

No. 1-10-1949

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IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County.
)	
v.)	No. 08 CR 11883
)	
ANDRIUS SPOKAS,)	
)	
Defendant-Appellant.)	The Honorable
)	Garritt E. Howard,
)	Judge Presiding.

PRESIDING JUSTICE LAVIN delivered the judgment of the court.
Justices Fitzgerald Smith and Pucinski concurred in the judgment.

ORDER

Held: Defendant's indictment was not fatally defective despite lacking an allegation of a mental state because: (1) defendant failed to object to the alleged defect prior to appeal; (2) the lack of a mental state allegation did not prejudice defendant in the preparation of his defense; and (3) he is protected from any subsequent prosecution of the same offense. Furthermore, defendant's convictions for mob action and aggravated battery was supported by the evidence and did not violated the one-act, one-crime rule.

¶ 1 After a bench trial, defendant Andrius Spokas was convicted of aggravated battery on a public way and mob action due to his involvement in an attack on Michael Snow occurring on May 31, 2008, near Snow's place of residence. Defendant was sentenced to a two-year term of

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Treatment Alternatives for Safe Communities (TASC) probation with community service and assessed various fines and fees. On appeal, defendant contends that: (1) the charging document was for mob action was fatally defective; (2) the evidence failed to prove him guilty of mob action and aggravated battery beyond a reasonable doubt; (3) the State failed to prove his intention to aid in the commission of a crime; and (4) mob action is a lesser included offense of aggravated battery because there was no evidence of multiple acts. For the reasons discussed below, we affirm the trial court's judgment.

¶ 2

I. BACKGROUND

¶ 3 Michael Snow testified that around 10:30 p.m. on May 31, 2008, he, his fiancé and their five-year-old son were driving back to their apartment on Keeler Avenue in Skokie, Illinois. Keeler Avenue runs north and south, with the apartment building being on the west side of the street between Brummel Street to the north and Howard Street to the south. After dropping his family off, Snow drove to his sister's nearby residence to pick up some DVDs. While driving back to his apartment, Snow was approaching from the north on Keeler Avenue, heading toward Brummel Street, when he observed a group of people at the intersection. At that time, Snow testified that he recognized Victor Quach, one of his neighbors, in the group and that the group was "drinking, making a lot of noise, you know, just being rowdy." Because the group was obstructing the road, Snow signaled with his horn and gestured for the group to move aside so he could drive through. The group eventually moved out of the way, but as Snow drove past them, he heard someone say, "We run this fucking street."

¶ 4 Snow pulled into his building's driveway and walked through the exterior front door,

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which opens to a vestibule area leading to a locked second. As Snow reached the locked door, he realized he had left his keys and a DVD in his car. Snow also stated that, during this time, he heard individuals in the group yelling expletives and making threatening remarks. Snow exited the building's front door to retrieve his forgotten items but was quickly confronted by the group that included defendant, Quach, and five others later identified as George Tai, Alexander Hernandez, Emily Peele, Aaron Maskowitz and Saran Thitayarak. Tai "headbutted" Snow and asked, "What do you want to do? What do you want to do?" Snow responded, "What are you talking about?" He then screamed, asking his fiancé, Patrice Willie, to call the police. Snow tried to use his cell phone to call 911, but Hernandez grabbed the phone from him. Snow was able to quickly grab it back, but at the same time, Moskowitz slapped the DVDs out of Snow's other hand. During this time, Peele was yelling, "Run, nigger, run," at Snow. Snow pushed Tai away and as Snow attempted to move towards his car, Quach pushed him. Snow attempted to retreat further, again shouting for Patrice to call the police. Snow saw Tai approaching him from one side, with defendant and Thitayarak approaching from the other. Peele continued to shout, "Run, nigger, run," at Snow.

¶ 5 Thitayarak then punched Snow in the neck. Tai also attempted to strike Snow, but Snow was able to duck under Tai's swing and strike back, hitting Tai. Snow attempted to back away again, but defendant grabbed Snow, ripping his shirt. Snow was able to escape defendant's grasp and ran into a nearby alley behind the building. He heard a glass bottle shatter against a building as he ran. As Snow headed north to Brummel Street, he saw defendant, Tai, and Thitayarak in pursuit. When Snow reached Brummel Street, he turned and saw that defendant was closest to

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him, with Tai and Thitayarak close behind. Defendant said, "What you got? We are going [to] break your face in," as the three approached Snow. Snow backed away, moving closer to Keeler Avenue, but Quach came from behind and put Snow in a headlock. Defendant then pounced on Snow and punched him, with Tai and Thitayarak quickly joining in the attack. After being struck several times, Snow fell to the ground. Defendant, Tai, Thitayarak, Moskowitz, and Quach continued to kick and strike Snow while shouting expletives at him. The group began to back off after a neighbor's car approached. Eventually the police arrived, prompting Moskowitz to get into his car and drive away after saying, "I don't want to get in any more trouble with the cops." As the police arrived, Peele warned Snow that if he said anything, she was going to claim that he tried to rob and hit her.

