must next determine whether any of the offenses are lesser-included ones. In deciding this, Illinois courts rely on the abstract elements approach. *Miller*, 238 Ill. 2d at 175; see also *Coats*, 2018 IL 121926, ¶ 30. In order to apply the abstract elements approach, the court compares the statutory elements of the two offenses. *Miller*, 238 Ill. 2d at 166. "If all of the elements of one offense are included within a second offense and the first offense contains no element not included in the second offense, the first offense is deemed a lesser-included offense of the second." *Id.*

¶ 54 Here, defendant was charged with armed robbery, which occurs when a defendant commits robbery and carries on or about his or her person or is otherwise armed with a firearm. 720 ILCS 5/18-2(a)(2) (West 2010). Robbery occurs when a defendant knowingly takes property, except a motor vehicle, from the person or presence of another by the use of force or threatening the imminent use of force. 720 ILCS 5/18-1(a) (West 2010). Further, defendant was also charged with aggravated kidnapping, which occurs when a defendant commits kidnapping while armed with a firearm. 720 ILCS 5/10-2(a)(6) (West 2010). Kidnapping occurs when a defendant knowingly by force or threat of imminent force carries another from one place to another with intent secretly to confine that person against his or her will. 720 ILCS 5/10-1(a)(2) (West 2010).

¶ 55 Comparing the statutory elements of both offenses demonstrates it is possible to commit armed robbery with a firearm without committing aggravated kidnapping. In particular, armed robbery does not require any asportation with intent to secretly confine a person, which is an element of aggravated kidnapping. Additionally, aggravated kidnapping can be committed without knowingly taking property from the person or presence of another, which would be required to prove armed robbery. As each of these offenses have distinct elements, neither can be considered a lesser-included offense of the other. See *People v. Hairston*, 207 Ill. App. 3d 674, 680 (1990). Accordingly, defendant's convictions do not violate the one-act, one-crime doctrine.

¶ 56 For the reasons set forth above, we affirm the judgment of the circuit court of Cook County.

¶ 57 Affirmed.