2018 IL App (1st) 152072-U

No. 1-15-2072

Order filed August 28, 2018

Second Division

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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. 12 CR 17119
	)	
PARIS TAYLOR,	)	Honorable
	)	Charles P. Burns,
Defendant-Appellant.	)	Judge, presiding.

JUSTICE PUCINSKI delivered the judgment of the court.
Justices Hyman and Walker concurred in the judgment.

ORDER

¶ 1 *Held*: Defendant's convictions for aggravated criminal sexual assault and aggravated kidnapping are affirmed over his contention that the State failed to prove beyond a reasonable doubt that he used "force or threat of force."

¶ 2 Following a bench trial, defendant was convicted of three counts of aggravated criminal sexual assault (720 ILCS 5/11-1.30(a)(4) (West 2012)) and one count of aggravated kidnapping (720 ILCS 5/10-2(a)(3) (West 2012)), and sentenced to natural life imprisonment. On appeal, defendant contends that his convictions for aggravated criminal sexual assault should be reversed

because the State failed to prove the requisite element of "force or threat of force." Defendant also contends that if we reverse his convictions for aggravated criminal sexual assault, we must also reduce his aggravated kidnapping conviction to kidnapping, and remand for resentencing. We affirm.

¶ 3 On August 19, 2012, about noon, defendant was arrested at his residence. Defendant was subsequently charged by indictment with nine counts of aggravated criminal sexual assault, six counts of aggravated kidnapping, and nine counts of aggravated criminal sexual abuse. As relevant here, counts 4, 5, and 6 alleged that defendant committed aggravated criminal sexual assault, in that he knowingly committed acts of sexual penetration upon the victim, S.T., by the use of force or the threat of force, while committing the felony of kidnapping. Count 10 alleged that defendant committed aggravated kidnapping, in that he secretly confined S.T. against her will and committed the felony of criminal sexual assault against her. Count 11 alleged that defendant committed aggravated kidnapping, in that he knowingly, by force or threat of imminent force, carried S.T. from one place to another with the intent to secretly confine her against her will, and that he committed the felony of criminal sexual assault against her. The case proceeded to a bench trial.

¶ 4 S.T., the victim, testified that, on August 19, 2012, she resided at her aunt's house at the corner of Le Moyne Street and Lockwood Avenue. Shortly after 3:00 a.m., while S.T. was sitting on the front stoop of the house and talking on her cell phone, a man, whom S.T. identified in court as defendant, approached her from Lockwood and pointed a gun in her face. Defendant was "roughly just a few feet" away from her, and was wearing a ski mask with a hood over it. While pointing the gun at S.T.'s face, defendant told her to hang up her phone and come with

him. Defendant instructed S.T. to walk normally, and the two walked together towards a nearby alley. As they did so, S.T. could feel the gun in her side. S.T. testified that she did not go with defendant voluntarily, but because he had a gun.

¶ 5 S.T. and defendant walked through an alley toward Hirsch Street. Near the end of the alley, S.T. saw a patrol car driving on Hirsch Street. S.T. told defendant that a police officer was in the area. Defendant told S.T. he was aware of the police officer, pushed her into an open garage, and told her to be quiet. Defendant placed his hand under S.T.'s shirt and began to caress her chest. S.T. testified that, at first, she tried to befriend defendant so that he would not hurt her.

¶ 6 Defendant "peeped out" of the garage to see if the police were gone. He removed his mask and placed it on S.T.'s head backwards so that the holes on the mask for the eyes and mouth were at the back of her head. However, because the mask was made of a "stretchy" material, S.T. could see through it. S.T. testified that she was able to see street lights and signs.

¶ 7 Defendant and S.T. walked through the alley and onto Hirsch Street, where they got into a dark-colored sports utility vehicle (SUV) that was facing Laramie Avenue. Defendant instructed S.T. to keep her head down, place her hands down to the side so he could see them, and not to move. S.T. testified that she got into the SUV because defendant "had taken the gun out of [her] side but [she] didn't know where the weapon was so [she] was still scared." When defendant went around the SUV to the driver's seat, S.T. did not attempt to flee because she did not know defendant's whereabouts.

