2015 IL App (4th) 131112-U

NO. 4-13-1112

FILED
October 22, 2015
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from
Plaintiff-Appellee,	)	Circuit Court of
v.	)	Woodford County
JONATHAN NUNNALLY,	)	No. 13CF120
Defendant-Appellant.	)	
	)	Honorable
	)	Charles M. Feeney,
	)	Judge Presiding.

PRESIDING JUSTICE POPE delivered the judgment of the court.
Justices Turner and Steigmann concurred in the judgment.

ORDER

¶ 1 *Held*: The State presented sufficient evidence from which the trial court could reasonably find defendant guilty of attempt child abduction beyond a reasonable doubt.

¶ 2 Following a bench trial, defendant, Jonathan Nunnally, was found guilty of attempt (child abduction) and sentenced to 30 months' probation and 180 days in the county jail. On appeal, defendant contends the evidence was insufficient to prove him guilty beyond a reasonable doubt. We affirm.

¶ 3 I. BACKGROUND

¶ 4 In September 2013, defendant was charged with attempt (child abduction) (720 ILCS 5/8-4, 10-5(b)(10) (West 2012)), alleging he "intentionally attempted to lure C[.A.], a child under the age of 17 years, into a motor vehicle without the consent of a parent of C[.A.] for other than a lawful purpose."

¶ 5 In November 2013, the State filed a motion *in limine* seeking to introduce evidence of other acts committed by defendant similar to the charged conduct.

¶ 6 Prior to the start of the November 2013 bench trial, the trial court heard testimony regarding the State's motion *in limine*. The parties agreed to examine the witnesses as though the motion would be granted to eliminate the need for them to testify twice. The parties presented the following evidence:

¶ 7 Ten-year-old H.N. testified on the morning of September 11, 2013, she was riding her bicycle to school in Toluca, Illinois. She was riding on the sidewalk. A silver car with two males inside it pulled up next to H.N. and "asked [her] to get in the car." They said "to come to the car" and H.N. said " 'no'." Neither of the men opened a car door or got out of the vehicle. When asked if the men asked her to get in the car, H.N. responded, "No, not really, they just said to come here. But I had a feeling they would have opened one of the doors and shoved me in." They asked her to come closer to the car but did not ask her to get in or make any physical gestures.

¶ 8 The driver of the car was "the dark one" and the passenger was "white." The "white one," whom H.N. identified in court as defendant, was the man who asked her through the open car window to "come here." After H.N. said " 'no,' " the man asked her again, at which time H.N. "sped up a little more." When the car caught up to her again, she sped off. H.N. had to turn onto another street to get to school and the car followed her. She was not sure what happened to the car when she arrived at school. When H.N. arrived at school, she told the principal.

¶ 9 H.N. testified, in November 2013, she met with Washburn police officer Jeff Moline and her principal, Molly Allen, in Allen's office. At that time, H.N. was shown two

sheets of paper, each containing six photographs. She did not immediately identify anyone from the first set of photographs. When H.N. looked at the second set, she immediately identified the man who was driving the vehicle. When she looked at the first sheet again, she commented to Officer Moline she was "really creeped out, because it scared [her] that day." H.N. said when she looked at the first sheet again, she stared at it, remembered what the man looked like, and picked defendant's picture from the six photographs. H.N. could not say why it was easier for her to pick the driver's photograph when the passenger was closer to her. H.N. said she was positive about her identification of both the passenger and the driver.

¶ 10 Jessica Ochoa testified she was H.N.'s mother. She did not know defendant and did not give him or anyone else permission to have contact with H.N. on her way to school the morning of September 11, 2013.

¶ 11 Molly Allen testified she was the principal at the elementary school in Toluca, Illinois. She knew H.N. as a fifth-grader at the school. In November 2013, Allen met with Officer Moline and H.N. in Allen's office. Allen witnessed H.N. go through the photographic lineup process as described by Officer Moline below. H.N. appeared to be uncomfortable and scared as she looked at the photographs, but after she picked the two photographs there was no hesitation and H.N. said she was sure those were the two men.

