

No. 1-12-0620

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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. 10 C 440310
)	
DAVID SITTERLY,)	Honorable
)	Noreen Love,
Defendant-Appellant.)	Judge Presiding.

JUSTICE LIU delivered the judgment of the court.
Presiding Justice Harris and Justice Simon concurred in the judgment.

ORDER

¶ 1 *Held:* Judgment entered on defendant's convictions of aggravated kidnapping predicated on the personal discharge of a firearm is affirmed, over defendant's claim that the State failed to prove that he knowingly and intentionally fired his gun. Defendant's convictions of domestic battery and aggravated unlawful restraint are vacated pursuant to the one-act, one-crime rule and the clerk is ordered to correct defendant's mittimus.

¶ 2 Following a bench trial, defendant David Sitterly was found guilty of eight counts of aggravated kidnapping, two counts of robbery, four counts of kidnapping, three counts of aggravated battery, four counts of intimidation, two counts of aggravated unlawful restraint, two

counts of unlawful restraint, three counts of domestic battery, two counts of reckless discharge of a firearm, and two counts of aggravated assault. He was then sentenced to a term of 35 years.

¶ 3 On appeal, defendant asserts that the State failed to prove him guilty of the offense of aggravated kidnapping beyond a reasonable doubt. He also contends that his domestic battery and aggravated unlawful restraint convictions must be vacated under the one-act, one-crime rule. Finally, he argues that his mittimus should be corrected to properly reflect his convictions and sentences.¹ For the following reasons, we affirm in part, reverse in part, and order the clerk to correct defendant's mittimus.

¶ 4 I. BACKGROUND

¶ 5 Defendant is the adopted son of Joan and Donald Sitterly (the Sitterlys). On February 12, 2010, defendant went to his parents' home in Oak Park and demanded \$100,000 from them. Over the course of the afternoon, evening, and next morning, he beat them, stole from them, brandished a gun at them, and repeatedly threatened them before finally flying back home to Florida. Defendant was subsequently arrested and charged with multiple offenses. The following evidence was adduced at his trial.

¶ 6 A. Testimony of Jill Wagner

¶ 7 Jill Wagner testified that she is the marketing director of the Oak Park Arms Retirement Community (Oak Park Arms). On February 11, 2010, the Sitterlys signed a 13-month lease at the Oak Park Arms and immediately occupied their apartment. After speaking to the Sitterlys about their reasons for moving in to the Oak Park Arms, Wagner instructed apartment security: (1) that the Sitterlys "did not live" at the apartment and were not present, should anyone call for them; (2) that no one was permitted to disclose the Sitterlys' room number to anyone looking for

¹ In his opening brief, defendant contends that the 15 and 20-year add-on penalties for aggravated kidnapping are void *ab initio* pursuant to *People v. Hauschild*, 226 Ill. 2d 63 (2007). In his reply brief, however, he concedes that those add-on penalties are not void *ab initio*. In light of defendant's concession, we do not address this claim.

them; and (3) that if an Asian man came looking for the Sitterlys and did not sign in at the desk, or attempted to go past the front desk, they should call 911 and alert the staff.

¶ 8 B. Testimony of Katie Lagges

¶ 9 Katie Lagges, the Sitterlys' daughter, testified that she and defendant were adopted from separate families in South Korea. She testified that defendant was violent as a child and that she moved out of the house in 1998 because defendant's behavior made it "a terrorizing place to live." Katie testified that defendant was physically violent with her parents and that both she and they had called the police on multiple occasions.

¶ 10 On February 11, 2010, Katie learned that her parents had moved out of their house. The next day, she called them at the Oak Park Arms but could not reach them. She left a message asking them to return her call. When they did not call her by the following day, she called their house instead, and spoke with her mother. Katie testified that her mother sounded "off" and "confused" and that her father eventually came to the phone and spoke with her briefly, but abruptly ended the call, saying, "I've got to go." On February 14, Katie spoke with her parents again on the phone and then went to their house. After she arrived, she instructed her father to call the police.

¶ 11 C. Testimony of Officer Michael Rallidis

¶ 12 Oak Park police officer Michael Rallidis testified that on February 14, 2010, he went to the Sitterlys' home, spoke with the initial responding officer, and walked the scene. He first went to a bedroom on the second floor, where he observed a spent nine-millimeter shell casing on the floor and a hole in the carpeting. When he went downstairs to the dining room, which was directly below the bedroom, he saw a hole in the ceiling that had been plastered over and a hole in the wall as well. Officer Rallidis testified that Donald gave him a spent nine-millimeter bullet, a "crumpled up letter" written by defendant, a photograph of defendant, a Chase Bank ATM

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receipt for \$3,000, and two firearms. He testified that the gun case retrieved by Donald from the upstairs closet contained a nine-millimeter handgun and three magazines loaded with 35 bullets in total. Officer Rallidis noted that the slide of the gun was forward, but he could not recall if the gun was loaded with bullets or a magazine. Officer Rallidis testified that he had previously responded to three or four calls at the Sitterlys' home, most of which involved an interaction with defendant while he was in an agitated state.