¶ 8 While S.T.'s head was down, the SUV began moving. Defendant drove S.T. north on Laramie, and then turned right, into an alley, after passing North Avenue. S.T. explained that she

knew when she was at North Avenue because she was from that area, and knew it was a "really lit up area." After passing a speed bump, the SUV stopped in an alley.

¶ 9 Defendant opened the passenger door and told S.T. to exit the SUV. They walked through a gate, which S.T. described as a black iron gate with a white, egg-shaped floral design in the middle. After entering through the gate into a backyard, S.T. could hear a waterfall to her right from a neighboring yard. A sensor light turned on, allowing S.T. to see the backyard. S.T. noticed a sidewalk, stairs, and a red fence to her right. Defendant guided S.T. up the stairs of the house, through a doorway and into a kitchen. From there, they walked through another doorway that led to a staircase. S.T. stood at the staircase, where defendant told her not to speak or move. Defendant left "for a second" and returned. S.T. did not attempt to flee because she did not know where she was. Defendant walked behind S.T. and guided her up the stairs. As they walked upstairs, defendant told S.T. to lower her head to avoid hitting it. They then went into a small enclosed room, similar to an attic.

¶ 10 Defendant asked S.T. for her name. She told him it was "Armari" because she did not want him to know her name. Defendant told S.T. to remove her shorts. After she did so, he removed her underwear and told her to lie on a bed. She complied with defendant's requests because he had a weapon and she was scared. S.T. laid on her back as defendant stood over her, placed his hands underneath her shirt, and touched her breast area and torso for "a few seconds." Defendant placed his mouth to S.T.'s vagina for about five minutes. He then got on top of her, and placed his penis into her vagina. Defendant wore a condom. After "about five, ten minutes," defendant removed the condom and told S.T. to squeeze his penis. Defendant then turned on a lamp. As he did so, he was "very close" to S.T. With the light on, S.T. could see defendant's face

through the ski mask. He again placed his penis into S.T.'s vagina, and then ejaculated on her stomach.

¶ 11 Defendant ordered S.T. to stay in the room as he left the room briefly. When he returned, he used a substance that smelled like hand sanitizer to wipe S.T.'s inner thighs, vaginal area, and stomach. Defendant asked S.T. if she was ready to go home, and S.T. said she was ready. He handed S.T. her clothes, and she got dressed. S.T. was still wearing the mask. She lied and told defendant she was pregnant because she did not want him to hurt her. Defendant told S.T. he was not going to hurt her. After getting dressed, S.T. sat on the bed and heard someone downstairs getting a drink of water from the kitchen. S.T. did not yell, or try to run away, because defendant told her to be quiet. After about ten minutes, defendant guided S.T., with the mask on her head, to his SUV. He drove S.T. back to the area near her aunt's house and told her "turn around and don't say anything and just walk away. Okay."

¶ 12 S.T. walked through an alley until she was far enough to feel safe. She then called 911 on her cell phone. By the time she arrived home, the police were there. S.T. awoke her aunt to tell her what happened and spoke with the officers. Shortly thereafter, she went to the emergency room at West Suburban Hospital. There, a doctor and a nurse administered a rape kit, which involved examining S.T.'s body and performing a pelvic exam. They also gathered S.T.'s clothing to keep it as evidence. S.T. spoke with a detective at the hospital.

¶ 13 After S.T. left the hospital, the detective arrived at her house and showed her a photo array. S.T. identified defendant as the offender. She then rode in the detective's car, and showed him the alley that her and defendant walked through. Afterward, she directed the detective to an alley where she recognized the black iron gate that she and defendant had walked through. The

detective drove through the alley and onto the street. There, S.T. recognized the SUV she had ridden in earlier that morning. Later that evening, about 9:00 p.m., S.T. identified defendant from a line-up at the police station.

