2014 IL App (2d) 130071-U
No. 2-13-0071
Order filed October 6, 2014

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. MIGUEL A. RICO, Defendant-Appellant.	)))))))))	Appeal from the Circuit Court of Lake County. Nos. 10-CF-3104 Honorable Daniel B. Shanes, Judge, Presiding.

JUSTICE Spence delivered the judgment of the court.
Presiding Justice Burke and Justice Hudson concurred in the judgment.

¶ 1 *Held*: We affirmed the trial court's denial of defendant's motions to suppress evidence and for a mistrial. We reversed defendant's conviction for aggravated kidnapping because the kidnapping was incidental to other offenses under the *Levy-Lombardi* doctrine. We affirmed defendant's conviction for home invasion because a rational trier of fact could have found the defendant caused intentional injury, and we remanded for a resentencing.

¶ 2 Defendant, Miguel Rico, was convicted of home invasion, aggravated kidnapping, and residential burglary for actions that took place on September 1, 2010, at the Hagy household in Lake Villa, Illinois. On appeal, he argues: the trial court erred by not quashing his arrest and suppressing evidence because officers lacked probable cause to arrest him on September 8, 2010;

his conviction for home invasion should be reversed because the State did not prove that he intentionally caused injury to Daniel Hagy; his conviction for aggravated kidnapping should be reversed because he did not secretly confine Daniel Hagy and because any kidnapping was incidental to the commission of theft; and the trial court erred by coercing a jury verdict and not declaring a mistrial. For the following reasons, we reverse defendant's conviction for aggravated kidnapping, affirm his conviction for home invasion, affirm the trial court's denial of defendant's motions to quash arrest and suppress evidence, affirm its denial of defendant's motion for mistrial, and remand for resentencing.

¶ 3 I. BACKGROUND

¶ 4 Defendant was charged by indictment with home invasion (four counts), aggravated kidnapping (three counts), and one count each of armed robbery, armed violence, residential burglary, and aggravated unlawful restraint for an incident on September 1, 2010, in Lake Villa, Illinois.[1]

¶ 5 On January 12, 2011, prior to his jury trial, defendant filed a motion to quash arrest and suppress evidence. In the motion, defendant argued that, at the time he was stopped by the

[1] The specific counts were: count I: armed violence; count II: home invasion with intentional injury to Daniel Hagy (by zip ties around wrists); count III: home invasion with intentional injury to Daniel Hagy (by duct tape around ankles); count IV: armed robbery; count V: aggravated kidnapping while concealing identity; count VI: aggravated kidnapping with a firearm; count VII: aggravated kidnapping while armed with a dangerous weapon (knife); count VIII: residential burglary; count IX: aggravated unlawful restraint; count X: home invasion with use of force against Daniel Hagy while armed with a firearm; and count XI: home invasion with us of force against Daniel Hagy while armed with a dangerous weapon (knife).

police and taken into custody: the officers did not observe him in the commission of a crime; the officers did not have probable cause or a reasonable suspicion to believe that he had or was about to commit a crime; the officers did not have reasonable grounds to believe a warrant had been issued for his arrest; he did not give consent to his detention; there were no exigent circumstances; and his arrest was in violation of the United States and Illinois constitutions.

¶ 6 On May 17, 2011, the trial court held a hearing on the motion, and Detective James Yanecek testified as follows. Yanecek was a detective and evidence technician with the Lake County sheriff's department. In September 2010, he was involved in an investigation of defendant. On September 8, 2010, around 11 p.m., Yanecek and his partner, Detective Dever, were in their vehicle, parked across the street from 1320 North Park in Round Lake Beach. They were there because they had been given information that a vehicle resembling one stolen during an Antioch home invasion was observed at that address earlier that day, and it was possible the suspect may return to the address for the car. They had received a description of the suspect as a Hispanic man, around five foot five or six inches tall, medium complexion, and wearing a plaid patterned hoodie and baggie blue pants. The description of the suspect came from the family whose home was invaded[2] earlier that day and whose car was stolen, and the description was relayed to Yanecek and Dever through the investigating officers.

¶ 7 Yanecek and Dever observed a man walk onto the driveway at 1320 North Park. They watched to see how far he would go, and when he got past the "no trespassing" sign and past the front of the house, Yanecek turned the headlights of the car on, illuminating the suspect from about 50 feet away. Yanecek observed the suspect in the headlights, and the suspect "appeared

[2] The home was William Chappel's, who testified at trial and whose testimony is summarized herein.

to be very similar to the description of the subject that we were given possibly involved in the home invasion in Antioch." A photo of the suspect taken that night showed a man with a medium complexion wearing blue pants and a plaid patterned hoodie. He and Dever then crossed the street and took the suspect into custody.