¶ 12 Officer Moline testified in November 2013, he met with Allen and H.N. Officer Moline told H.N. he had two sets of photographs he wanted her to look at to see if she recognized anyone. He told her there may not be anyone in the photographs she recognized and that was okay. Officer Moline did not coach H.N. in any way about whom she should pick.

¶ 13 When Officer Moline handed H.N. the first set of photographs, she looked at it for a couple of minutes and then said she wanted to come back to it. She wanted to look at the

second set. Within 20 seconds of viewing the second set, H.N. identified one of the photos as the driver of the silver car in Toluca in September 2013. H.N. grabbed the first sheet and started staring at one photograph. She said, " 'Hmm.' " Officer Moline asked H.N. if something was wrong and she said it scared her to look at it. When asked why it scared her, H.N. said, " 'because one of them looks really familiar, like another guy in that car.' " Officer Moline again told H.N. she needed to be sure and not pick one just to pick someone. H.N. responded number one was the passenger in the car that morning. The photograph H.N. circled on this set of photographs was that of defendant.

¶ 14 Defendant called Stephanie Spiller. She testified defendant had been living with her and her boyfriend for approximately two months prior to the incidents. Spiller testified her job was a seven-day-per-week paper route. Defendant called Spiller and her boyfriend "mom" and "dad." Spiller had known defendant for approximately seven months.

¶ 15 Spiller testified on Wednesday, September 11, 2013, she worked the paper route along with defendant, her ex-husband, Danny Spiller, and her boyfriend, Dustin Bryant. The paper route required them to leave home between 2:30 and 3 a.m. They would return home around 6 or 6:30 a.m. On September 11, 2013, they got home around 6:45 a.m. and followed their normal routine of eating breakfast and hanging out until 9 or 10 a.m., when everybody except Spiller went to bed.

¶ 16 Spiller testified defendant ate breakfast with them and then fell asleep out in the living room chair until she woke him around 10 a.m. and asked him to move to a bed. Spiller testified on September 11, 2013, between 6 and 10 a.m., defendant was in her presence continuously.

¶ 17 Spiller testified on Friday, September 13, 2013, defendant went along on the

paper route in the morning. He also went to see his daughter. When he returned from there, defendant told Spiller he and his friend, Tyler Merriman, were going to go see an out-of-town friend and might not be back until the morning. Spiller did not see defendant again that day.

¶ 18 Defendant called Seth Lovell, who worked at the Shell station in Bartonville, Illinois. Spiller, Bryant, Danny Spiller, and defendant stopped by Shell station almost every morning, sometime between 3 a.m. and 6 a.m., when doing their paper route. On Wednesday, September 11, 2013, Lovell worked the third shift, between 10 p.m. and 7 a.m. He saw Spiller, Bryant, Danny, and defendant around 6 a.m. Lovell said he was 90% certain defendant was with Spiller, Bryant, and Danny on September 11, 2013.

¶ 19 On the morning of September 13, 2013, Lovell saw defendant and Merriman in a car. Defendant told Lovell they were headed up to Elgin to see a girlfriend.

¶ 20 Defendant called Dustin Bryant, whom defendant called "dad." Bryant indicated defendant went with them on the daily paper route about 90% of the time. Defendant was with them on September 11, 2013. After they arrived home, Bryant, Spiller, and defendant sat and watched a movie. Spiller fell asleep in the chair about 30 to 40 minutes into the movie. Defendant fell asleep in the chair around 10 or 10:30 a.m. The only time Bryant left the room was to go to bed. Spiller and defendant were still asleep in their respective chairs at that time.

¶ 21 Defendant called his friend, Danny Spiller, also the ex-husband of Stephanie Spiller. On September 11, 2013, Danny, Spiller, Bryant, and defendant went on the paper route. Danny dropped everyone else at their house and went to pick up his brother to take him to work. Danny returned to the house at 7:05 a.m., where everyone was getting ready to eat breakfast and watch a movie. Danny left at 8 a.m. and went across the street to take care of his dog. He returned at 8:20 a.m. and everyone was watching a movie. Defendant was getting ready to fall

asleep in his chair with his dog. About 9:30, Danny left and went across the street to his house and took a nap. When he went back across the street at 3:30 p.m., defendant was still asleep in his chair.