¶ 14 During her testimony, S.T. identified photo exhibits depicting the house defendant drove her to. S.T. also testified that video footage showed her inside defendant's SUV with her head down toward her knees. S.T. saw defendant's gun once, when he pointed it in her face, and felt it in her side "up until we got in the car."

¶ 15 On cross-examination, S.T. testified that she did not know with whom she was talking to on the phone when defendant approached her, and did not tell that person that a man with a gun had approached her. When S.T. first entered the SUV, she did not attempt to lock its doors. S.T. was able to see the design on the gate because of street lights. Defendant went through S.T.'s purse after he had sex with her. He looked at her photo ID and said her first name. She denied that defendant placed money in her purse. On redirect examination, S.T. testified that she did not agree to receive money from defendant, and that, at the time, she was working at a McDonald's restaurant.

¶ 16 A.M. testified that, in August 2012, her niece, S.T., resided with her at her house. On August 19, A.M. awoke to S.T. crying and yelling. S.T. sounded "panicky" and "afraid." S.T. repeated "he raped me." The police transported S.T. to the hospital by ambulance.

¶ 17 Tanya Smith, a registered nurse at West Suburban Hospital, testified that, on the morning of August 19, 2012, she administered a rape kit on S.T. and collected a blood standard from her. Smith recalled that S.T. was sad and crying.

¶ 18 Officer Joseph Pekic testified that, on August 19, 2012, at 5:26 a.m., he went to S.T.'s residence. S.T. was very distraught, crying, and "had a lot of trouble communicating." Later, Pekic spoke with S.T. at the hospital, where she recounted to him in detail what had happened to her. When Pekic left the hospital, he toured the area that S.T. described, and arrived in the alley of West Concord Place. There, Pekic observed a residence that matched S.T.'s description. At the front of the residence, Pekic saw a vehicle that also matched S.T.'s description. A license plate check revealed that the vehicle was registered to defendant. When Pekic and other officers entered the residence described by S.T., Pekic saw defendant. On cross-examination, Pekic testified that a search of the residence did not yield a gun or a ski mask.

¶ 19 Detective Jeffrey Hansson testified that, on the morning of August 19, 2012, he spoke with S.T. at West Suburban Hospital. Afterward, Pekic informed Hansson that he had information regarding a suspect, a vehicle, and a possible address of the crime scene. Hansson relocated to the police station, and, using the information provided by Pekic, compiled a photo array. Hansson showed the photo array to S.T. and she identified defendant. Hansson then drove S.T. around the area, as she directed him along the path that she believed defendant took when he abducted her. Hansson drove southbound through an alley east of S.T.'s residence, eastbound on Hirsch, then northbound on Laramie, and eastbound through the north alley of North Avenue. There, S.T. recognized the fence she entered with defendant, another fence that was nearby, and the steps on the rear porch of the residence. After exiting the alley, and driving onto Concord Place, S.T. recognized the vehicle she rode in with defendant. Hansson drove S.T. back to her house, and then returned to the address on West Concord Place.

¶ 20 Hansson knocked on the door of the house and spoke with defendant's father, who allowed Hansson into his house. Defendant and his mother, Carol Taylor, were also present inside the house. Defendant consented to a search of the second floor. There, Hansson found a pair of jeans resting on a chair next to a bed. Inside the pockets of the jeans was a used condom, a used condom wrapper, and a set of keys. Hansson also saw a bottle of rubbing alcohol on a bench, and used tissues in a trash bin. After observing these items, Hansson requested an evidence technician. Defendant's vehicle was impounded for investigation. After the evidence technician photographed the second floor and removed evidence, Hansson went to the police station and spoke with defendant. About 9:00 p.m., S.T. identified defendant from a physical line-up.

¶ 21 Evidence Technician James McDonough testified that he arrived at defendant's house and searched the second floor. Among the items McDonough recovered and inventoried, were a used condom and a condom wrapper. He did not recover a firearm or ski mask. McDonough also photographed the second floor and the outside of the residence.