¶ 8 Defendant was transported to the police station. After questioning, he ultimately provided inculpatory written and video-recorded statements regarding his involvement with the incident in this case and in the Antioch home invasion case.

¶ 9 The trial court entered an order on May 25, 2011, denying defendant's motion to quash his arrest and his motion to suppress evidence, although it did grant suppression of some of the defendant's statements. The motion to suppress was denied as to all of defendant's statements except those made from the time, while in custody, that he indicated that he did not wish to speak to the detectives anymore and until he reinitiated conversation with the officers; all other statements were ruled admissible. The cause proceeded to a jury trial, and we summarize the relevant testimony below.

¶ 10 Daniel Hagy testified as follows. In September 2010, was living with his parents, Nick and Dawn Hagy, at 820 Longwood Drive, Lake Villa. At the time of trial (October 2012), he was 22 years old and attending college.

¶ 11 On September 1, 2010, his mother was not at home; she was in Europe. Daniel woke up around 9:30 a.m., and his father was already at work. Daniel got ready and went to school. When he left for school, nobody remained in the home.

¶ 12 Daniel returned home from school around 12 or 12:30 p.m. Upon returning home, he noticed the garage door was open and that a gold bike—not his or his parents'—was in the garage. When he entered the house, he noticed some of his "stuff" in a pile outside of the

laundry room, such as his PlayStation 3 and his computer. Those items were normally kept in the basement.

¶ 13 Before he could make further observations, defendant emerged from the living room, clad in a hoodie and jeans and with a bandana wrapped around the face. Defendant had a gun. He strode purposefully toward Daniel with the gun pointed at him and cocked to the side. The man was shorter than him, about 5'8"; Daniel was 6'3". He could observe his eyes and forehead, and identified defendant's complexion as Hispanic.

¶ 14 Daniel tried to back out of the laundry room toward the garage, but defendant, still holding the gun, ordered him to get down on the ground. Daniel complied by lying down on his stomach. Defendant took his wallet and phone, then put his hands behind his back and tied them with plastic zip ties. The zip ties were tied around his wrists. Defendant then ordered him to get up, and the two walked upstairs to one of the bathrooms, with defendant keeping the gun pointed at him. The first bathroom did not have a functioning door as it was being remodeled, so defendant took him to another bathroom that did. Defendant left him in the second bathroom with the door shut.

¶ 15 Defendant came back in five to ten minutes to check on him and noticed the zip ties were loose. He re-zipped them. Then, defendant had Daniel move to his parent's bedroom and lie on his stomach on the bed. There, he zip-tied his feet and put duct tape over his wrists and ankles. Defendant had him get up and move to the basement, which he achieved by "hopping" and going down stairs by "slid[ing] on [his] butt." Defendant had the gun pointed at his back while he moved.

¶ 16 Defendant made him go to the storage unit in the basement and sit there. Defendant left Daniel in the room with the door closed. He came back after five or ten minutes and dragged

him to the other room in the basement. There Daniel remained, with the door to that room shut, for about two hours.

¶ 17 Defendant came back to the room three or five times over those two hours. Twice he came to ask how Daniel was doing. The first time he came back, he asked if Daniel had $500 in cash. He replied he did not. The second time he came back, defendant asked for the password to Daniel's phone. He gave it. While browsing the phone, defendant asked who "baby girl" was. Daniel replied that it was his girlfriend, Fallon Lascola.[3] Defendant told him to call her to come over with $500 or he was "going to put a bullet in [his] head." Defendant dialed the phone and held it for Daniel to talk, and he ended up leaving a message that his tire had popped and he needed $500 to replace it in his driveway. During the phone call, defendant pulled out a knife and put it to Daniel's neck.

¶ 18 On other returns to the basement room, defendant asked for the combination to the family's two safes and about keys to his mother's BMW. Daniel did not know the combination to the safes, nor did he know where the keys to the car were placed. Defendant's final visits were to see how Daniel was doing.

¶ 19 Upon hearing heavier footsteps upstairs, Daniel realized his father was home. He called out to him, and his father came down to the basement. He helped him to get out of the house, and then his father called the police. Once outside, Daniel observed that his car was missing.

¶ 20 Also once outside, Daniel's father cut the duct tape and zip ties off him with a razor. There was some swelling and redness on his arms and wrists after removing zip ties and duct tape.

[3] Fallon testified that they dated "off and on again" for about five years, starting in 2007. On September 1, 2010, they were "off."

¶ 21 Daniel's father, Nick Hagy, testified as follows. On September 1, 2010, Nick left for work around 5 a.m. and returned home around 2:30 p.m. Upon returning home, he noticed "things from [his] son's vehicle" on the floor of the garage; the family dogs were not around; some drawers were open in the kitchen; and his wife's jewelry was all over the bathroom upstairs. Seeing the jewelry spread out, it finally "hit" him, a "holy molly [*sic*]" moment. He yelled for Daniel and heard a muffled yell back. He found Daniel in the basement behind the TV with duct tape around his ankles and wrists. The door to the room in the basement had been closed. He dialed 9-1-1.