¶ 13 D. Testimony of Joan Sitterly

¶ 14 Joan Sitterly testified that she is 70 years old and that defendant is her adopted son. She explained that defendant had been violent with Donald and her in the past and that he had also caused damaged to their home. Joan began documenting the violence and damage at one point, and she identified several photographs showing, *inter alia*, holes punched in the wall, broken doors, torn up photographs, and bruises on her body. She testified that defendant moved out of their house in the summer of 2008, and later moved to Florida on January 28, 2010. Joan and Donald covered defendant's living expenses while he was in Chicago and Florida.

¶ 15 On February 11, 2010, the Sitterlys moved out of their house and into the Oak Park Arms after receiving an early morning phone call. They signed a one-year lease and informed the leasing agent that they were "very frightened" of defendant and needed a safe place to stay. About 3 p.m. the next day, the Sitterlys returned to their home to get clothes for a funeral. At one point, Joan heard the back door while she was walking into the kitchen and thought it was Donald. Defendant came around the corner from the back hallway and told her to turn off the alarm, which had been set in case he appeared. Joan testified that defendant looked "very angry" and that she turned off the alarm because she "had learned through years of being told what to do to follow his orders." She thought that if she did not turn off the alarm, he would beat her, since there were "many times he had beaten [her] in the past."

¶ 16 Joan followed defendant as he "stomped" upstairs to the Sitterlys' bedroom and found Donald in front of the dresser. When defendant noticed the open suitcases on the bed, he shut the bedroom door and started cursing and yelling at his parents. He asked the Sitterlys where they were going. Joan told defendant about the funeral. Defendant said that he did not believe her and then punched Donald on the side of the head, causing Donald's glasses to fall to the floor. Defendant took Donald's wallet out of his pocket and removed about \$100. Defendant found a key in Donald's pocket, which was attached to a keychain with "Oak Park Arms" emblazoned on it. Defendant was angry about the key, but laughed at them, saying, "why wouldn't [they] expect him to look for [them] there." Joan testified that while defendant was frisking Donald, she nodded her head toward the phone to find out from Donald whether she should try to call 911. She testified that when defendant saw this, he punched her in the arm, pulled her hair, and told her "Don't try anything like that." Joan testified that she did not feel that she could leave at this point and that defendant ordered her "[t]o shut up and not interfere and stay out of his way." She testified that she moved towards her husband because she was concerned for him and that she was terrified, crying, and very sure that they "would probably die that day."

¶ 17 Joan testified that defendant began looking for his handgun in Donald's closet. When he could not find it, he ordered Donald to get it for him. Donald went to the attic and brought down a case containing the gun. Defendant removed the gun from its case and loaded it with bullets. After defendant loaded his gun, he closed the bedroom door and told the Sitterlys to sit on the bed, while he stood between them and the door. He then pointed the gun at them, in a manner that Joan described as being "in [their] general direction, chest." He told the Sitterlys that "he had spent the entire flight back from Florida thinking about how he would kill [them]." Joan testified that she was "sure [they] were going to die." Defendant proceeded to yell at them about

leaving the house and not answering his phone calls. He demanded \$100,000 from them. According to Joan, it was "quite a while before he pulled the trigger." When the gun fired, Joan recalled, "it was pointed down" and "the bullet went through the carpeting and the wood floor." She testified that at the time the gun went off, Donald had not agreed to give defendant the \$100,000. After the gun discharged, defendant accused Donald of loading the gun and trying to set him up. Defendant then put the gun down, but Joan still did not feel free to leave. She said that defendant had given them four rules: (1) they could not call police; (2) they could not tell anyone about what had happened; (3) they should always answer the phone; and (4) they could not leave the house.

¶ 18 During cross-examination, Joan agreed with defense counsel's characterization that defendant "didn't raise the gun and deliberately shoot at" her. She stated that it was her "impression [that] the gun slipped down and discharged." When asked whether the gun discharged by accident, she replied, "I don't know that for sure."

¶ 19 Joan testified that Donald eventually promised to give defendant the \$100,000 that defendant demanded. Donald went to the computer across the hall to withdraw money out of some accounts. Defendant remained in the bedroom with the door closed, but occasionally checked on his father. While in the bedroom, defendant ordered Joan to get on the floor, then kicked her repeatedly in the ankles and the back of her thigh while "continually" pulling her up from the floor by her hair. He told her that "[she] was a terrible mother, [she] had always been a terrible mother, that [the Sitterlys] ruined his life by taking him from Korea, [and] that he had an unhappy childhood, never had any fun."