¶ 22 Detective Patricia Dwyer testified that, on August 20, 2012, about 11:30 a.m., she executed a search warrant for a dark colored SUV. Registration found in the SUV indicated that the owner of the vehicle was Paris Taylor. From the cargo area, Dwyer recovered a mask "to cover your face," but did not recover "a knit ski mask that had two eye holes and a mouth hole that you could see through."

¶ 23 The parties stipulated that: (1) the DNA profiles of S.T. and defendant matched the DNA profiles obtained from a swab of the outside of the used condom; (2) defendant's DNA profile matched a DNA profile obtained from a swab of the inside of the condom; and (3) defendant's

DNA profile matched a DNA profile found on the vaginal swabs from the sexual assault kit administered on S.T. The parties also stipulated that the video surveillance footage presented was from the Social Security building on North Avenue, and that the footage was recorded by a camera located in the alley south of Concord Place, on August 19, 2012, between 3:00 to 5:30 a.m. The State rested its case in chief.

¶ 24 Manuel Maldanaldo testified that he lived next door to, and has known, defendant for eight years. On August 19, 2012, about 3:00 a.m., Maldanaldo heard a woman screaming "Paris." He looked outside his window and saw a young black woman, pacing back and forth, outside of defendant's house.

¶ 25 Defendant's father, Jerry Taylor, testified that, on the date in question, he and his wife, Carol, resided at a house on West Concord Place with defendant, who lived in the upstairs bungalow. From midnight until 6:00 a.m., Jerry did not hear any noises from the upstairs bedroom, which is directly above his bedroom.

¶ 26 On cross-examination, Jerry testified that, on the evening of August 18, 2012, he, Carol, and defendant went to a family reunion. Defendant left the reunion before Jerry, and was at the house when Jerry arrived there. Jerry denied telling Detective Hansson that he was intoxicated. Jerry told Hansson that he woke up that night to use the bathroom three or four times. He also denied telling Hansson that his wife woke up, sometime between 3:00 and 4:00 a.m., went to the kitchen, and then returned to bed.

¶ 27 Carol Taylor, defendant's mother, testified that she could not recall if defendant was at the house when she returned from the family reunion on the night of August 18, 2012. In the following early morning hours, she did not hear anything unusual upstairs. On cross-

examination, Carol testified that she drank very little at the family reunion, and that defendant was at the house when she arrived there. After arriving home, Carol and Jerry drank in the basement and watched television. She did not see defendant again until the police arrived the next morning. Jerry went upstairs to bed before Carol, who stayed in the basement until 4:00 a.m. She could not recall whether she got water from the kitchen before going to bed. She did not recall telling Hansson, on August 19, 2012, that she woke up about 3:00 or 4:00 a.m., got ice from the freezer and some water, and then went back to bed. She acknowledged telling Assistant State's Attorney Jim Pontrelli, during a conversation on August 20, 2012, that on the morning in question, about 3:30 to 4:00 a.m., she went into the kitchen and got a glass of ice water.

¶ 28 Defendant testified that, on August 19, 2012, he went to a family reunion. He left the reunion, about 7:00 or 7:30 p.m., because he had to work the next day. At midnight, defendant awoke to a call from his girlfriend, Dawn Sutton, and they had a conversation because they were "going through some issues." About 1:00 a.m., defendant left for work. When defendant arrived at work, he learned that he was not needed that day. About 2:00 a.m., he left work and went to a 24-hour tire shop to repair his vehicle, a maroon 1997 Chevy Tahoe. He then went to a White Castle restaurant near North Avenue. Afterward, he went to a gas station at "North Avenue towards Cicero." There, defendant saw S.T., who called herself "Shantae."

¶ 29 Defendant was familiar with S.T. and had been "involved" with her at least three times. Defendant explained that they first met at that gas station on North Avenue when he had lent her money to purchase cigars. Sometime after they met, S.T. called him on the phone. Defendant's girlfriend went through his phone and called S.T. On one occasion, while at defendant's parents'

house, S.T. told defendant that she was pregnant and asked him for $100 to help her save for the baby. Defendant promised to give her the money.