¶ 22 Dawn Hagy, Daniel's mother, also testified that she was out of town when the incident occurred, and when she arrived home, she discovered one of their safes was missing. The safe had contained baseball and Pokémon cards. Detective Keith Kaiser testified that an investigation of defendant's residence revealed a grayish-black safe under the deck, with the sides of the safe cut by what he believed was some type of saw.

¶ 23 William Chappel was the complainant in another case against defendant for a home invasion at his Antioch home,[4] and his testimony was allowed for the limited purpose of establishing defendant's identity. He testified as follows. On September 8, 2010, Chappel got up around 5 a.m., put a pot of coffee on, took a walk outside while it brewed, and returned to pour a cup. As he reached for the coffee pot, he felt a knife at his throat. He heard someone say, in effect, "don't do anything stupid, nobody will get hurt." The man with the knife forced him to his knees and duct-taped his hands behind his back. The man asked for money, and Chappel said he had some in his pants pocket; the man took it. The man also asked where the car keys were,

[4] The case was No. 10-CF-3103, and defendant's appeal in that case was disposed of in a June 26, 2014 order. *People v. Rico*, 2014 IL App (2d) 120650-U.

and he said they were on the desk. The man wore a light t-shirt pulled over his face, so that Chappel could not see the man below his eyes. He remembered his eyebrows and said he had a darker complexion.

¶ 24 The man took Chappel outside to the garage, where he put Chappel in the trunk of a Nissan Altima and closed the trunk lid. The man opened the trunk a few times throughout Chappel's ordeal to check on him. Chappel told him that he needed water, and the man got him some. This happened multiple times. Once, Chappel managed to open the trunk by working an emergency release, and he tried to escape, but the man caught him and put him back in the trunk. Once, when the trunk was popped, Chappel saw his daughter, and another time he saw his wife.

¶ 25 Eventually, the man let Chappel out of the trunk and took him to the master bathroom of his home. He observed that the car was loaded with items such as computers and monitors. At this point, both his arms and legs were bound with duct tape. The man left him in the bathroom, and that was the last he saw him. The police eventually came and freed Chappel.

¶ 26 Despite that Chappel's testimony was permitted for the limited purpose of identification, it was admitted by counsel that Chappel had not identified defendant as the offender in the defendant's other trial that involved Chappel, as he never clearly saw defendant's face before that trial.

¶ 27 Detective Robert Richards of the Lake County sheriff's department testified as follows. On September 9, 2010, Richards was at the sheriff's department, and he met defendant in an interview room. Defendant asked to speak with Detective Rochelle Tisinai, which Richards allowed. Richards was not involved with defendant until later, when Tisinai relayed that defendant wanted to speak with him as well. Richards came to the interview room with Tisinai. He personally re-advised defendant of his *Miranda* rights, showing him the signed *Miranda*

warnings form that Tisinai had obtained from defendant when she first began speaking with him. Defendant provided confessions as to the incident involving Chappel, corroborating that testimony. Defendant also agreed to provide written and video-taped inculpatory statements regarding his involvement in the incidents at the Chappel and Hagy households.

¶ 28 The State introduced into evidence defendant's written statement, memorializing his involvement in the events of September 1, 2010, at the Hagy household. He signed the statement, and the statement was witnessed by Detectives Tisinai and Richards. The statement said that he was riding his bike on September 1, 2010, when he saw a house with the garage open, so he went inside. Nobody was home, and he grabbed all the electronics he could. Then, someone entered the house, a man about 6 foot 3 inches. He "got scare [*sic*]" and took his gun out, telling the man to get down. He first took him upstairs to the bathroom, but then to the basement. He tied his legs and left him in the basement room while he continued loading electronics to take. He checked on the man every 15 or 20 minutes to see how he was doing. He packed the stuff in the man's car and left. He finished the statement by saying "I'm sorry wath [*sic*] I did, and I know it was wrong but I was doing it for money, I dint [*sic*] try or ment [*sic*] to hurt no one."

¶ 29 Defendant testified as follows. He was 18 years old on September 1, 2010, and he completed school through 8th grade. On that date, he did not enter the Hagy residence, tie up Daniel Hagy, nor commit the offense he was charged of committing. On September 8 around 11 p.m., he was in Round Lake because he "was told by a friend if I can do him a favor and pick up some merchandise that he was stashing." He was arrested at gunpoint by two policemen and was "surprised." The officers took him to the Lake County sheriff's department, put him in a room, and questioned him about trespassing in Round Lake. That night, he slept in the room on the

carpet. In the morning, he knocked on the door (locked from the inside), and an officer escorted him to the bathroom.

