

No. 1-09-0706

**NOTICE:** This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from
	)	the Circuit Court
Plaintiff-Appellee,	)	of Cook County
	)	
v.	)	No. 07 CR 661199
	)	
JAWARBU WILLIAMS,	)	Honorable
	)	Brian Flaherty,
Defendant-Appellant.	)	Judge Presiding.

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JUSTICE CAHILL delivered the judgment of the court.  
Justice McBride concurred in the judgment.  
Justice R.E. Gordon concurred in part and dissented in part.

**ORDER**

**Held:** Defendant's convictions for home invasion and armed robbery are affirmed over defendant's contention that the jury verdict forms did not permit the jury to acquit him of all the charges. Defendant's mittimus is amended to reflect a single conviction of home invasion and the number of days he spent in presentence custody.

After a jury trial defendant Jawarbu Williams was found guilty of two counts of home invasion and two counts of armed robbery. He was sentenced to four concurrent terms of 20

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years' imprisonment. Defendant appeals, arguing that: (1) his convictions must be reversed and the case remanded for a new trial because the jury verdict forms did not permit the jury to acquit him of all the charges; (2) one of his home invasion convictions must be vacated because there was only one entry; (3) one of his armed robbery convictions must be vacated because there was only one taking; (4) if this court vacates any of his convictions the case should be remanded for resentencing; and (5) his mittimus should be amended to reflect 545 days of sentencing credit. We affirm the judgment but vacate one count of home invasion and order the mittimus to be corrected.

Defendant was arrested on August 30, 2007, in connection with a home invasion and robbery that took place on August 24, 2007, at 84 Hemlock Street in Park Forest. Defendant was charged by information with two counts of attempted first degree murder, three counts of aggravated discharge of a firearm and four counts each of home invasion and armed robbery. The State *nolle prosequied* all but the four counts of home invasion and armed robbery.

At trial, Sandra Sanchez testified that on August 24, 2007, she lived with her two children and her brother, Ricardo Sanchez, in a townhouse at 84 Hemlock Street in Park Forest. Sandra said in the early morning hours on that date she was inside the upstairs bathroom of the house and heard someone break through the downstairs kitchen door and shout "police." She then saw two men, wearing tee shirts over their faces, running up the stairs toward her. They each placed a gun to her head and asked her for money. Sandra gave the men a few hundred dollars she had in her pocket from babysitting. At this time, Ricardo appeared at the bottom of the stairs. One of the men pointed a gun at him and ushered him up the stairs. The two men continued to demand

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money from Sandra at which point she told them there was money in the downstairs closet. The group went downstairs. As they did so, one of the men's tee shirts covering his face "fell down some." Sandra immediately recognized the man as "Jawarby." Defendant and his accomplice took the money from the closet and left the house through the kitchen door. As they did so, Sandra shouted "I know who you are, Jawarby." Defendant then turned around and fired about four shots in her direction.

Sandra called the police and told them that defendant had broken into her house. She identified defendant from a photo array, a lineup and in court. She said she knew defendant "from back in the day" when they both lived in the Chicago Heights neighborhood. She also testified she had previously dated defendant.

Ricardo testified that after he heard glass breaking and someone yell "police," he went upstairs to see Sandra. From the bottom of the stairs, he saw two men with shirts covering their faces, pointing guns at Sandra. One of the men ran down the stairs and placed a gun to Ricardo's head. The man then escorted Ricardo to the second floor and demanded money from him. Ricardo testified he and Sandra kept their rent money in a box located in the downstairs closet. The men escorted Ricardo and Sandra downstairs. As they did so, one of the men's shirts covering his face fell off. Ricardo identified the man as defendant from a lineup and in court. Defendant and his accomplice took the money from the closet and left the house through the kitchen door.

Defendant's sister, Erica Williams, testified that she lived at 1944 Dartmouth Street on August 23, 2007. She said about 5 p.m. on that date defendant arrived at her house with his

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girlfriend and did not leave until the next day.

Defendant's uncle, Jamar Williams, testified that he spoke with Sandra Sanchez several weeks after the robbery. He said Sandra told him that she would drop the charges against defendant if his family gave her \$6,000.

Defendant testified that he and his girlfriend arrived at his sister's house about 4:30 p.m. on August 23, 2007. He said they stayed at his sister's house until the next day. Defendant acknowledged he had dated Sandra in the past but denied breaking into her house.

Before closing arguments, the court held an in camera jury instruction conference with the parties. The record shows defendant did not object to the State's proposed jury instructions. The court then admonished the parties that the jury would receive four verdict forms - not guilty of armed robbery, guilty of armed robbery, not guilty of home invasion and guilty of home invasion. Defendant did not object to the proposed verdict forms or request specific verdict forms.