¶ 30 On the night in question, defendant spoke with S.T. at the gas station for about fifteen minutes. S.T. asked about the money defendant had promised to give to her. When defendant told S.T. he was going to his parents' house, she agreed to come with him. Defendant did not force S.T. into the truck, he did not have a weapon, nor an item that would lead somebody to believe it was a weapon, and he did not have a ski mask. Defendant drove S.T. to the alley behind his parents' house and they went to the second floor of the house. There, they took off their own clothes, and had consensual sex. S.T. removed a condom defendant was wearing and performed oral sex on him. As they were preparing to leave the house, defendant gave S.T. $50, which she placed in her purse. S.T. complained that he had promised her $100 and that he was "playing her cheap." Defendant went downstairs to grab S.T. a bottle of water, and when he returned upstairs, S.T. was using hand sanitizer that was on top of a television.

¶ 31 S.T. walked home, but returned to defendant's house because she had left her belt there. S.T. called defendant's name from outside the house. When defendant went downstairs to return the belt to her, S.T. complained that he did not pay her the additional $50. Defendant then went back upstairs and realized that S.T. took two credit cards from his wallet. Defendant drove to Laramie Avenue and Le Moyne Street, where S.T. was standing next to a vehicle and talking to two men. Defendant confronted S.T., and they argued about the credit cards. Defendant eventually grabbed the cards from her after she removed them from her bra. When defendant grabbed the credit cards, he also "snatched" the money he had given her and "tore the twenty and the ten." Defendant then drove home.

¶ 32 On cross-examination, defendant testified that he first met S.T. sometime at the end of July or the beginning of August 2012. S.T. took defendant's phone number and called him repeatedly. Defendant testified that he had sex with S.T. three times, and paid S.T. for sex "probably twice." He also testified that S.T. had previously called him and asked him for a phone charger. On the morning in question, "about three something," defendant drove S.T. to his house to have sex with her. Defendant saw the video, presented at trial, of a vehicle driving through an alley. He acknowledged that his vehicle was shown in the video, but that he could not see a person in the passenger seat because the video was blurry. Defendant testified he did not place the condom he used with S.T. in his jeans pocket. Defendant denied telling Assistant State's Attorney Dustin Smith, on August 20, 2012, that he saw a prostitute the previous night, but did not know her name.

¶ 33 In rebuttal, S.T. testified that she never met defendant at a gas station at North and Laramie, and had never previously been to defendant's house. When shown a photograph of the mask Dwyer recovered from defendant's vehicle, S.T. testified that she had not seen that mask before. On cross-examination, S.T. acknowledged that she has, on a few occasions, purchased cigars for her aunt and sister at the gas station on North and Laramie. S.T. denied telling defendant she was pregnant.

¶ 34 The parties stipulated that, in August 2012, S.T. had one cell phone. The parties also stipulated that, if called, the keeper of records for Sprint would testify that: (1) defendant's phone number does not appear in records, from August 1, 2012 to August 20, 2012, of incoming and outgoing calls made to S.T.'s cell phone number; (2) Sutton's phone number does not appear in those same records; and (3) on August 19, 2012, S.T.'s cell phone received an incoming call at

3:16 a.m., which lasted 22 minutes, and that the next call made from S.T.'s cell phone was to 911 at 5:08 a.m.

¶ 35 Former Assistant State's Attorney Dustin Smith testified that defendant told him that on the evening of August 18, 2012, he was with Sutton until 5:00 p.m. Defendant then met up with a prostitute, whose name was either Shantell or Shantrell, and was with her until 9:00 p.m. Defendant said that the prostitute was the only person he had sexual relations with the entire night, and that he never left his house after 9:00 p.m.

¶ 36 Dawn Sutton testified that, on August 18, 2012, she was defendant's girlfriend and went to his house about 4:00 or 5:00 p.m. As they were preparing to go to a family function, they began to argue and she ultimately did not go to the family function with defendant. She spoke to defendant at 12:01 a.m. over the phone, and again at 12:59 a.m., when defendant told her he was getting ready to go to work. Later that morning, she called defendant at 10:50 a.m., and he told her he had arrived home at 8:00 or 9:00 a.m. On cross-examination, Sutton testified that, in August 2012, she asked defendant why he had a young woman's phone number in his phone.