¶ 30 The next time defendant spoke with the officers, they showed him pictures of the safe they found at his parents' home, and told him he should come forward to tell them "what is going on, what happened." If he did not come forward, they said, they could arrest his parents. He felt "scared." Their demeanor was angry; they had "an attitude" towards him, but they did not yell. They left the room to let him think about it. The officers repeated this entry and exit, leaving a few minutes of time in between for him to think about things. They told him if he did not admit to the crime he could go to jail for life.

¶ 31 He admitted he made a written statement, saying he "just wanted to cooperate with them because they told me if I didn't I would spend the rest of my life in prison." He did not write what he wanted to write but what he was told to write. The officers started acting "more nice" after he wrote the statement: he was given lunch, asked if he wanted a cigarette, and given a blanket. A couple of hours later, he made a video recorded statement because the officers "told me they needed a video." They told him to tell the same story as in his written statement.

¶ 32 The jury began its deliberations around 11 a.m. on October 4, 2012. The jury sent the court multiple notes during its deliberations. After lunchtime on October 5, the court received a note from the jury that said "We are not able to agree on a verdict on the charges." Counsel agreed to have the jury continue deliberations, and the court ordered that the jury continue doing so. Later that day, the jury sent the court a note saying they had reached a unanimous verdict on one charge and sought direction on the other charges. Again, the court ordered that the jury continue deliberations.

¶ 33 In the evening of October 5, the jury sent another note to the court indicating that they were "deadlocked." Defense counsel desired that the court instruct the jury to keep deliberating, stating this was the first time the jury used the word "deadlocked." The State suggested a *Prim* instruction. The court stated that it was now 7 p.m., and the jury had been deliberating for 16 hours over 2 days. The court then gave the jury a *Prim* instruction, IPI 26.07 (Illinois Pattern Jury Instructions, Criminal, No. 26.07 (4th ed. 2000) (hereinafter IPI Criminal 4th No. 26.07)). Defense counsel objected to the *Prim* instruction.

¶ 34 At 9:30 p.m., the jury sent another note indicating that their individual positions on the verdicts had not changed. Noting that the jury had been deliberating for almost 18 hours already, which was much longer than it took the evidence to come in, the court declined to recess the jury and have them continue deliberations the next day, as the State and defendant's counsel had suggested the court do. The court stated that it was "going to accept the verdicts that they have reached and declare a mistrial on the others."

¶ 35 The jury returned to the court and presented three unanimous verdicts: not guilty of home invasion with a dangerous weapon (knife); not guilty of aggravated kidnapping with a dangerous weapon (knife); and guilty of residential burglary. They did not return another unanimous verdict. After polling the jury, juror number 326 asked to approach the court and said: "I signed the form assuming he could not be convicted unless all the charges were put together and agreed upon." The court asked juror 326 whether they were the juror's verdicts. First juror 326 responded "The problem is I think he has done that and much more." When asked again whether the verdicts were the juror's verdicts, the juror responded "I am going to say no." Whereupon the court declared that it could not accept the verdicts since they were not unanimous at that point, and it sent the jurors back to the jury room to continue deliberating.

¶ 36 After further deliberations that night, the jury reached unanimous verdicts. The jury found defendant guilty of residential burglary (count VIII), home invasion (count II: intentionally causing injury to Daniel Hagy), and aggravated kidnapping (count V: concealed identity). The jury found defendant not guilty the other counts.[5] Defense counsel moved to strike the guilty verdicts as to home invasion and aggravated kidnapping because the court should have accepted the original three unanimous verdicts and declared a mistrial on the remaining counts. The court denied this motion.

¶ 37 At defendant's sentencing hearing, the court entered judgment on the three guilty verdicts and then went on to explain the reasoning for its sentence. It described the incident at the Hagy household as "sheer terror." What defendant put Daniel Hagy "through was hell." Considering factors in aggravation, the court mentioned the need for deterrence from such crimes. Defendant's crimes were "big league stuff." It also considered his prior criminal record, which included domestic battery, assault, and a parole violation. It also considered Chappel's testimony, not as an actual factor, but in looking at whether defendant's conduct was likely to recur.

¶ 38 In mitigation, the court found defendant had "matured" while in custody, and that he was an "intelligent guy" who made his own decisions. It further considered his youth and the fact that he had been shot before, which would lend "anybody who gets shot *** a perspective on life."

[5] Specifically, the jury found defendant not guilty of: armed violence, armed robbery, aggravated kidnapping (armed with a dangerous weapon, a knife), home invasion (armed with a dangerous weapon, a handgun), and home invasion (armed with a dangerous weapon, a knife). It also found that defendant was not armed with a firearm.

¶ 39 The court sentenced defendant to consecutive 30-year terms of imprisonment for home invasion and aggravated kidnapping. It did not impose a sentence for residential burglary because that conviction merged with home invasion.