¶ 20 About one hour later, defendant brought the Sitterlys downstairs, sat them on the floor, and played back all the messages on their answering machine, about 70 in total. He then "marched" the Sitterlys back to the bedroom and told Donald to buy him a plane ticket. Donald

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tried to get him a ticket on the computer while defendant and Joan were in the bedroom. Defendant ordered Joan onto the floor, flicked cigarette ashes at her, spit on her, and called her various "obscenities" while repeating that she was "the worst mother ever." Donald eventually found a \$900 first class ticket back to Florida, but the flight did not leave until the next day. When Joan asked permission to sit on the bed, defendant allowed her to do so but ordered her to keep her shoes on. He repeated the four rules again as well, which he continued to repeat to them about 15 to 20 times during the night.

¶ 21 Joan testified that defendant and Donald left the house at some point. She did not know where they were going and does not recall how long they were gone. She recalled, however, that she "was sitting on the bed paralyzed with fear" and did not call the police because she was "scared to death," explaining that "the [defendant's] rules had been repeated so many times" and that her "husband's life was in jeopardy." Donald and defendant eventually returned and came upstairs to the bedroom. Defendant, who had ordered a pizza, instructed Donald to lie on the bed. Joan testified that she "probably dozed off" at some point. She felt that she could not leave the house that night because defendant was walking around and checking on them.

¶ 22 About 4 a.m., defendant ordered Donald out of bed and asked him for the PIN number to the Sitterlys' checking account. About 6 a.m., he woke Donald up again, and they left the bedroom together. Joan did not know where they were going and did not feel free to leave. She did not contact the police because defendant "had always warned [them] that if the police were called, he could kill [Donald and her] before they got there." At some point, Donald returned from the airport without defendant. On February 13, 2010, the following day, Joan spoke with defendant's sister, Katie, and mentioned the gunshot. Katie came over to the house the next day and insisted that the Sitterlys call the police.

¶ 23

E. Testimony of Donald Sitterly

¶ 24 Donald Sitterly, defendant's 69-year-old father, testified that at the end of January 2010, he had given defendant \$10,000 to move to Florida because defendant demanded the money. He testified that defendant found an apartment in Fort Lauderdale, but could not prove to the landlord that he could afford it. Defendant asked Donald for a \$50,000 loan. Donald agreed to the loan after defendant threatened that "he knew some people—some guy in the neighborhood that would do favors for him and he would have us killed."

¶ 25 Donald testified that around the beginning of February 2010, defendant returned to Chicago and demanded \$50,000 from the Sitterlys. Donald acquiesced and gave defendant a total of \$50,000. Before defendant returned to Florida, he left his nine-millimeter pistol with Donald and "made it quite clear that when he asked for it back [Donald] would give it to him immediately." Defendant subsequently spent most of the \$50,000 on new furniture, and later called Donald to ask for more furniture and for a car. At various times, defendant threatened to kill the Sitterlys, burn down their house, or do the same to their relatives. Donald eventually stopped answering the phone and was "quite fearful." On February 11, anticipating defendant's return to Oak Park, the Sitterlys packed a few suitcases and moved into the Oak Park Arms.

¶ 26 Donald's testimony regarding the incidents that occurred during defendant's visit to his parents' house was largely consistent with his wife's testimony. Donald explained that when he gave defendant the case containing the gun, defendant "took the pistol out" of the case, "loaded the clip in it," and "slid the thing back and forth to cock it." Defendant then pointed the gun at Donald and demanded \$100,000. At one point, Donald testified, defendant "did fire off the gun," which "was pointed at the floor," and "shot a hole through the floor." The bullet pierced the bedroom floor, causing a hole in the ceiling of the dining room one floor below. Defendant subsequently patched the ceiling hole sometime later that night. Donald stated that he did not

think that defendant had "intended to fire the gun at that point because it wasn't pointed at [the Sitterlys]." On cross-examination, Donald stated that when the gun went off, defendant blamed him for loading the gun and that defendant "unloaded it after he fired the round." When asked what defendant was thinking at that point, Donald said, "I think he was surprised."

¶ 27 After defendant put his gun away, he told Donald to take him to the batting cages, apparently because he "needed to let off some steam." The two of them went to the batting cages for about 20 minutes; no one else was there. When they returned home, defendant went to a friend's house. Donald and Joan still did not leave the house, because defendant made it clear that they "would never be free from him just by hiding away or running away." In explaining why he did not call the police, Donald said, "[F]rom the beginning to the end of this thing I was afraid to call the police, afraid for our safety, for anybody on the street's safety."