After closing arguments, the court instructed the jury and admonished them as follows:

"You will receive four forms of verdict. As to each charge you will be provided with both a not guilty and a guilty form of verdict. From these two verdict forms with regard to a particular charge you should select the one verdict form that reflects your verdict on that charge and sign it as I have stated."

Defendant did not object.

During deliberations, the jury sent a note to the court: "If not guilty on one charge, does he go free on the others?" Without objection from either party, the court instructed the jury: "It

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is your obligation to sign either a not guilty or guilty form as to each charge.” The jury found defendant guilty of home invasion and armed robbery.

After hearing arguments in aggravation and mitigation, the court sentenced defendant to 20 years’ imprisonment for armed robbery and 20 years’ imprisonment for home invasion. In announcing sentence, the court noted the “frightening” nature of the crime and that: “The home invasion will be counts 3 and 4. They [will] be concurrent, and the armed robbery will be counts 7 and 8, and they also will be concurrent.”

On appeal, defendant first argues that his convictions must be reversed and the case remanded for a new trial because the jury verdict forms did not permit the jury to acquit him of all the charges. He claims that because the trial court failed to give the jury a pair of verdict forms for each victim there is no guarantee that all twelve jurors found that the offenses were committed against the same victim. Defendant maintains that the court’s alleged error may have resulted in non-unanimous guilty verdicts. In making this argument, defendant acknowledges that he did not object at trial to the verdict forms or include the issue in a timely filed posttrial motion but asserts that we may review the issue for plain error.

Under the plain error exception to the waiver rule, a reviewing court may consider a forfeited error when the evidence is closely balanced or the error is so fundamental and of such magnitude that the accused was denied his right to a fair trial. *People v. Harvey*, 211 Ill. 2d 368, 387, 813 N.E.2d 181 (2004). The first step in plain error review is to determine whether error occurred. *People v. Piatkowski*, 225 Ill. 2d 551, 565, 870 N.E.2d 403 (2007). Here, we find that it did not.

Where several counts are charged, a general verdict form is sufficient when the various counts arise out of the same transaction. See *People v. Braboy*, 393 Ill. App. 3d 100, 107, 911 N.E.2d 1189 (2009); *People v. Gonzalez*, 388 Ill. App. 3d 566, 583-84, 900 N.E.2d 1165 (2008); *People v. Travis*, 170 Ill. App. 3d 873, 893, 525 N.E.2d 1137 (1988); *People v. Lloyd*, 93 Ill. App. 3d 1018, 1027, 418 N.E.2d 131 (1981). Here, defendant was charged with four counts of home invasion and four counts of armed robbery, stemming from his unlawful entry into Sandra Sanchez's house and removal of money therefrom. Defendant does not dispute that each count arose from this event. General verdict forms were given to the jury for each charge but not for each count. When a general verdict of guilty is returned on an indictment that contains several counts arising out of the same transaction, the defendant is considered guilty on each count. If the punishment imposed is authorized for the offenses charged, the verdict must be sustained. *People v. Kulpa*, 102 Ill. App. 3d 571, 576, 430 N.E.2d 164 (1981), citing *Lloyd*, 93 Ill. App. 3d 1018; see also *People v. Morgan*, 197 Ill. 2d 404, 448, 758 N.E.2d 813 (2001).

We are unpersuaded by defendant's argument that the court's failure to give the jury specific verdict forms meant that "the jury had no option but to convict him of both counts of each offense or acquit him of both." In *Kulpa*, this court rejected the defendant's similar argument that the effect of giving one general verdict form for three separate counts of aggravated battery must have confused the jury because the jury felt it should find him guilty of one count. *Kulpa*, 102 Ill. App. 3d at 576.

We are also unpersuaded by *People v. Scott*, 243 Ill. App. 3d, 167, 169, 612 N.E.2d 7 (1993), cited by defendant in support of his argument. In *Scott*, this court found that the

defendant's right to a unanimous verdict was violated when the trial court gave the jury one general verdict form where the defendant was charged with three counts of delivering a controlled substance to undercover police officers during three separate transactions. *Scott*, 243 Ill. App. 3d at 168-70. Here, unlike *Scott*, there was one transaction.

Defendant next contends and the State concedes that one of his home invasion convictions must be vacated because there was only one entry. A defendant may be convicted of only one count of home invasion where there is only one entry regardless of the number of victims. See *People v. Hicks*, 181 Ill. 2d 541, 548, 693 N.E.2d 373 (1998), and cases cited therein. Here, despite defendant's single entry into the Sanchez residence, defendant's mittimus reflects two convictions of home invasion under section 12-11(a)(3) of the Criminal Code of 1961 (Code) (720 ILCS 5/12-11(a)(3) (West 2006)). By our authority under Supreme Court Rule 615(b)(1) (134 Ill. 2d R. 615(b)(1)), we vacate one of defendant's convictions for home invasion.