¶ 37 Detective Hansson testified that he spoke with defendant in the afternoon of August 19, 2012, at the police station. Defendant said he left the family reunion at 8:00 p.m., and that his parents were already home when he arrived home at 9:00 p.m. Defendant also said that the next time he left the house was when the police arrived, and that he did not go to work at the Chicago Tribune because he was tired. Defendant indicated that four days earlier he had been with a prostitute.

¶ 38 Later in the afternoon of August 19, 2012, Hansson spoke with Jerry and Carol at their home. Jerry told Hansson that, when he and Carol arrived home from the family reunion,

defendant was already home, and that defendant had to help Carol into the house because they were both intoxicated. Jerry also said that Carol woke up in the middle of the night, sometime around 3:00 and 4:00 a.m.

¶ 39 Certified copies of defendant's prior convictions for attempted murder, unlawful use of a weapon by a felon, aggravated unlawful restraint, aggravated fleeing, and eluding the police were also admitted into evidence for impeachment purposes.

¶ 40 The trial court found defendant guilty of three counts of aggravated criminal sexual assault and two counts of aggravated kidnapping. We briefly note that defendant could lawfully be convicted of each of these two offenses despite that the kidnapping was committed in order to accomplish the sexual assault and the sexual assault was committed during the kidnapping. See *People v. Hines*, 165 Ill. App. 3d 289, 300-01(1988).

¶ 41 In announcing its ruling, the court rejected defendant's affirmative defense of consent, and noted that it found S.T.'s testimony credible. However, the court found that the State did not prove beyond a reasonable doubt that defendant was armed with a handgun because there was no explanation of what happened to the gun. As a result, defendant was acquitted of all charges "that reveal the defendant was armed with a dangerous weapon or a deadly weapon." The court ultimately found defendant guilty of three counts of aggravated criminal sexual assault (counts 4, 5, and 6), and two counts of aggravated kidnapping (counts 10, and 11). Defendant was acquitted on the remaining counts.

¶ 42 At sentencing, the court merged the two counts of aggravated kidnapping and sentenced defendant to natural life imprisonment without parole. The court denied defendant's motion to reconsider sentence.

¶ 43 On appeal, defendant argues that his convictions for aggravated criminal sexual assault should be reversed because the State failed to prove beyond a reasonable doubt that he used force, or threatened force, against S.T. Where a criminal conviction is challenged based on insufficient evidence, a reviewing court, considering all of the evidence in the light most favorable to the prosecution, must determine whether any rational trier of fact could have found beyond a reasonable doubt the essential elements of the crime. *People v. Brown*, 2013 IL 114196, ¶ 48 (citing *Jackson v. Virginia*, 443 U.S. 307, 315-16 (1979); *People v. Cooper*, 194 Ill. 2d 419, 430-31 (2000)). It is "the trier of fact's responsibility to determine the witnesses' credibility and the weight given to their testimony, to resolve conflicts in the evidence, and to draw reasonable inferences from the evidence; we will not substitute our judgments for that of the trier of fact on these matters." *People v. Ortiz*, 196 Ill. 2d 236, 259 (2001). A reviewing court will not reverse a conviction unless the evidence is " 'unreasonable, improbable, or so unsatisfactory as to justify a reasonable doubt of the defendant's guilt.' " *People v. Jackson*, 232 Ill. 2d 246, 281 (2009) (quoting *People v. Campbell*, 146 Ill. 2d 363, 375 (1992)).