¶ 28 Donald eventually went to bed on February 11, but defendant frequently went into the Sitterlys bedroom during the night. On one occasion, defendant requested his father's PIN number and bank account information. On another occasion, he brought Donald to the kitchen and dictated a letter for Donald to sign, promising that Donald would turn over the house to defendant if he failed to give defendant \$100,000.

¶ 29 At 6 a.m. on February 12, defendant woke Donald up to go to breakfast, and Donald went along because defendant was "calling the shots." He testified that he could not do anything without defendant's approval because he would have been beaten. During breakfast, defendant told Donald that he could read people's minds when they walked into a room. Donald later said in the car, "guess what I'm thinking," and defendant reacted by telling Donald to pull over and take off his glasses because he was going to punch him in the face. When Donald pulled over, however, defendant decided not to punch him because they were on their way to the bank. Defendant instead told Donald that he now wanted \$125,000.

¶ 30 After Donald and defendant arrived at the Chase Bank on Lake Street in Oak Park, Donald withdrew \$3,000 from a cashier while defendant waited in the car. Donald testified that he did not inform the cashier of the situation because "all hell would have broken loose." He noted that "Joan was home alone, and if we arrived home with police cars around the house, I would have been dead and who knows what else would have happened." Donald gave defendant the money he had withdrawn, and they agreed that Donald would mail the remaining money to defendant by February 26. About noon, Donald drove defendant to the airport.

¶ 31 F. Testimony of Detective Timothy Unzicker

¶ 32 Oak Park police detective Timothy Unzicker testified that on February 14, 2010, he was assigned to investigate an armed robbery at the Sitterlys' home. He went to the house the next day and spoke with the Sitterlys, and then obtained an arrest warrant for defendant. Defendant was arrested in Florida on February 22, and brought to the Oak Park Police Department on March 16. The officers who brought him in turned over a backpack containing multiple documents, including a note that defendant had forced Donald to write at the house. About 4:17 p.m., Detective Unzicker spoke with defendant in an interview room and advised him of his *Miranda* rights. They spoke for about one hour concerning the incident in question, and defendant agreed to meet with an assistant State's Attorney (ASA) that night. Around 6 p.m., the ASA arrived at the Oak Park Police Department and met with defendant. After a conversation with the ASA and Detective Unzicker, defendant agreed to give a written statement, which was prepared by the detective. Defendant reviewed and signed the written statement. Defendant's written statement was then published to the court.

¶ 33 G. The Statement Signed by Defendant

¶ 34 According to his statement, defendant moved to Fort Lauderdale on February 2, 2010, with \$50,000 from his parents. On February 10, he called his father and asked for a car. Donald

refused to buy him a car, which resulted in several "heated" arguments between defendant and his father over the phone. Eventually, Donald stopped answering defendant's calls, which led defendant to panic and become angry. He left about 27 messages on his parents' answering machine and, at one point, told them that "he knew someone in Oak Park who could take care of them, *** meaning hurt them." Defendant stated that he did not intend to hurt his parents, only to scare them. Defendant flew home on February 12 "after becoming more and more frustrated and angry about [their] failure to answer his phone calls." He took a cab to the Sitterlys' house and used his key to open the back door. After he told his mother to turn off the alarm, defendant confronted his father. At one point, he "backhanded" his father in the head, kicked his mother on the leg, took \$220 from his father's wallet, and demanded \$100,000 from his parents.

¶ 35 In his statement, defendant indicated that at the time he removed his nine-millimeter gun from its case, he believed it was unloaded. Defendant stated that a bullet must have been left in the chamber because the gun "accidentally" fired into the floor when he "racked" it. He claimed that he only took out the gun and the clips to scare his parents and that he subsequently returned the gun to the case and told his father to put it away.

¶ 36 Later that evening, defendant made Donald drive him to the batting cages. Afterward, defendant dropped Donald off at the house and went to North Riverside Mall to buy some shirts. Defendant stated that his parents were asleep when he returned home, but that he could not sleep that night. About 5 a.m., defendant woke Donald up to get breakfast at IHOP. He was worried Donald would not give him the money as promised, and before they left, he made Donald write out a note promising him \$100,000. He and Donald ate breakfast together, then returned home.

¶ 37 Defendant stated that about 9 a.m., defendant roused Donald awake again to go to Chase Bank. On the way there, he made his father repeatedly promise that he would give him \$100,000 by February 26. Defendant thought Donald was making fun of him at one point and ordered

Donald to pull over so that he could hit him. Defendant then decided not to hit him, however. They subsequently drove through the bank drive-thru, and Donald withdrew \$3,000. Defendant took this money and put it in his pocket. Defendant stated that he was still angry about Donald making fun of him, so he increased his demand from \$100,000 to \$125,000.