¶ 6 Tai, Quach, Peele, and Hernandez were detained at the scene of the incident. Snow's fiancé helped him get into to their apartment where he replaced his torn shirt and put on some shoes, as he had lost his slippers during the incident. Snow then walked around the area with Sergeant Thomas Wojdyla to discuss the attack and search for Snow's DVDs and slippers, which they eventually found. During this time, Spokas and Thitayarak were discovered hiding behind two garbage cans outside of Quach's house and were subsequently detained.

¶ 7 Juan Delgado, one of Snow's neighbors, briefly testified that around 10:40 p.m. on May 31, 2008, he heard screaming and a commotion outside. Delgado looked outside and saw "a group of people beating up on one gentleman." He was only able to recognize Quach in the group.

¶ 8 Patrice Willie, Snow's fiancé, testified that around 10:30 p.m. on May 31, 2008, she was

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getting her son ready for bed and was preparing to take a bath herself when she heard a loud noise and heard her name being called. She looked out of a window and saw her fiancé braced against the building's front door facing a group of people. She identified defendant, Quach, Thitayarak, Hernandez and Tai as being part of the group. She initially believed that the group was trying to get inside the building in an effort to get away from someone else. As Patrice made her way downstairs, however, she heard expletives and racial slurs being shouted and realized Snow was being attacked. When she got downstairs, Patrice saw defendant punch and kick Snow. Patrice asked Peele to call the police, not realizing at the time that Peele was part of the group confronting Snow. Peele responded that she was not going to call the police and that if Patrice did, Peele would simply claim that Snow tried to rob the group.

¶ 9 Patrice ran back inside the building in search of assistance, and by the time she got back outside, Snow and the were at the corner of Brummel and Keeler. Patrice ran to the intersection, and saw that Snow was being beaten by a group of six or seven people. The assailants were still yelling expletives and racial slurs. She identified defendant as one of the individuals holding Snow but did not specifically see him strike him at the intersection, although she later testified she was unsure of defendant's specific involvement at the intersection. Patrice stated that at one point she dove in to the fray in an attempt to shield Snow but Peele pulled her away so that the others could continue their attack. The attack abated as the police arrived, and Patrice testified that she identified Hernandez, Tai and Quach, while walking around the area with Snow and the police. She was also present when defendant and Thitayarak were discovered hiding in the alley and identified them as well.

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¶ 10 Sergeant Thomas Wojdyla was the next to testify. At around 10:40 p.m. of the night of the incident, Sergeant Wojdyla received a call of a large fight in the area of Brummel Street and Keeler Avenue. When he arrived at the scene, he observed that numerous police cars were already there and that a large group of individuals were in the area. He noted that Snow had a "puffy, split lip," wore a torn shirt and was shoeless. While investigating the premises and conversing with Snow, he found Snow's missing footwear and a broken DVD and then, while walking in Keeler's west alley, he discovered defendant and Thitayarak hiding behind two garbage cans.

¶ 11 Detective Ronald Glad testified that he was involved in the investigation of the underlying incident and played certain tapes of 911 calls for the court. The first call only contained an operator saying, "Hello?" but there was no response. Later callers indicated that a fight was occurring in the nearby street. The State then rested its case.

¶ 12 Detective Glad was promptly called back to the stand as the first witness for the defense. He testified that on June 1, 2008, he interviewed Quach, who told him that nothing had happened outside of Snow's apartment except for some shouting, and that while at the intersection of Keeler and Brummel, Quach merely grabbed Snow as he was falling, ripping Snow's shirt at the right shoulder area. In the interview, Quach claimed that no one had struck Snow that night. Quach, however, did not explain why the altercation moved from the building to the intersection or why Snow was falling when he grabbed him.

¶ 13 Officer Nick Larson's brief testimony established that at around 12:40 a.m. on June 1, 2008, Quach had also told him that he ripped Snow's shirt while at Keeler Avenue and Brummel

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Street.