Defendant also contends that one of his armed robbery convictions must be vacated because there was only one taking. The State responds that because there were two takings - the money from Sandra's pocket and the money from the closet - defendant is subject to two convictions for armed robbery. We agree with the State.

A person commits armed robbery when he takes property from the person or presence of another by the use of force or by threatening the imminent use of force and he is armed with a firearm. See 720 ILCS 5/18-2(a)(2) (West 2006); *People v. Pittman*, 126 Ill. App. 3d 586, 593, 467 N.E.2d 918 (1984). When there are two separate takings in the presence of two victims, a defendant is subject to two convictions for armed robbery. *Pittman*, 126 Ill. App. 3d at 594.

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Here, because there were two separate takings in the presence of two victims - one from Sandra's pocket and one from the closet where Sandra and Ricardo kept their rent money - defendant is subject to two convictions for armed robbery. *Pittman*, 126 Ill. App. 3d at 594, citing *People v. Moore*, 61 Ill. App. 3d 694, 702, 378 N.E.2d 516 (1978).

Defendant further contends that if this court vacates any of his convictions we must remand the case for resentencing. He claims that because we cannot determine the amount of weight the trial court may have given to his "two invalid convictions" during sentencing, he must be resentenced. See *People v. Durdin*, 312 Ill. App. 3d 4, 10, 726 N.E.2d 120 (2000).

We are unpersuaded by *Durdin*. In *Durdin*, the defendant was convicted of one count of delivery of a controlled substance within 1,000 feet of a school and one count of delivery of a controlled substance. *Durdin*, 312 Ill. App. 3d at 4-5. On appeal, this court agreed that the defendant was improperly convicted of delivery of a controlled substance within 1,000 feet of a school and reversed that conviction. *Durdin*, 312 Ill. App. 3d at 8. We then remanded the case for resentencing because "the trial court sentenced defendant for the conviction under count I, the delivery of cocaine within 1,000 feet of a school, which was the most serious offense" and we could not determine what weight was given by the trial judge to this enhancing factor. *Durdin*, 312 Ill. App. 3d at 10.

Here, unlike *Durdin*, there is no such enhancing factor. The record shows the trial court imposed separate sentences for defendant's convictions, and that it was not influenced by defendant's two convictions for home invasion in determining the length of the sentence for his two armed robbery convictions. See *People v. Payne*, 98 Ill. 2d 45, 55, 456 N.E.2d 44 (1983).

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Under these circumstances, we believe remanding the case for resentencing is unnecessary.

*Payne*, 98 Ill. 2d at 55-57.

Defendant finally contends, and the State agrees, that his mittimus should be amended to reflect 545 days of sentencing credit. A defendant is entitled to credit for time spent in custody before sentencing. See 730 ILCS 5/5-8-7(b) (West 2006). The record shows defendant was in custody from the date of his arrest on August 28, 2007, until the day he was sentenced, February 23, 2009, for a total of 545 days. Because the mittimus does not reflect the number of days defendant was in custody, it must be corrected. See *People v. Miller*, 363 Ill. App. 3d 67, 80-81, 842 N.E.2d 290 (2005).

By our authority under Supreme Court Rule 615(b)(1) (134 Ill. 2d R. 615(b)(1)), we vacate defendant's conviction for home invasion under section 12-11(a)(3) of the Code (count IV) (720 ILCS 5/12-11(a)(3) (West 2006)). We order the clerk of the circuit court to amend the mittimus to reflect: (1) defendant's single conviction for home invasion under section 12-11(a)(3) of the Code (count III) (720 ILCS 5/12-11(a)(3) (West 2006)); (2) his two convictions for armed robbery under section 18-2(a)(2) of the Code (counts VII and VIII) (720 ILCS 5/18-2(a)(2) (West 2006)); and (3) 545 days of credit, the number of days defendant spent in presentence custody. *People v. McCray*, 273 Ill. App. 3d 396, 403, 653 N.E.2d 25 (1995). We affirm the judgment in all other respects.

Affirmed.

JUSTICE ROBERT E. GORDON, concurring in part and dissenting in part:

I concur with the majority's holding that we must: 1. vacate one of defendant's two convictions for home invasion; and 2. correct the mittimus to reflect 545 days of sentencing credit. However, I must dissent because I would also: 1. vacate one of defendant's two convictions for armed robbery; and 2. remand for resentencing, based on the vacating of two of defendant's four convictions.