¶ 38 After defendant and Donald returned home, defendant ordered Donald to get him a flight home. Defendant stated that after Donald purchased a first-class ticket, they had a "nice lunch" at a restaurant on North Avenue. Donald subsequently dropped defendant off at the airport, and defendant flew back to Florida. For about three days, defendant continued calling his parents several times a day to tell them about his day and learn about theirs. He stated that he never meant to physically harm his parents and only threatened and demanded money from them "to hurt their feelings like they had hurt his by failing to return his calls from Florida *** and for inflicting on him years of emotional abuse."

¶ 39 H. Judgment and Sentence of the Trial Court

¶ 40 The State entered into evidence certified copies of defendant's prior convictions of domestic battery and violation of an order of protection. The parties also stipulated that defendant had called his parents a total of 77 times on February 11; 24 times on February 12; 6 times on February 13; 5 times on February 14; 10 times on February 15; 59 times on February 16; 33 times on February 17; 20 times on February 18; and 12 times on February 19.

¶ 41 The State rested. Defendant's motion for a directed finding was granted as to one count of armed violence and denied in all other respects. The defense ultimately rested without presenting any evidence.

¶ 42 The circuit court found defendant guilty of two counts of robbery, four counts of kidnapping, three counts of aggravated battery, four counts of intimidation, two counts of aggravated unlawful restraint, two counts of unlawful restraint, three counts of domestic battery,

two counts of reckless discharge of a firearm, and two counts of aggravated assault. The court also found defendant guilty of eight counts of aggravated kidnapping where, during the course of the kidnappings, he committed additional felonies (intimidation and aggravated battery); was armed with a firearm; and personally discharged a firearm. 720 ILCS 5/10-2(a)(3), (a)(6), (a)(7) (West 2010).²

¶ 43 At sentencing, the court merged defendant's convictions and sentenced him to concurrent terms of: 15 years on two counts of aggravated kidnapping, with 20-year enhancements for personally discharging a firearm during the kidnapping (Counts 4 and 8); 7 years on two counts of robbery (Counts 10 and 11); 5 years on two counts of aggravated battery (Counts 16 and 18); 5 years on two counts of intimidation (Counts 19 and 21); 5 years on two counts of aggravated unlawful restraint (Counts 23 and 24); 3 years on two counts of domestic battery (Counts 27 and 29); and 3 years on two counts of aggravated assault (Counts 32 and 33). Defendant now appeals pursuant to Illinois Supreme Court Rules 603 and 606 (eff. Feb. 6, 2013).

¶ 44

II. ANALYSIS

¶ 45

A. Sufficiency of the Evidence

¶ 46 On appeal, defendant contends that the evidence was insufficient to prove, beyond a reasonable doubt, that he committed the offense of aggravated kidnapping predicated on the personal discharge of a firearm. Specifically, defendant claims (1) that the record does not establish that he knowingly and secretly confined the Sitterlys, (2) that any confinement, if

² We note that two of defendant's aggravated kidnapping charges (Counts 3 and 7) contain a discrepancy in that they charge defendant with committing the offense of kidnapping while armed with a dangerous weapon, but cite section 10-2(a)(6) of the Criminal Code of 1961 (Code) (720 ILCS 5/10-2(a)(6) (West 2010)), which applies where defendant "commits the offense of kidnaping while armed with a firearm." Defendant has not raised any issue regarding this discrepancy on appeal. For purposes of our review, we consider defendant to have been charged and found guilty of aggravated kidnapping pursuant to section 10-2(a)(6) of the Code. The record shows that the State filed a notice of intent to seek increased sentence citing the enhancement for aggravated kidnapping where a "person is armed with a firearm." Also, the court found that the "dangerous weapon" with which defendant was armed was a gun.

proven, was merely incidental to the other crimes that he committed during the same period of time, and (3) that the State did not establish that he personally discharged a firearm during the commission of a kidnapping.

¶ 47 When reviewing a challenge to a conviction based on the sufficiency of the evidence, the reviewing court must determine "whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." (Emphasis in original.) *People v. De Filippo*, 235 Ill. 2d 377, 384-85 (2009) (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)). "A criminal conviction will not be set aside unless the evidence is so improbable or unsatisfactory as to create a reasonable doubt of the defendant's guilt." *People v. Siguenza-Brito*, 235 Ill. 2d 213, 225 (2009). Moreover, our supreme court has stated, "it is not the function of a reviewing court to retry the defendant. *** Rather, in a bench trial, it is for the trial judge, sitting as the trier of fact, to determine the credibility of witnesses, to weigh evidence and draw reasonable inferences therefrom, and to resolve any conflicts in the evidence." *Id.* at 228. A conviction shall not be reversed simply on the grounds that "the evidence is contradictory" or "the defendant claims that a witness was not credible." *Id.*

¶ 48 A person commits kidnapping when he knowingly and secretly confines another against his or her will or by force or threat of imminent force carries a person from one place to another with intent secretly to confine that person against his or her will. 720 ILCS 5/10-1(a)(1)-(2) (West 2010). A person commits aggravated kidnapping when he personally discharges a firearm during the commission of the kidnapping. 720 ILCS 5/10-2(a)(7) (West 2010). To establish that a person "personally discharged a firearm," the State must prove that the defendant, "while armed with a firearm, knowingly and intentionally fires a firearm causing the ammunition projectile to be forcefully expelled from the firearm." 720 ILCS 5/2-15.5 (West 2010).