¶ 14 Defendant testified on his own behalf. He testified that he is currently a law student at John Marshall Law School and that on May 31, 2008, he and Tai picked up Quach and the three went to Quach's house for a party. Approximately 10 to 15 people were at the party, and defendant stated that the group had been drinking alcohol. At one point, the group decided to leave the party to go to a nightclub. Defendant testified he exited Quach's house, walked to a black sedan and got into the backseat with Peele and another individual. While in the car, he saw some people running on Keeler Avenue and he exited the car with Peele to investigate. He and Peele walked up to an apartment building where they saw a group of 10 to 15 people standing near Snow, with Tai, Moskowitz, and Quach being directly in front of Snow. Defendant testified he was about 15 feet away.

¶ 15 While standing outside the apartment building, Snow moved to the side of the building and the group followed him, although defendant maintained his distance. He saw Peele jump in between Snow and Tai, attempting to separate the two. Defendant then saw Snow swing in the direction of Peele and Tai but could not see if Snow hit anyone. Defendant heard someone say, "Emily got hit," and then saw Snow run toward an alley. Tai, Moskowitz, Quach, and Thitayarak followed Snow, but defendant stated he stayed back to check on Peele. After determining that Peele appeared to be unharmed, defendant walked over to the intersection of Brummel and Keeler with a number of other people. He testified there were about 10 people in the area and that no one was saying anything but were only standing and watching. Moskowitz and Tai were directly in front of Snow, with Quach and Thitayarak to the side. All five, at

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various times, appeared to "lunge" at each other and throw punches, but apparently no one was able to make contact. Snow was backing up at the time, but due to defendant's positioning, Snow was getting closer to defendant. Defendant testified that when Snow eventually got near him, Snow suddenly lunged and punched defendant in the forehead. Defendant fell to the ground but saw Quach and others grab Snow. Defendant stood up and said, "[L]et's get out of here," and walked back to the car he was originally in and got inside. However, he later saw some people walk into Quach's house and decided to join them. After a couple minutes in Quach's house, defendant testified he opened a door and saw Thitayarak in Quach's backyard. Defendant walked over to Thitayarak and as he approached him, a police officer told them to "freeze."

¶ 16 During cross-examination, defendant denied a number of statements he allegedly related to Detective Glad and an Assistant State's Attorney after the incident, including that: (1) Snow shouted, "Do you want this?" while holding his cellphone in front of himself; (2) Tai, Quach, and Thitayarat swatted at Snow's hand, knocking DVDs to the ground, because it appeared Snow was going to use his phone; and (3) Snow lunged forward and "muzzled" Emily. After defendant testified, the defense rested its case.

¶ 17 Detective Glad was then called by the State as a rebuttal witness. At around 8 p.m. on June 1, 2008, Detective Glad testified that he had a conversation with defendant in the presence of an Assistant State's Attorney. Detective Glad offered testimony rebutting several portions of defendant's previous testimony, including that defendant had related to Detective Glad that while outside of Snow's apartment, Snow shouted, "Do you want this?" while holding his cellphone in

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front of him. Defendant had also stated he was "right behind" Quach, Tai, and Thitayarat, as opposed to 15 feet away, while outside of Snow's apartment. Detective Glad also testified that defendant had related that Tai, Quach or Thitayarat swatted at Snow's hand when it appeared Snow was going to use his phone and that defendant had claimed that Snow had lunged at and "muzzled" Peele, with defendant specifically using the word "muzzled." During cross-examination, Detective Glad stated he took notes of his conversation with defendant, but did not keep them after using them to write a report of the incident. He also admitted he did not tape the conversation, accompany defendant to the scene of the incident to explain what happened, and that certain items were omitted from his notes and report which Detective Glad deemed to be irrelevant to the fight or altercation.

¶ 18 The trial court found defendant guilty of aggravated battery on a public way and mob action. Based on defendant's lack of a prior criminal history, the trial court sentenced him to two years of TASC probation, 60 days of community service, and a \$1,000 fine plus mandatory fees and costs. Defendant timely appeals.