¶ 40 Defendant timely appealed.

¶ 41 II. ANALYSIS

¶ 42 Defendant makes five arguments on appeal. He argues that the trial court erred by not suppressing evidence because officers lacked probable cause to arrest him; that the state did not prove that he intentionally caused injury to Daniel Hagy, as necessary to support a conviction for home invasion; that he did not secretly confine Daniel Hagy, as necessary to support a conviction of aggravated kidnapping, and also that any kidnapping was incidental to theft; that the trial court abused its discretion by coercing a verdict and not declaring a mistrial; and that the trial court abused its discretion in sentencing him to consecutive 30-year terms. We address each in turn.

¶ 43 1. Motion to Quash Arrest and Suppress Evidence

¶ 44 Defendant conceded at oral argument that this issue was already disposed of in a prior disposition. 2014 IL App (2d) 120650-U. In our prior order, we found that defendant's September 8, 2012, arrest in Round Lake was proper and affirmed the trial court's denial of defendant's motion to quash arrest and suppress evidence. *Id.* ¶ 10. Accordingly, we do not revisit the issue.

¶ 45 2. Home Invasion

¶ 46 Defendant next argues that his conviction for home invasion (count II) should be reversed because the State failed to present evidence that he "intentionally caused any injury" to Daniel Hagy, an essential element of the offense. We review a criminal conviction by asking whether, 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. *People v. Cunningham*, 212 Ill. 2d 274, 278 (2004). For the following reasons, we agree with the State and affirm his conviction for home invasion under count II.

¶ 47 Home invasion occurs when a person: (1) without authority; (2) knowingly enters the dwelling place of another when he or she knows or has reason to know that one or more persons is present or he or she knowingly enters the dwelling place of another and remains in the dwelling place until he or she knows or has reason to know that one or more persons is present; and (3) intentionally causes injury to any person in the dwelling place. 720 ILCS 5/12-11(a)(2) (West 2010) (renumbered as of January 1, 2013, to 720 ILCS 5/19-6(a)(2) (West 2014)). Count II of the complaint against defendant alleged that he knowingly, without authority, entered the dwelling of Nick Hagy at 820 Longwood Drive, Lake Villa, remained there until he knew Daniel Hagy was present within the dwelling, and intentionally caused injury to Daniel by applying zip-ties around his wrists.

¶ 48 Defendant argues that no evidence supported the third essential element of the crime of home invasion, that is, defendant did not intentionally cause injury to Daniel. Defendant argues that the only testimony related to a possible injury is that there was "redness and swelling" on Daniel's wrists. Defendant also points out that Daniel did not complain of psychological trauma. See *People v. Hudson*, 228 Ill. 2d 181, 195 (2008) (proof of psychological injury satisfies the injury element).

¶ 49 However, redness and swelling of the wrists can be enough to constitute an "injury" under the statute because we have held that even pressure applied to the wrists, which left no visible sign of injury but did leave the defendant in pain for a few days, constituted "injury" for purposes of home invasion. *People v. Woods*, 373 Ill. App. 3d 171, 178-79 (2007).

Accordingly, a rational trier of fact had sufficient evidence to find that an injury occurred. Defendant did not develop an argument whether the injury was intentionally committed (see Ill. S. Ct. R. 341(h)(7) (eff. Feb. 6, 2013; *Ramos v. Kewanee Hospital*, 2013, IL App (3d) 120001, ¶ 37), but assuming no forfeiture, we reiterate that there was evidence by which a rational trier of fact could have found the defendant intentionally caused Daniel Hagy injury. See *People v. Terrell*, 132 Ill. 2d 178, 204 (1989) (a defendant is assumed to intend the natural and probable consequences of his actions).

¶ 50 3. Aggravated Kidnapping

¶ 51 Defendant next argues that his aggravated kidnapping conviction (count V) should be reversed because the State did not prove that defendant acted with the specific intent to "secretly confine" Daniel but rather his confinement was incidental to the theft. The indictment alleged that defendant committed the offense of kidnapping by knowingly and secretly confining Daniel Hagy against his will in violation of 720 ILCS 5/10-1(a)(1) (West 2010). It further alleged that defendant concealed his identity by wearing a t-shirt over his nose and mouth, elevating the offense of kidnapping to aggravated kidnapping. 720 ILCS 5/10-2(a)(4) (West 2010). We apply the same standard of review as we did for the offense of home invasion.

¶ 52 Defendant argues as follows. First, the evidence at trial did not support that Daniel was "secretly" confined. Daniel did not testify that he was gagged or silenced, and when his father came home, his father was readily able to find him. He was confined while defendant committed the theft of items, but the evidence did not amount to a secret confinement, just confinement.