¶ 22 The trial court found H.N.'s testimony was credible, her identification of defendant was certain, and her display of emotion while identifying defendant in the courtroom was genuine. On the other hand, the court found the defense witnesses had concocted an alibi to help their friend. The court noted the many conflicts in the defense witnesses' stories and discussed how eager those witnesses were to share the details of the alibi without even being asked a question. The court granted the State's motion *in limine* and admitted the evidence of the prior act in order to show intent and lack of mistake, given the similarities between the two cases.

¶ 23 In its case in chief, the State called nine-year-old C.A. C.A. testified on September 13, 2013, at around 4:30 p.m., he left his friend's house and rode his bike to Grant Ireland Park in Washburn, Illinois. He was alone. He entered the park at the exit for cars, but it can also be used by pedestrians and bicycles. He went down the hill to the basketball courts located near the main car entrance to the park. Had he gone straight, he would have gone over a bridge to the back part of the park where there were trails and playground equipment. He saw some people in a car circling around back there. C.A. testified there were two places in the park a car could turn around. One was near where the car had stopped by him and the other was across the bridge at the back of the park. To get out of the park from across the bridge, a car would have to turn around and come back across the bridge.

¶ 24 C.A. watched a few people playing basketball for about three minutes before he headed back toward the bicycle entrance to the park, following the same path he had taken into

the park. The same car he had seen, which was a silver Chevrolet, started coming toward C.A. The car was occupied by two males, one African-American and one Caucasian with black or brown hair and wearing glasses. The white man was the driver. C.A. stopped by the garbage can across from the bathrooms because he thought the car was going to go by and out the car exit. Instead, the car stopped next to C.A., with the driver's side being nearest to C.A. C.A. testified, "[t]hey rolled down the window, and then they tried getting me to get into the car." He stated the driver "just kept asking me to get over to the car." C.A. did not respond; he got scared. The exact words the driver spoke were, "Hey, come here." The passenger "just laughed a little." C.A. got on his bike and started riding away really fast and "they screamed, 'You get back here.' " The individuals in the car did not ask C.A. for directions. C.A. identified defendant as the individual who had done the talking. Neither defendant nor the passenger got out of the car or opened the car door. They did not ask C.A. any questions or ask him to get in the car. They did not offer C.A. anything to eat or drink.

¶ 25 When C.A. took off on his bicycle, the car followed him for a little bit. He knew they were following because he looked back and saw them moving toward him. C.A. fell and the car stopped and waited. C.A. jumped back on his bike and rode toward a gas station, where he had earlier seen a police officer. The gas station was visible from the park. When C.A. started toward the gas station, it looked like the car was following him. He exited the park ahead of the car. The car signaled to turn right, but when the men saw the police officer at the gas station, they turned left instead and headed in the opposite direction on Route 89.

¶ 26 C.A. told the police officer, "These guys tried getting me into their car." C.A. told the officer they were in a silver car and had just gone down Route 89. The officer took off and C.A. went to where he knew his mother was, at her friend Bobbie's house. When C.A.

arrived at Bobbie's house, he saw the two men who tried to "abduct" him on Bobbie's porch as Bobbie and C.A.'s mother sat on the porch. They were having a conversation but C.A. could not hear it. He was scared and stayed off the porch until the men left. He saw one of the men poke the other and say, " 'look,' " and point toward C.A. The two men got in their car and left. C.A. told his mother and Bobbie what had happened.

¶ 27 Washburn police officer Richard Levine testified on September 13, 2013, at approximately 5 p.m., he was on duty, sitting at the American Legion parking lot. At that time, Levine saw a gray- or silver-colored vehicle entering the exit to Grant Park, which Levine found unusual since there are big signs clearly marking the entrance and exit to the park. Levine stated the park's exit is situated right as Route 89 curves from east/west to north/south. Levine thought about following the car until he noticed he was low on fuel and decided to go to Casey's, which is a half block from the park exit. The park is mostly visible from Casey's, with the exception of the back of the park.