The facts established at trial are stated in the majority's opinion, and I will not repeat them here. I repeat only the few facts which are relevant to vacating one of the armed robbery convictions. At trial, the evidence established that defendant and another armed man entered the home of defendant's former girlfriend and demanded money. After the woman handed them money from her pocket, they asked her for more and she told them there was more money in a closet, which she retrieved. Based on these facts, the majority found that there were two robberies, because the money came from two places: a pocket and a closet. Slip op. at 7-8 ("there were two separate takings \*\*\* one from Sandra's pocket and one from the closet").

In contrast, the majority found that a single set of verdict forms for the two armed robbery counts was not error, since "there was one transaction." Slip op. at 7. I agree with the majority that there was only one transaction, and that is why we must vacate one of the armed robbery counts.

A person commits armed robbery when he or she takes property from a victim's "person or presence" by the use of force or threat of force, and the offender also carries a firearm. 720 ILCS 5/18-1 (defining "robbery"), 5/18-2(a)(2) (defining "armed robbery") (West 2006). In the

case at bar, defendant and another man demanded money from a victim and then took money from this victim's person (ie. her pocket) and presence (ie. her closet). There is nothing in the plain language of the statute to indicate that the joint ownership of the rent money in the closet with her brother, and the brother's additional presence in the home should transform this one armed robbery into two.

The majority states that the brother testified that the robbers "demanded money from him." Slip op. at 3. However, the transcript indicates that their demands were directed towards his sister. The brother testified that, when he emerged from the basement, the robbers were surprised to find him in the house. He testified that he heard the robbers state several times "give me the money" and, when they did not receive a response, they hit his sister in the chest. His sister then gave them the money that she had in her pocket. The robbers then demanded more money and, in response, she handed them the rent money from a box in a closet.

The sister testified that, after she gave defendant the money from her pocket, "he asked me where the rest of the money was." She replied that there was not any more money and, in response, defendant tapped her on her chest with his gun. She then told him that the rent money was in the closet. After the robbers had the rent money, she told defendant and the other man that "they got what they wanted" so they could go.

In support of its holding, the majority cites *People v. Pittman*, 126 Ill. App. 3d 586 (1984). In *Pittman*, the appellate court found that the facts before it supported two convictions for armed robbery. *Pittman*, 126 Ill. App. 3d at 593. In *Pittman*, the robber held a gun on two store clerks, who were standing side by side behind a cash register, and demanded money.

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*Pittman*, 126 Ill. App. 3d at 588. By contrast, in the case at bar, defendant's demands for money were directed only against his former girlfriend which distinguishes this case from *Pittman*.

In *People v. Mack*, our supreme court held that a bank robber who robbed multiple teller stations, in the presence of a bank security guard, a bank loan officer and multiple tellers, could be guilty of only one count of armed robbery. *Mack*, 105 Ill. 2d at 136. *People v. Mack*, 105 Ill. 2d 103, 136 (1984). *Mack* was vacated on other grounds (*Mack v. Illinois*, 479 U.S. 1074 (1987)); however, its result is still instructive.

Since I find that two of defendant's four convictions must be vacated, I would also remand for resentencing.

The majority held that there was no need for resentencing, even though it had vacated one of defendant's two convictions for home invasion. Slip op. at 8. Based solely on the fact that "the trial court imposed separate sentences for defendant's convictions," the majority concluded that the trial court "was not influenced by defendant's two convictions for home invasion." Slip op. at 8. I am not persuaded that this fact necessarily leads to this conclusion.

Since "we cannot determine what weight in sentencing was given by the trial court to the fact" that defendant received double the convictions that he should have, "defendant must be resentenced." *People v. Durdin*, 312 Ill. App. 3d 4, 10 (2000).

When defendant is resentenced, "the court shall not impose a new sentence for the same offense \*\*\* which is more severe than the prior sentence less the portion of the sentence previously satisfied unless the more severe sentence is based upon conduct on the part of the defendant occurring after the original sentencing." 730 ILCS 5/5-5-4 (West 2006). As we

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explained in *Durdin*, “[t]his section of the statute does not allow an increase in sentence unless it is based upon defendant’s conduct after the original sentence.” *Durdin*, 312 Ill. App. 3d at 10-11.

For the foregoing reasons, I would vacate one of defendant’s two convictions for armed robbery, and remand for resentencing pursuant to section 5/5-5-4 of the Unified Code of Corrections (730 ILCS 5/5-5-4 (West 2006)). As previously stated, I concur with the majority’s holding to vacate one of defendant’s convictions for home invasion and to correct the mittimus to reflect 545 days of sentencing credit.