¶ 53 Defendant continues that the *Levy-Lombardi* doctrine applies here. The doctrine provides that a conviction for kidnapping cannot be sustained when the conduct was in the course of and incidental to another crime. See *People v. Enoch*, 122 Ill. 2d 176, 197 (1988). Defendant argues

that the reasoning from *People v. Eyler*, 133 Ill. 2d 173, 199-200 (1989)—that the binding, torturing, and killing of the victim who was induced to come to the defendant's apartment for the purported purpose of prostitution showed that the confinement was not incidental to the crime of murder—applies here, but with the result that the confinement of Daniel was incidental to defendant's residential burglary. Daniel was asported to a bathroom, bedroom, and basement room, his detention was an inherent part of a robbery because it was done to immobilize potential resistance, and his asportation and detention did not pose any danger independent of the danger imposed by the robbery. Admitting that he committed various offenses, defendant argues those offenses did not include aggravated kidnapping because any technical compliance with the elements of the kidnapping statute were incidental to the essential elements of an armed robbery (which, he points out, the jury acquitted him of).

¶ 54 The State responds as follows. First, defendant did not raise the *Levy-Lombardi* doctrine issue in his posttrial motion and therefore forfeited review. Furthermore, Daniel's secret confinement was not incidental to the commission of another offense. He was confined for three hours, two hours of which he was detained in a closed basement room. He was forced to hop from the bedroom to the basement. He was not immobilized to take items from his person. He sustained injury due to his confinement, and he would have been confined for much longer had his father not come home when he did to find him.

¶ 55 First, defendant did not forfeit his arguments because defendant moved for judgment notwithstanding the verdict, renewing his arguments from his motions for directed verdict at the close of the State's case and the close of all the evidence that the State could not prove, *inter alia*, aggravated kidnapping. See *Knauerhaze v. Nelson*, 361 Ill. App. 3d 538, 562 (2005)

(motion for judgment notwithstanding the verdict preserved question on appeal whether the evidence supported the verdict).

¶ 56 Addressing the merits of the argument, we agree with defendant, even though the State put forth evidence that Daniel's confinement was secret because he was confined within a home behind a closed door in the basement. See *People v. Siguenza-Brito*, 235 Ill. 2d 213, 227-28 (2009) (victim pushed out of van into garage and held there with garage door closed constituted secret confinement for purposes of kidnapping); *People v. Reeves*, 385 Ill. App. 3d 716, 726 (2008) (secret confinement established by showing the victim was enclosed within something like a house or car); *People v. Turner*, 282 Ill. App. 3d 770, 780 (1996) ("secret" may be defined as concealed, hidden, or not made public). Nonetheless, in this case, the confinement was incidental to other offenses, to wit, residential burglary and home invasion.

¶ 57 In *Eyler*, our supreme court stated that "the *Levy-Lombardi* doctrine states that a defendant cannot be convicted of kidnapping where the asportation or confinement of the victim was merely incidental to another crime, such as robbery, rape or murder." *Eyler*, 133 Ill. 2d at 199. The supreme court first discussed *Enoch*, where they had found that the evidence showed more than a simple detention incident to murder or rape. There, the defendant took the victim to the victim's apartment where she was murdered. Her boyfriend had tried to contact her while they were in the victim's apartment for about 45 minutes, and she was found with her hands bound behind her back with wire, lacerations across her throat, stab wounds in her chest, and a cut from her sternum to her pubic bone. *Id.* at 200. Blood was found in several rooms and on the telephone, evincing an attempt to escape. *Id.* These facts supported a conviction for kidnapping independent of a conviction for rape or murder. *Id.*

¶ 58 Likewise, in *Eyler*, the supreme court stated that the confinement was not incidental to the murder. The defendant induced the victim to come to his apartment under the pretense of prostitution. Once there, however, the defendant "had something else in mind: to bind (and most likely gag), torture, and stab his victim before murdering him, in a place where the victim was beyond the reach of anyone who could help him." *Eyler*, 133 Ill. 2d at 200. There, the confinement to accomplish this could not be said to be incidental to the crime of murder, and the *Levy-Lombardi* doctrine did not apply. *Id.*

¶ 59 The appellate court has previously set out factors to consider in whether the *Levy-Lombardi* doctrine applies. Those factors are:

> "(1) (T)he duration of the detention or asportation; (2) whether the detention or asportation occurred during the commission of a separate offense; (3) whether the detention or asportation which occurred 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. Smith*, 91 Ill. App. 3d 523, 529 (1980) (quoting *Government of Virgin Islands v. Berry*, 604 F. 2d 221, 227 (3d Cir. 1979)).

¶ 60 Applying the factors to this case, the duration of the detention was approximately three hours, or, approximately the time it took defendant to rob the home. The detention occurred during the commission of other offenses, residential burglary and home invasion. The detention was not inherent to those offenses, although it did aid in the commission of the offenses. Finally, the detention did not create a significant danger to the victim, because he was put in no further danger than when he first encountered defendant, firearm drawn, robbing his home.