¶ 28 Levine testified after he put fuel in his car, a young boy whom Levine knew as C.A. came up on his bicycle. He was out of breath and told Levine two people tried to get him into their car. C.A. was scared. He gave Levine a description of the car and its occupants and indicated the car had traveled north on Route 89. Levine went on pursuit and eventually saw a car and occupants matching C.A.'s description and stopped the car. A license plate check showed the car was stolen. Levine identified defendant as the driver of the vehicle. Defendant was arrested.

¶ 29 At the police station, defendant waived his *Miranda* rights (*Miranda v. Arizona*, 384 U.S. 436 (1966)). Defendant told Levine he was looking for Roy Moulton, a friend from whom he was to get a key because defendant was going to be living with Moulton. Defendant

also said they were headed to La Rose because they thought Moulton was there, and they were also going to go to Elgin to meet someone named Brittany. Defendant told Levine the car belonged to the passenger, Tyler Merriman. Defendant said they were in the park trying to find directions to Moulton's house. In the park, Merriman rolled down the window and told defendant to yell at a little boy on his bicycle and ask if he knew where Moulton lived. Defendant said he yelled out the window.

¶ 30 Defendant told Levine after they left the park, they went to a house where Moulton had lived seeking directions to Moulton's house. When Levine pulled them over, defendant said they were going to La Rose, where Moulton worked.

¶ 31 Levine testified he prepared a sworn report of his initial encounter with C.A. Levine agreed that report stated C.A. told him, "two individuals in a gray Chevy four-door were trying to get him to come closer to the vehicle." That was what C.A. told him initially. However, as a part of the investigation, C.A. also made a written statement in which he indicated he believed the men were trying to get him to get into the car.

¶ 32 Roy Moulton testified he had a theft conviction in 2012 and a forgery conviction in 2011. He stated he lived near the corner of State and Main Streets, across the street from the grade school in Washburn, Illinois. He had lived there for seven years. Moulton stated he had never lived on Madison Street in Washburn, Illinois, and he never told anyone he had. He never lived in or had a job in La Rose, Illinois, and he had never told anyone he did.

¶ 33 Moulton testified he had known defendant since fifth grade but had not seen him since mid-year of sixth grade. The last time Moulton had spoken to defendant was in August, when defendant called Moulton after they had communicated on Facebook. Defendant asked Moulton to move in with him but Moulton told him he could not do so. Moulton never offered

to let defendant move in with him. Moulton never offered or provided defendant with keys to his home. Moulton did provide defendant with his address and invited him to come there, but only if he called first. Moulton did not talk to defendant in September 2013. Defendant never told Moulton he was coming to Washburn on September 13, 2013, and Moulton was not expecting defendant to stop by that day.

¶ 34 Danisha A. testified she was C.A.'s mother. On September 13, 2013, at around 5 p.m., Danisha was on the front porch at Nick and Bobbie Vanmeter's house on Magnolia Street along with Bobbie, Bobbie's eight-year-old son, and Danisha's five-year-old daughter. C.A. had ridden his bicycle to Grant Park, a few blocks away. As Danisha and Bobbie were sitting on the porch and the children were playing in the yard, Danisha and Bobbie noticed a silver car come up the street and park in front of the next-door neighbor's house. Two men whom they had never seen before exited the car, walked in front of Bobbie's house down to the end of Magnolia Street, and turned left onto Madison Street. Bobbie took down the license plate number. The men went to the second house on Madison Street and knocked on the door. Danisha did not know if anyone answered the door. The men walked back by the Magnolia Street house toward their car. They walked up to Bobbie's yard and asked where Roy Moulton lived. Bobbie and Danisha told the men they were nowhere near the right area of town. Bobbie gave them directions to Moulton's house. They got in their car, drove up Magnolia Street, and turned left on Madison Street farther away from Moulton's address. From there, Danisha did not know where they went.