¶ 49

1. The Underlying Kidnapping

¶ 50 First, defendant contends that the State failed to prove, as an element of the underlying offense of kidnapping, that he knowingly and secretly confined the Sitterlys. 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). The element of "secret confinement can be shown through evidence that the defendant isolated the victim[s] from meaningful contact with the public." *Id.* at 480. In addition, "a person knows, or acts knowingly" about the "nature or attendant circumstances of his or her conduct, described by the statute defining the offense, when he or she is consciously aware that his or her conduct is of that nature of that those circumstances exist." 720 ILCS 5/4-5(a) (West 2010).

¶ 51 Viewed in the light most favorable to the prosecution, we find abundant and indisputable proof from the trial record that defendant "knowingly" and "secretly" confined his parents, Joan and Donald Sitterly, almost immediately as he entered his parents' house and began demanding money from them. The record shows that on the afternoon of February 12, 2010, defendant went to the Sitterlys' home and entered through the back door with his key. He then instructed his mother to turn off the security alarm and went upstairs to confront his father. Upon confronting Donald, defendant learned that the Sitterlys had keys to a different place to live and that they were not planning to stay in the house. After arguing with his parents, defendant struck both Joan and Donald and closed the door to their bedroom with them inside. He continued to yell at them, hit them, and even warned Joan that she should not try to call the police. He ultimately demanded that the Sitterlys give him \$100,000. During this ordeal, he repeatedly told the Sitterlys: (1) they could not call police; (2) they could not tell anyone about what had happened; (3) they should always answer the phone; and (4) they could not leave the house. The record is

replete with facts establishing defendant's reliance on physical and verbal abuse as a means to control his parents and prohibit them from reaching out to the public for help. We find that any rational trier of fact would find that the evidence established, beyond a reasonable doubt, that defendant knowingly isolated the Sitterlys from meaningful contact with the public.

¶ 52 Defendant argues that there is no evidence of any intent to keep the confinement of the Sitterlys a secret. Contrary to his claim, however, we find that the above evidence was more than sufficient to establish that he knowingly isolated the Sitterlys from meaningful contact with the public. The evidence shows that the Sitterlys never felt free to leave during the time defendant was in town and that they also could not call police as a result of defendant's "rules" and long history of violent and threatening behavior towards them. The mere fact that defendant left the Sitterlys alone at times during this confinement period and brought Donald out in public did not require the trier of fact to conclude that Joan or Donald were not secretly confined. See *id.* at 481-82 (the supreme court noted that it "long ago rejected any *per se* rule that a victim visible in a public place precludes a finding of secret confinement.")

¶ 53 Defendant attempts to compare the instant case to *People v. Pasch*, 152 Ill. 2d 133 (1992). In *Pasch*, the defendant was involved in a full-blown hostage standoff complete with hostage negotiators and "made it well known" that he was holding the victim as a hostage. *Id.* at 156, 188. There, the supreme court reversed the defendant's aggravated kidnapping conviction because the State failed to prove that the confinement of the victim was "secret." *Id.* at 188. We find nothing about the instant case that even remotely resembles the facts of *Pasch*. Unlike that case, there was no hostage standoff situation in the case at bar and no evidence that defendant make it well known to anyone that he was holding the Sitterlys. We therefore find defendant's reliance on *Pasch* to be misplaced and reject his claim that the State failed to prove his knowing and secret confinement of the Sitterlys.

¶ 54 Defendant next argues that if the evidence established that there was a secret confinement of the Sitterlys, such confinement was merely incidental to his commission of other offenses. In determining whether an asportation or detention rises to the level of an independent kidnapping, we consider: (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. *People v. Watson*, 342 Ill. App. 3d 1089, 1098 (2003). Whether a detention is sufficient to constitute a kidnapping depends on the particular facts and circumstances of each case. *People v. Quintana*, 332 Ill. App. 3d 96, 105 (2002).