¶ 44 To prove a defendant guilty of aggravated criminal sexual assault, the State must prove the defendant guilty of criminal sexual assault and show an aggravating factor. 720 ILCS 5/11-1.30(a) (West 2012). As charged in this case, the State had to prove defendant committed criminal sexual assault by an act of sexual penetration upon S.T. by the "use of force or threat of force" (720 ILCS 5/11-1.20(a)(1) (West 2012)), and that this occurred during the commission of another felony, as relevant here, kidnapping. 720 ILCS 5/11-1.30(a)(4) (West 2012). Defendant does not challenge the court's findings that he committed sexual penetration during the

commission of another felony. Rather, he solely argues that the court erred in finding that he used "force or threat of force."

¶ 45 Section 5/11-0.1 of the Criminal Code of 2012 defines "force or threat of force" as:

> "the use of force or violence or the threat of force or violence, including, but not limited to, the following situations:
>
> (1): when the accused threatens to use force or violence on the victim or on any other person, and the victim under the circumstances reasonably believes that the accused has the ability to execute that threat; or
>
> (2) when the accused overcomes the victim by use of superior strength or size, physical restraint, or physical confinement." 720 ILCS 5/11-0.1 (West 2012).

"There is no definite standard setting forth the amount of force necessary to establish criminal sexual assault by the 'use of force,' and each case must be considered on its own facts." *People v. Mpulamasaka*, 2016 IL App (2d) 130703, ¶ 74. "Force" does not mean the force inherent to all sexual penetration, but instead refers to physical compulsion, or a threat of physical compulsion, that causes the victim to submit to the sexual penetration against his or her will. *People v. Denbo*, 372 Ill. App. 3d 994, 1005 (2007).

¶ 46 Here, after viewing the evidence in the light most favorable to the State, we find that a rational trier of fact could conclude that defendant used the threat of force to commit an act of sexual penetration. S.T. testified that, in early morning hours, defendant, who was wearing a ski mask with a hood over it, pointed a gun at her face and told her to come with him. As the two walked together to a nearby alley, S.T. could feel the gun in her side. She testified that she did not go with defendant voluntarily, but because he had a gun. Upon seeing a police car, defendant

pushed S.T. into an open garage and instructed her to be quiet. Defendant then placed the ski mask he was wearing on S.T.'s head backwards and ordered her into a nearby SUV. S.T. testified that she got into the SUV because, although defendant took the gun out of her side, she did not know where the weapon was so she was still scared. Defendant instructed S.T. to keep her head down and drove her to his parent's house. There, he told her to remove her shorts and lie on a bed. S.T., who was still wearing the ski mask, complied with defendant's requests because he had a weapon and she was scared. Defendant then got on top of her and placed his penis in her vagina.

¶ 47 After the attack, S.T. told defendant that she was pregnant because she did not want him to hurt her. Defendant eventually drove S.T. back to her aunt's house. S.T. testified that she walked down an alley and, when she was far enough to feel safe, she called 911. Witnesses, who saw S.T. shortly after the attack, described her as distraught, sad, crying, "panicky," afraid, and having "a lot of trouble communicating." This evidence, and the reasonable inferences therefrom, was sufficient for a rational trier of fact to conclude that defendant used force or threat of force to commit an act of sexual penetration against S.T. where he pointed an object the victim thought was a gun at her face and pressed the object against her side, which induced her to comply with his instructions. See *People v. Alexander*, 2014 IL App (1st) 112207, ¶ 44 (the testimony of a single witness, if it is positive and the witness is credible, is sufficient to convict).

¶ 48 Nevertheless, defendant argues that the State failed to establish the element of force because the only evidence that he possessed a gun was S.T.'s testimony. He also maintains that the weakness of the State's evidence is underscored by the court's finding that the State failed to

prove beyond a reasonable doubt that defendant possessed a gun; a finding that resulted in the court acquitting him of charges involving a firearm.

¶ 49 We initially note that the term "firearm," as used in the Criminal Code of 2012, has a very specific definition. The term "has the meaning ascribed to it in Section 1.1 of the Firearm Owners Identification Card Act" (430 ILCS 65/1.1 (West 2012)) (720 ILCS 5/2-7.5 (West 2012), which defines a firearm as: "any device, by whatever name known, which is designed to expel a projectile or projectiles by the action of an explosion, expansion of gas or escape of gas," and specifically excludes pneumatic, spring, paint ball or BB guns, and assorted other devices. 430 ILCS 65/1.1 (West 2012). As such, the court's finding that the evidence was insufficient to sustain defendant's convictions on firearm charges, does not mean that the evidence was insufficient to show that he did not threaten S.T. with force by displaying an object that S.T. thought was a gun.