¶ 35 As the men were leaving, C.A. came around the corner on his bicycle. He was out of breath and said those were the men who tried to get him into their car at the park. Danisha identified defendant as one of the men. Danisha never gave defendant consent to pick up C.A., get C.A. into the vehicle, or talk to C.A. at any time on September 13, 2013.

¶ 36 Bobbie Vanmeter testified she lived on East Magnolia Street in Washburn, Illinois, which is east of Route 89. She had lived there for eight years and was familiar with who lived on the street and in the neighborhood. On September 13, 2013, at around 5 p.m., Bobbie was on her front porch with her friend, Danisha, and their children. The children were playing under the front porch, which was elevated about six feet off the ground. Around that time, a silver or gray car drove off Route 89 and pulled up in front of the next-door neighbor's house. The occupants exited the car and walked toward Madison Street, went north on Madison Street, and walked up to the Gray's house. Vanmeter noticed these individuals because she knew her neighbors and knew these men had never been there before. It also seemed odd when they parked there and then walked a block away. Vanmeter walked off the porch and down to the vehicle so she could get the license plate number of the car.

¶ 37 When the men walked back toward their car, they came into her yard and asked where Moulton lived. Vanmeter told them Moulton lived on the other side of town. Vanmeter gave them step-by-step directions on how to get to Moulton's house. Vanmeter never told defendant Moulton's street address. Defendant said he used to live in Washburn, he was just passing through town, and he thought he would stop and say "hi." The men got in their car as C.A. rode up and said that was the car and the men who had tried to get him to come to their car. Vanmeter watched them drive away and knew they did not follow her directions because she would have been able to see their car again had they done so.

¶ 38 The trial court denied defendant's motion for a directed judgment at the close of the State's case.

¶ 39 In finding defendant guilty, the trial court looked at the totality of the evidence to determine whether defendant had taken a substantial step toward commission of the crime. The

court determined the fact defendant did not open the car door, did not grab C.A., did not physically touch C.A., and did not actually in words invite C.A. into the car did not mean defendant did not take a substantial step toward commission of the crime. The court reasoned luring an especially young child into a car did not necessarily require positive luring such as described above. Rather, luring could also be done by scaring a young child by yelling at the child to "get over here," implying to the child if he or she did not comply he or she might be physically accosted.

¶ 40 The trial court noted C.A. testified, despite defendant having activated his right turn signal, he turned left when C.A. headed toward the police officer at Casey's. In an unusual maneuver, from there defendant went and parked along Magnolia Street and walked to a house around the block on Madison Street rather than driving around and parking the car at that particular house. Then defendant concocted a story about being in Washburn looking for Moulton's house to pick up a key because he was going to move in with Moulton. After defendant was given directions to Moulton's house, he did not follow them and instead said he was headed to La Rose, where Moulton worked. However, it turned out Moulton had never discussed with defendant the possibility of them living together in Moulton's residence. The court questioned why someone innocently seeking directions would see the need to concoct such a story. The court felt it was indicative of a guilty mind and defendant's actions spoke loudly that he was not just innocently looking for directions. Further the court noted the strikingly similar encounter defendant had had with H.N. on September 11, 2013, just two days before the instant offense. The court found it showed on September 13, 2013, defendant was guilty of something different than an innocent search for directions from C.A. The court found him guilty of attempt (child abduction).

¶ 41 In December 2013, the court sentenced defendant to 30 months of probation and 180 days in the county jail, with credit for time served.

¶ 42 This appeal followed.

¶ 43 II. ANALYSIS

¶ 44 On appeal, defendant argues he was not proved guilty beyond a reasonable doubt. Specifically, defendant maintains the words "come here" and "get back here," which he uttered to C.A. through the open car window, were not sufficient to prove he attempted to lure C.A. into the vehicle.