¶ 61 Weighing these factors and examining the specific facts of this case, we hold that Daniel's detention was incidental to defendant's residential burglary and home invasion. The State argues that the long detention was unnecessary to achieve those offenses. We note, however, that the *Levy* case that gave rise to the eponymous doctrine considered the theft of persons confined in a moving automobile and compared it to a robbery of a bank where victims are tied up and moved to another room. *People v. Levy*, 204 N.E.2d 842, 844 (N.Y. 1965). It found that neither instance supported a kidnapping conviction in addition to one for robbery. *Id.*

¶ 62 This situation is akin to those situations that gave rise to the *Levy-Lombardi* doctrine. Defendant began stealing items at the Hagy home when nobody was there. When Daniel stumbled upon defendant mid-offense, defendant had to restrain Daniel in order to complete the burglary. He bound him so that he could not escape or call for help or interfere in any way.

¶ 63 This case is unlike *Eyler* or *Enoch*. In both those cases, kidnapping was not incidental to the other offense, but rather the kidnapping preceded the other offenses and created the setting for the commission of additional offenses. The kidnapping and murders in *Eyler* and *Enoch* were sequential offenses, not coincidental as we have in this case, and whether the kidnapping occurs during another offense is one of the *Smith* factors to consider in application of the *Levy-Lombardi* doctrine.

¶ 64 Moreover, the other offenses in *Eyler* and *Enoch* were violent offenses, and the fourth of the *Smith* factors to consider in applying the *Levy-Lombardi* doctrine is whether the asportation or detention created an independent, significant danger to the victim. In *Eyler* and *Enoch*, the asportation and detention left the victims vulnerable to the violent crimes ultimately committed upon them. Here, Daniel was in no greater danger once confined. If anything, he was safer no longer having a gun pointed at him.

¶ 65 "Technical compliance" with the statutory definition of kidnapping is a hallmark of the *Levy-Lombardi* doctrine. *Eyler*, 133 Ill. 2d at 200; see *Levy*, 204 N.E.2d at 844 ("It is unlikely that these restraints *** which are incidents to other crimes *** were intended by the Legislature to constitute a separate crime of kidnapping, even though kidnapping might sometimes be spelled out literally from the statutory words."). We note that in form, the elements of the kidnapping statute were met here, insofar as evidence supported that defendant knowingly confined Daniel in a place that was purposefully hidden from public view and therefore secret. However, in substance, the actions that otherwise constituted kidnapping were necessary for defendant to complete the residential burglary and steal items from the Hagy household. This is the type of situation where the *Levy-Lombardi* doctrine applies: a coinciding performance of the elements of kidnapping in order to carry out the commission of an independent offense. Accordingly, we reverse defendant's conviction for aggravated kidnapping.

¶ 66 4. Mistrial

¶ 67 Defendant argues that the trial court erred when it denied defendant's motion to strike his convictions for home invasion (intentional injury) and aggravated kidnapping (concealed identity) because it should have accepted the initial verdicts of not guilty[6] (before juror 326 said the verdicts were not his and the court ordered the jury to continue deliberations) and declared a mistrial on the five remaining, non-unanimous counts.[7]

[6] We note that the initial, unaccepted verdicts were for different counts: home invasion armed with a dangerous weapon (knife) and aggravated kidnapping armed with a dangerous weapon (knife).

[7] In defendant's brief, he argues for a mistrial generally, but in the trial court he moved only for a mistrial on the five counts that the jury initially failed to return a unanimous verdict

¶ 68 We hold that the trial court did not abuse its discretion in denying a mistrial as to any count. *People v. Bishop*, 218 Ill. 2d 232, 251 (2006) (a trial court's denial of a defendant's motion for mistrial will not be disturbed absent a clear abuse of discretion). "Generally, a mistrial should be granted where an error of such gravity has occurred that it has infected the fundamental fairness of the trial, such that continuation of the proceeding would defeat the ends of justice." *Id.* Defendant compares this case to *People v. Andrews*, 364 Ill. App. 3d 253 (2006), where the trial court, over defendant's objection, found manifest necessity to declare a mistrial. *Id.* at 262, 266. Such a situation is clearly inapposite to ours, as the trial court here made no finding of manifest necessity, did not declare a mistrial, and defendant moved for a mistrial instead of opposing it.

¶ 69 We agree with the State that *Andrews* and its factors do not control here.[8] We are not reviewing a finding of manifest necessity and an order of mistrial. Rather, as the State characterizes it, we are reviewing whether the trial court coerced a verdict by ordering the jurors to continue deliberations after not accepting juror 326's verdicts. Whether instructions given to a

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on. After about 40 minutes of further deliberation, the jury returned unanimous verdicts of "not guilty" on those five counts.