¶ 50 Stated differently, the fact that the trial court found the evidence did not amount to the statutory definition of "firearm" does not somehow negate S.T.'s testimony that defendant pointed an object at her face, pushed it into her side, and instructed her to comply with his instructions, including sexual penetration. The issue of force or threat of force in the context of criminal sexual assault is decided based on the evidence and the credibility of the witnesses, a question that is best left to trier of fact, who heard the evidence and observed the demeanor of the witnesses. See *People v. Barbour*, 106 Ill. App. 3d 993, 998-99 (1982).

¶ 51 Here, in finding defendant guilty, the trial court noted that S.T.'s testimony was credible and that her demeanor while testifying showed she was brought "back" to the incident. The court considered S.T.'s actions after the incident to be persuasive, and mentioned that S.T. reported the

encounter shortly after defendant dropped her off. The court further noted that that the video footage presented at trial, and other witness' testimony about S.T.'s reaction following the sexual assault, corroborated S.T.'s testimony. As mentioned, the " 'testimony of a single witness, if it is positive and the witness [is] credible, is sufficient to convict.' " *Alexander*, 2014 IL App (1st) 112207, ¶ 44 (quoting *People v. Smith*, 185 Ill. 2d 532, 541 (1999)). There is "force or threat of force" when "the accused threatens to use force or violence on the victim or on any other person, and the victim under the circumstances reasonably believes that the accused has the ability to execute that threat." 720 ILCS 5/11-0.1 (West 2012). S.T.'s testimony supports a finding that defendant threatened violence, and that she reasonably believed that he had the ability to execute his threat.

¶ 52 Defendant's arguments amount to a request that we substitute the trial court's judgment regarding S.T.'s credibility, and the weight given to her testimony, with our own. This we will not do. *Ortiz*, 196 Ill. 2d at 259. Such determinations are the trier of fact's responsibility. *Id.* We will not reverse a conviction unless the evidence is unreasonable, improbable, or so unsatisfactory as to justify a reasonable doubt of the defendant's guilt. *Jackson*, 232 Ill. 2d at 281. This is not one of those cases. Viewing the evidence in the light most favorable to the State, we conclude that any rational trier of fact could have found defendant guilty of aggravated criminal sexual assault beyond a reasonable doubt where the evidence supports a finding that he committed an act of sexual penetration using force or threat of force.

¶ 53 In reaching this conclusion, we find the cases cited by defendant in support of his argument that the State failed to prove force unpersuasive. Here, unlike in *People v. Vasquez*, 233 Ill. App. 3d 517 (1992), *People v. Warren*, 113 Ill. App. 3d 1 (1983), and *People v. Taylor*,

48 Ill. 2d 91 (1971), the victim, S.T., testified she actually saw defendant with an object that appeared to her as a weapon. See *Vasquez*, 233 Ill. App. 3d at 527 (1992) ("The only evidence tending to show that force was applied by the defendant during the two oral sex acts with P.L. was that the defendant placed his hand on the back of P.L.'s head and 'forced' P.L.'s head down onto the defendant's penis"); *Warren*, 113 Ill. App. 3d at 5 ("complainant concedes that defendant did not strike her or threaten to strike or use a weapon"); *Taylor*, 48 Ill. 2d at 93, 99 (complainant thought defendant had a gun in the crook of his arm, though she never actually saw a gun).

¶ 54 In sum, we affirm defendant's convictions for aggravated criminal sexual assault. As a result, we will not consider defendant's contention that his aggravated kidnapping conviction should be reduced to kidnapping.

¶ 55 The judgment of the circuit court of Cook County is affirmed.

¶ 56 Affirmed.