¶ 55 Beginning with the first factor, we find that the detention of the Sitterlys occurred for an extensive period of time. The record shows that the Sitterlys were detained from shortly after 3 p.m. on February 12, 2010, until defendant flew back to Florida around noon the next day. "[T]his court has previously held that an asportation of less than one block, and a detention of a few minutes were sufficient to support a separate kidnapping conviction." *People v. Jackson*, 331 Ill. App. 3d 279, 294 (2002). Given the Sitterlys' isolation from the public for nearly 24 hours, we find that the first factor clearly weighs in favor of separate kidnapping convictions. The second factor supports separate kidnapping convictions as well where the record shows that defendant committed his other offenses during the detention of the Sitterlys, rather than the other way around. Finally, there is no question that the third and fourth factors are satisfied in this case. The detention of the Sitterlys was not an element of the robbery, battery, assault, or firearm offenses, and thus not inherent to those offenses. *Quintana*, 332 Ill. App. 3d at 108 (noting that "in order for the asportation or detention to be inherent in a separate offense, it must constitute an element of that offense.") Also, the detention created additional opportunities for

violence against the Sitterlys, which were independent of the threats posed by the other offenses. *People v. Moreland*, 292 Ill. App. 3d 616, 622 (1997). Having considered the necessary factors, we conclude that defendant's commission of aggravated kidnapping was independent of his commission of other offenses.

¶ 56 2. Aggravated kidnapping

¶ 57 Next, defendant argues that the State failed to prove that he personally discharged a firearm, because the evidence did not indicate that he knowingly and intentionally caused his gun to discharge when it fired into the Sitterlys' bedroom floor. 720 ILCS 5/10-2(a)(7) (West 2010). As we previously noted, a person acts "knowingly" if he "is consciously aware that the result is practically certain to be caused by his conduct," (720 ILCS 5/4-5(a) (West 2010)), and acts "intentionally" if "his conscious objective or purpose is to accomplish that result or engage in that conduct," (720 ILCS 5/4-4 (West 2010)).

¶ 58 The circuit court found that defendant loaded the gun, pulled the slide to load the bullets into the chamber of the gun, and "had his finger on the trigger." Defendant argues, however, that the record lacks evidence from which to conclude that he "knowingly" and "intentionally" fired his gun. He maintains that, based upon his written statement and the testimony of his parents, the proof indicated that the gun discharged accidentally. Defendant asserts that there was no evidence that he "had his finger on the trigger," and that the evidence shows that "both Donald and Joan believed that the discharge was an accident."

¶ 59 When the subject offense requires a specific mental state, the fact finder must determine whether there is sufficient evidence to prove that a defendant had the requisite mental state to commit the offense. *People v. Lattimore*, 2011 IL App (1st) 093238, ¶ 36. Evidence of intent and knowledge need not be proven by direct evidence, and, instead, may be established through circumstantial evidence. *People v. Stewart*, 406 Ill. App. 3d 518, 526 (2010).

¶ 60 Here, defendant claims that the evidence supports a finding that his conduct was reckless, not "knowing." Defendant asserts that he simply took out the gun and racked it before the gun discharged accidentally. The accounts related by Donald and Joan, however, differ somewhat from defendant's narrative. Both of the Sitterlys testified that defendant loaded the gun with clips or bullets after he removed the gun from its case. They both testified that defendant had pointed the loaded gun at them for some period of time before it fired, and that defendant was holding the gun when it discharged. Joan testified, three times, that defendant pulled the trigger. Defendant himself admitted that it was intention to scare his parents with the gun. He further stated, consistent with Donald's testimony, that he "racked" the gun—evidence that is highly probative of his awareness that there was practical certainty that a bullet would be released into the chamber of the gun.

¶ 61 Viewing the evidence in the light most favorable to the State, we find that the circuit court could have rationally inferred that defendant knowingly and intentionally fired his gun. Defendant points to testimony indicating that his parents seemed "surprised" after the gun discharged, that the gun "slipped" before discharging, and that neither of his parents actually said that he knowingly and intentionally fired the gun. Where "conflicting inferences could be drawn from the undisputed but circumstantial evidence, *** questions of fact rather than law are presented." *People v. Moore*, 365 Ill. App. 3d 53, 58 (2006). Because the issue of defendant's mental state presents a question of fact, it is the role of the circuit court, as the finder of fact, to resolve conflicts in the testimony and to weigh the evidence and credibility of the witnesses. *Siguenza-Brito*, 235 Ill. 2d at 224-25, 228. It is not our task to substitute our judgment for that of the circuit court on its consideration of the evidence and inferences drawn therefrom. *Id.*

¶ 62 We therefore find the evidence sufficient to establish defendant's guilt of aggravated kidnapping predicated on the personal discharge of a firearm beyond a reasonable doubt.

¶ 63

B. One-Act One-Crime Rule

¶ 64 Defendant next contends that his convictions of domestic battery and aggravated unlawful restraint must be vacated pursuant to the one-act, one-crime rule, which the State concedes. Although defendant failed to raise this issue in his motion for a new trial (*People v. Enoch*, 122 Ill. 2d 176, 186 (1988)), we note that "a violation of the one-act, one-crime doctrine affects the integrity of the judicial process, thus satisfying the second prong of the plain-error analysis" (*People v. Span*, 2011 IL App (1st) 083037, ¶ 81).