[8] The six factors the *Andrews* court considered "in a case like this one where the specific issue presented is the manifest necessity for declaring a mistrial based on a jury deadlock" were: (1) the jury's collective opinion that it cannot agree, (2) the length of jury deliberations, (3) the length of trial, (4) the complexity of the issues considered by the jury, (5) any proper communications between the judge and jury, and (6) the effects of possible exhaustion and the impact that coercion of further deliberations might have had on the verdict. *Andrews*, 364 Ill. App. 3d at 266-67.

deadlocked jury are coercive is reviewed by considering the totality of the circumstances. *People v. Outlaw*, 388 Ill. App. 3d 1072, 1094 (2008).

¶ 70 Although the deliberations took over 18 hours, which was longer than the trial itself took, "[i]n determining how long a jury should be permitted to deliberate before a mistrial is declared and the jury is discharged, no fixed time can be prescribed, and great latitude must be accorded to the trial court in the exercise of its informed discretion." *People v. Preston*, 76 Ill. 2d 274, 283 (1979). Defense counsel did not object to continued deliberations on multiple occasions. Defense counsel objected to the *Prim* instruction after 16 hours of deliberation, preferring instead that the jury merely keep deliberating because it was the first time they had used the word "deadlocked." After the *Prim* instruction was given and the jury sent back another note saying some verdicts were still not unanimous, both defense and State counsel were willing to extend deliberations to the next day. It was the trial court's decision to try to expedite a verdict that day. The trial court also told counsel that it would accept the unanimous verdicts and declare a mistrial on the others.

¶ 71 After continued deliberations, the jury returned verdicts of not guilty of aggravated kidnapping (armed with a dangerous weapon, a knife) and home invasion (armed with a dangerous weapon, a knife), and guilty of residential burglary. The trial court then polled the jury, and juror 326 expressed reservations about the verdict, ultimately denying that the verdicts were his. In response, the trial court ordered the jury to continue deliberations, as is the trial court's prerogative. See *People v. Kellogg*, 77 Ill. 2d 524, 528 (1979) ("If the trial judge determines that any juror does dissent from the verdict submitted to the court, then the proper remedy is for the trial court *** to either direct the jury to retire for further deliberations or to discharge it." (Citations omitted.)).

¶ 72 The jury continued deliberating for another 40 minutes, and it returned three "guilty" verdicts and five "not guilty" verdicts. Defendant then moved to strike two of the "guilty" verdicts and declare a mistrial on the others.

¶ 73 The totality of these circumstances does not demonstrate that the trial court abused its discretion by continuing jury deliberations and coercing a verdict. Rather, the trial court exercised its inherent power to order continued deliberations after one juror denied that the initial verdicts were his during juror polling. It is the purpose of juror polling to allow a juror to voice concerns or disagreements, and to find that the court abused its discretion by not declaring a mistrial because a juror voiced disagreement with the verdict during polling would defeat the purpose of jury polling. See *Kellogg*, 77 Ill. 2d at 528 ("Jurors must be able to express disagreement during the poll or else the polling process would be a farce and the jurors would be bound by their signatures on the verdict."). That was the reason the jurors were sent back to continue deliberating, and the court had already stated it would accept a mistrial on those counts where a unanimous verdict could not be reached. The jury continued deliberating for less than one hour after the court ordered them to continue deliberations, and they then returned unanimous verdicts. These facts do not support an abuse of discretion.

¶ 74 5. Sentencing

¶ 75 Defendant argues that the trial court abused its discretion by imposing consecutive 30-year sentences on him. We need not address this argument, as we have reversed defendant's conviction for kidnapping and remand for resentencing. Our supreme court has said a remand for resentencing is unnecessary when a trial court sentences a defendant separately on each conviction, and the record does not otherwise show that the court considered the vacated convictions in imposing a sentences on the remaining convictions. *People v. Maggette*, 195 Ill.

2d 336, 354-55 (2001); see *People v. Hurry*, 2013 IL App (3d) 100150-B, ¶ 23. Here, we cannot say the trial court sentenced defendant on the home invasion conviction without consideration of the now-vacated aggravated kidnapping. The trial court considered the totality of the circumstances at the Hagy household, finding defendant put Daniel "through hell" and that his offenses were "big league stuff." The kidnapping involved consideration of many of the same facts as the home invasion. Accordingly, we remand for resentencing on the home invasion conviction.

¶ 76 III. CONCLUSION

¶ 77 For the aforementioned reasons, we affirm the Lake County circuit court's denial of defendant's motion to quash arrest and suppress evidence, affirm its denial of defendant's motion declare a mistrial, reverse defendant's conviction for aggravated kidnapping, affirm his conviction for home invasion, and remand for resentencing.

¶ 78 Affirmed in part, reversed in part, and remanded.