¶ 45 When reviewing a challenge to the sufficiency of the evidence, in a criminal case, "the relevant question is 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. Collins*, 106 Ill. 2d 237, 261, 478 N.E.2d 267, 277 (1985) (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979). Under this standard, a court of review must allow all reasonable inferences from the record in favor of the prosecution. *People v. Bush*, 214 Ill. 2d 318, 326, 827 N.E.2d 455, 460 (2005). It is the responsibility of the trier of fact to determine the credibility of witnesses and the weight given to their testimony, to resolve conflicts in the evidence, and to draw reasonable inferences from that evidence. *People v. Ortiz*, 196 Ill. 2d 236, 259, 752 N.E.2d 410, 425 (2001). In a bench trial, the trial court, as the trier of fact, has the responsibility to resolve conflicts in witnesses' testimony, determine whether witnesses are credible, and draw reasonable inferences from all the evidence presented. *People v. Sutherland*, 223 Ill. 2d 187, 242, 860 N.E.2d 178, 217 (2006). A court of review will not overturn the verdict of the fact finder "unless the evidence is so improbable or unsatisfactory that it creates a reasonable doubt of the defendant's guilt." *Collins*, 106 Ill. 2d at

261, 478 N.E.2d at 276.

¶ 46 Under section 10-5(b)(10) of the Criminal Code of 1961 (Code) (720 ILCS 5/10-5(b)(10) (West 2012)), a person commits the offense of child abduction when he

> "(10) Intentionally lures or attempts to lure a child: (A) under the age of 17 *** into a motor vehicle *** without the consent of the child's parent or lawful custodian for other than a lawful purpose. For the purpose of this item (10), the trier of fact may infer that luring or attempted luring of a child under the age of 17 into a motor vehicle *** without the express consent of the child's parent or lawful custodian *** was for other than a lawful purpose."

" 'Luring' means any knowing act to solicit, entice, tempt, or attempt to attract the minor." 720 ILCS 5/10-5(a)(2.2) (West 2012). To "attract" can be defined as "to cause to approach" or "to pull to or draw toward oneself." *Merriam-Webster's Collegiate Dictionary* 75 (10th ed. 2000).

¶ 47 An attempt occurs "when, with intent to commit a specific offense, [a person] does any act that constitutes a substantial step toward the commission of that offense." 720 ILCS 5/8-4 (West 2012).

> "Although it is not necessary that a defendant complete the last proximate act in order to be convicted of attempt, our cases have held that mere preparation is not a substantial step. [Citations.] It would be an impossible task to compile a definitive list of acts which, if performed, constitute a substantial step toward the commission of every crime. Such a determination can only be

accomplished by evaluating the facts and circumstances of the particular case. [Citation.]. This is not to suggest, however, that analysis of cases which have defined 'substantial step' cannot provide some guidance." *People v. Terrell*, 99 Ill. 2d 428, 433, 459 N.E.2d 1337, 1340-41 (1984).

¶ 48 Further guidance on what constitutes a substantial step can be drawn from the Model Penal Code (Code), § 5.01(2) (1985), which lists types of conduct to be considered sufficient as a matter of law to support an attempt conviction, as long as the conduct is "strongly corroborative of the actor's criminal purpose." These steps include the following:

"(a) lying in wait, searching for or following the contemplated victim of the crime;

(b) enticing or seeking to entice the contemplated victim of the crime to go to the place contemplated for its commission;

(c) reconnoitering the place contemplated for the commission of the crime;

(d) unlawful entry of a structure, vehicle or enclosure in which it is contemplated that the crime will be committed;

(e) possession of materials to be employed in the commission of the crime, that are specially designed for such unlawful use or that can serve no lawful purpose of the actor under the circumstances;

(f) possession, collection or fabrication of materials to be employed in the commission of the crime, at or near the place

contemplated for its commission, if such possession, collection or fabrication serves no lawful purpose of the actor under the circumstances;

(g) soliciting an innocent agent to engage in conduct constituting an element of the crime." *Id.*

"This list manifests the [Code's] emphasis on the nature of the steps taken, rather than on what remains to be done to commit the crime." *People v. Hawkins*, 311 Ill. App. 3d 418, 424, 723 N.E.2d 1222, 1227 (2000).