¶ 65 Under the one-act, one-crime rule, a defendant may not be convicted of multiple offenses based upon the same physical act. *People v. Johnson*, 237 Ill. 2d 81, 97 (2010). Determining whether the rule has been violated involves a two-step analysis. *People v. Miller*, 238 Ill. 2d 161, 165 (2010). The first step is to determine whether defendant's conduct involved multiple acts or a single act. *Id.* "Multiple convictions are improper if they are based on precisely the same physical act." *Id.* The second step is to determine, if the conduct involved multiple acts, whether any of the offenses are lesser-included offenses. *Id.* "If an offense is a lesser-included offense, multiple convictions are improper." *Id.*

¶ 66 In this case, defendant was convicted of two counts of domestic battery (Counts 27 and 29) and two counts of aggravated battery (Counts 16 and 18). With respect to domestic battery, Count 27 alleged that defendant kicked, punched, and choked Joan and also pulled her hair; and Count 29 alleged that defendant punched Donald in the back of the head. With respect to aggravated battery, Count 16 alleged that defendant kicked and punched Joan about the head and body and also pulled her hair; and Count 18 alleged that defendant punched Donald in the back of the head. The parties are correct that defendant's domestic battery and aggravated battery convictions are based upon the same physical acts. We thus agree that these convictions run afoul of the one-act, one-crime rule.

¶ 67 Where a one-act, one-crime violation occurs, sentence should be imposed on the more serious offense and the less serious offense should be vacated. *People v. Artis*, 232 Ill. 2d 156, 170 (2009). "In determining which offense is the more serious, a reviewing court compares the relative punishments prescribed by the legislature for each offense." *Id.*

¶ 68 Here, defendant's domestic battery convictions were Class 4 felonies due to his prior convictions of domestic battery and violation of an order of protection. 720 ILCS 5/12-3.2(b) (West 2010). His aggravated battery convictions were Class 3 felonies. 720 ILCS 5/12-4(e)(1) (West 2010). The punishment for a Class 4 felony is one to three years (730 ILCS 5/5-4.5-45(a) (West 2010)), which is less than the two to five years prescribed for a Class 3 felony (730 ILCS 5/5-4.5-40(a) (West 2010)). We therefore vacate the less-serious domestic battery convictions and the four-year term of mandatory supervised release (MSR) that attached to those convictions (730 ILCS 5/5-8-1(d)(6) (West 2010)). Pursuant to our authority under Illinois Supreme Court Rule 615(b), we direct the clerk to modify defendant's mittimus to reflect a three-year MSR term, which attaches to a conviction of aggravated kidnapping. 730 ILCS 5/5-4.5-25(l) (West 2010).

¶ 69 Defendant also claims that this court should vacate his two convictions of aggravated unlawful restraint (Counts 23 and 24) pursuant to the one-act, one-crime rule because they are based on the same acts as his aggravated kidnapping convictions. This court has previously noted that there is no distinction between the word "detain" in the unlawful restraint statute and the word "confine" in the kidnapping statute. *People v. Banks*, 344 Ill. App. 3d 590, 596 (2003). Because defendant's aggravated kidnapping and aggravated unlawful restraint convictions were "carved from the same physical act[s]" of detaining the Sitterlys (*id.*), we agree with the parties that defendant's convictions of aggravated unlawful restraint should be vacated as the less serious of the offenses. 720 ILCS 5/10-2(b) (West 2010) (aggravated kidnapping is a Class X felony); 720 ILCS 5/10-3.1(b) (West 2010) (aggravated unlawful restraint is a Class 3 felony).

¶ 70

C. Amendment of the Mittimus

¶ 71 Defendant lastly contends, and the State concedes, that his mittimus should be corrected to properly reflect the offenses of which he was convicted. Pursuant to our authority under Illinois Supreme Court Rule 615(b), we direct the clerk to amend defendant's mittimus to reflect two counts of aggravated kidnapping (Counts 4 and 8); two counts of robbery (Counts 10 and 11); two counts of aggravated battery (Counts 16 and 18); two counts of intimidation (Counts 19 and 21); and two counts of aggravated assault (Counts 32 and 33).

¶ 72

III. CONCLUSION

¶ 73 For the reasons stated, we affirm defendant's convictions of aggravated kidnapping predicated on the personal discharge of a firearm; vacate defendant's domestic battery and aggravated unlawful restraint convictions (Counts 23, 24, 27, and 29); and order the clerk to modify defendant's mittimus to reflect the correct MSR term and convictions.

¶ 74 Affirmed in part; vacated in part; mittimus modified.