¶ 49 Here, defendant maintains the evidence in this case did nothing more than establish he attempted to get C.A. to come "closer" to his vehicle, not that he attempted to get C.A. "into" his vehicle. Therefore, defendant argues the State failed to prove him guilty beyond a reasonable doubt of attempt (child abduction). However viewing the evidence as a whole, accepting all reasonable inferences drawn from that evidence, and viewing that evidence in a light most favorable to the prosecution, we find the State proved defendant guilty of attempt (child abduction).

¶ 50 Defendant relies on *People v. Wenger*, 258 Ill. App. 3d 561, 631 N.E.2d 277 (1994), to support his argument. In *Wenger*, A.T. and M.P. saw the defendant four times during the course of an evening but they were not positive defendant was following them, and the evidence did not establish that fact. The defendant later waved to A.T. but never said anything to her. *Id*. at 566, 631 N.E.2d at 280-81. The reviewing court concluded "without some affirmative conduct evidencing an intent to lure a child into a vehicle," the "innocuous gesture of waving" was insufficient to prove beyond a reasonable doubt the defendant was attempting to lure the child into his vehicle. *Id.* at 567, 631 N.E.2d at 281.

¶ 51 The case *sub judice* is distinguishable from *Wenger*. Just two days before the instant offense occurred, in a scenario strikingly similar to the one presented here, defendant and Merriman approached 10-year-old H.N. while she was riding her bicycle to school. Through the open car window, defendant asked H.N. to "come here." When she told defendant "no," he asked her again. H.N. sped up on her bicycle. Defendant followed H.N., even when she turned onto another street, and until she arrived at school. (We note defendant does not challenge the court's ruling on the motion *in limine* regarding these events.)

¶ 52 Two days later, defendant and Merriman circled their car around the parking lot at the back of Grant Park, an area of the park not visible from the street. Alone, C.A. rode his bike into the park and stopped to watch some people playing basketball. When C.A. rode his bike away from the basketball court, he headed toward the roadway exiting the park. It was then defendant approached C.A. C.A. stopped to let the vehicle pass, but defendant stopped and, through the open car window, said to C.A., "Hey, come here." C.A. got scared and quickly rode away. As he did, defendant yelled, "You, get back here." Defendant followed C.A. When C.A. fell down, defendant stopped and waited for C.A. to get back on his bike and take off again. Defendant continued to follow C.A. to the park exit. Defendant put on his turn signal as if to follow C.A. to the right. Levine's police car was sitting at the Casey's in view of the exit to the park and C.A. headed in that direction. Defendant abandoned pursuit of C.A. and turned left instead of turning right as he had originally signaled.

¶ 53 Defendant then drove to a neighborhood and parked next door to a house where two small children, aged five and eight, were playing in the yard. Defendant and Merriman got out of the car and walked in the direction of that house. The children's mothers were sitting on the front porch, which was elevated about six feet off the ground. Defendant and Merriman

walked on by, rounded the corner, and knocked on a door defendant later claimed was where Moulton used to live. Moulton testified he had never lived on that street. One of the mothers was suspicious and walked off the porch to get the license plate of the vehicle. She walked back up on the porch as defendant and Merriman walked back toward the car. They stopped to ask the mothers where Moulton lived. When given step-by-step directions, they did not follow them.

¶ 54 When Levine interviewed defendant, defendant claimed he just wanted to ask C.A. for directions to Moulton's house. Defendant claimed Moulton and he were going to live together and he was going to get a key from Moulton. However, Moulton testified they had no such arrangement, he had not spoken to defendant recently, and he was not expecting defendant on the date of the incident. The Casey's gas station was on the main highway, just half a block away from the park. Defendant could have inquired there for directions. Instead, according to defendant, he drove to the back of the park, where no one from the street could see him, and then asked a nine-year-old child for directions. Moreover, according to C.A., he was just across the roadway from defendant and defendant could have asked C.A. for those directions without asking him to "come here." Further, even though defendant got very specific directions to Moulton's house, he did not follow those directions and was apprehended outside of town. Then he claimed he was on his way to La Rose, where Moulton allegedly worked. But Moulton testified he had never worked in La Rose and never told anyone he had. Defendant also claimed he was on his way to Elgin. Defendant's story kept changing and the trial court reasonably inferred defendant was not telling the truth.

¶ 55 In *Wenger*, the reviewing court determined there was insufficient evidence to convict by distinguishing other cases where the defendant was "clearly pursuing the child and did more than simply wave." *Id.*, at 566, 631 N.E.2d at 281. Those cases included *People v.*

Rogers, 133 Ill. 2d 1, 549 N.E.2d 226 (1989) (the defendant asked two boys to help him unload newspapers for $5, briefly touched their "private parts," and offered them money for sex); *People v. Patten*, 230 Ill. App. 3d 922, 595 N.E.2d 1141 (1992) (the defendant stopped his car near the child, exited his vehicle leaving the door open, and reached out and said, "come here, I want to give you a kiss"); *People v. Marcotte*, 217 Ill. App. 3d 797, 577 N.E.2d 799 (1991) (the defendant told the child she was pretty, motioned her over to his car, and asked her if she wanted a ride after school to get her hair done); *People v. Joyce*, 210 Ill. App. 3d 1059, 569 N.E.2d 1189 (1991) (the defendant honked and waved to the child, told her to get into his truck and said, "I don't bite and I will give you a ride home"); and *People v. Embry*, 177 Ill. App. 3d 96, 531 N.E.2d 1130 (1988) (the defendant stopped his car adjacent to several girls and stated, "[g]et in the damn car right now"). Defendant suggests these cases prove the evidence in this case was insufficient to convict him. However, we reiterate, the determination of whether defendant took a substantial step toward commission of the crime "can only be accomplished by evaluating the facts and circumstances of the particular case." *Terrell*, 99 Ill. 2d at 433, 459 N.E.2d at 1340-41.

¶ 56 Granted, defendant was not successful in getting C.A. to come closer to his vehicle. He never asked C.A. to get in the vehicle. He never got out of the vehicle. He never physically touched or grabbed C.A. But those facts are not necessary to prove child abduction if the totality of the evidence shows defendant took a substantial step toward commission of the crime.

> " 'The child abduction statute criminalized the act of luring a child, whether or not the act is successful, in order to protect children from further acts of violence.' [Citation.] Under the statute, there is no requirement that a defendant must actually touch or harm the

child in order to be guilty of child abduction. [Citation.]

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'Precisely what is a substantial step must be determined by evaluating the facts and circumstances of each particular case.' *People v. Jiles*, 364 Ill. App. 3d [320,] 334, 845 N.E.2d 944[, 956 (2006)]." *People v. Sweigart*, 2013 IL App (2d) 110885, ¶¶ 20, 22, 985 N.E.2d 1068.

¶ 57 We also note here defendant took steps, which according to the Code are strongly corroborative of his criminal purpose, *i.e.*, (1) he waited at the back of the park until C.A. rode away from the basketball players, approached C.A., and then followed him as he tried to distance himself from defendant's vehicle; and (2) he tried to get C.A. to come to his vehicle. Additionally, defendant's explanation of why he asked C.A. to "come here" was suspect because there was no need to get C.A. closer to the vehicle just to ask for directions.

¶ 58 Reviewing the evidence as a whole, we find the trial court reasonably inferred defendant's intentions were not innocent. Rather, they were attempts to get C.A. closer to the vehicle and, therefore, constituted a substantial step toward luring C.A. into the vehicle. Having acted the same way with 10-year-old H.N. just two days prior tends to negate inadvertence or innocent intent. Considering the evidence in the light most favorable to the prosecution, as we must, we find the evidence was sufficient to prove defendant guilty beyond a reasonable doubt.

¶ 59 III. CONCLUSION

¶ 60 For the reasons stated, we affirm the trial court's judgment. As part of our judgment, we award the State its $50 statutory assessment against defendant as costs of this appeal.

¶ 61 Affirmed.