¶ 19

II. ANALYSIS

¶ 20

A. Defendant's Indictment

¶ 21 Defendant first contends that the charging document for mob action was fatally defective. Section 111-3 of the Code of Criminal Procedure of 1963 (Code) sets forth the statutory requirements for a charging instrument and provides, in pertinent part:

"A charge shall be in writing and allege the commission of an offense by:

- (1) Stating the name of the offense;

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- (2) Citing the statutory provision alleged to have been violated;
- (3) Setting forth the nature and elements of the offense charged;
- (4) Stating the date and county of the offense as definitely as can be done; and
- (5) Stating the name of the accused, if known ***." 725 ILCS 5/111-3(a) (West 2008)

When a charging instrument is attacked prior to trial, the indictment must strictly comply with the pleading requirements stated in section 111-3(a) of the Code. *People v. Smith*, 337 Ill. App. 3d 819, 823 (2002). Where the charging instrument, however, is attacked for the first time on appeal as defendant does here, the standard of review is not as stringent. In such cases, a charging instrument is sufficient so long as it "apprised the accused of the precise offense charged with enough specificity to (1) allow preparation of his defense and (2) allow pleading a resulting conviction as a bar to future prosecution arising out of the same conduct." *People v. DiLorenzo*, 169 Ill. 2d 318, 322 (1996); *Smith*, 337 Ill. App. 3d at 823.

¶ 22 At the time of the underlying incident and defendant's indictment in 2008, section 25-1(a)(1) of the Code read: "Mob action consists of any of the following: (1) The use of force or violence disturbing the public peace by 2 or more persons acting together and without authority of law."¹ 720 ILCS 5/25-1(a)(1) (West 2008). In the case *sub judice*, defendant solely argues that the indictment for mob action was fatally defective in that it failed to allege a mental state.

¹ In 2009, section 25-1(a)(1) was amended, with mob action requiring the "knowing or reckless use of force or violence," which became effective January 1, 2010. 720 ILCS 5/25-1(a)(1) (West 2010).

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In pertinent part, defendant's indictment provided: "[Defendant and co-defendants] committed the offense of mob action in that they, acting together and without lawful authority used force or violence disturbing the public peace, in violation of Chapter 720 Act 5, Section 25-1(a)(1) of the Illinois Compiled Statutes 1992, as amended."

¶ 23 We first address defendant's reliance on *People v. Leach*, 3 Ill. App. 3d 389 (1972), in support of his argument. In *Leach*, the defendant challenged the sufficiency of a complaint charging her with mob action. The court reversed the defendant's conviction based on the lack of any allegation of a mental state in the complaint, also noting that mob action was not an absolute liability crime which would excuse an absence of a mental state allegation. *Id.* at 392-93. We find it significant that *Leach* was decided prior to the establishment of the applicable standards of review noted above. See *People v. Pujoue*, 61 Ill. 2d 335 (1975).

¶ 24 Accordingly, in order for *Leach* to be persuasive here, we must first determine whether it applied an appropriate standard of review. A close reading of *Leach*, however, reveals that it employed a standard equivalent to the one used where a charging instrument is challenged prior to trial, *i.e.*, strict compliance. *Leach* did not contain any language referencing whether the defendant was sufficiently apprised of the charged offense to allow preparation of a defense, nor did it contain a double jeopardy analysis as is required. Instead, the court in *Leach* applied a mechanical standard, reversing the defendant's conviction after simply observing that the complaint lacked an allegation of a mental state. *Leach*, 3 Ill App. 3d at 393. For these reasons, *Leach* is meaningfully distinguishable from the procedural circumstances here, where defendant failed to challenge the indictment until his appeal.

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¶ 25 Having found that *Leach* employed a different standard of review, we must conduct our own updated analysis. As an initial matter, we note that the indictment here mirrored the statutory language and specifically identified defendant, the name and statutory provision of the offense, as well as the date and county in which the offense alleged occurred. Generally, where a defendant can discern from a charging instrument that "at a specific time and at specific place the statute had been violated," the charging instrument will be deemed sufficient. *People v. Brogan*, 352 Ill. App. 3d 477, 489 (2004). Next, we observe that, consistent with our reasons for distinguishing *Leach*, we have held that where an indictment is challenged for the first time on appeal, a failure to allege an element of an offense does not necessarily violate the applicable sufficiency standard. *Smith*, 337 Ill. App. 3d at 823. Furthermore, section 25-1(a)(1), as it read in 2008, did not contain a mental state requirement for mob action. See 720 ILCS 5/25-1(a)(1) (West 2008).

¶ 26 It is well-established that an indictment is not necessarily defective for failure to allege a mental state where the statute defining the offense charged does not include a specific mental state. *People v. Flynn*, 352 Ill. App. 3d 1193, 1195 (2004). Therefore, the mere lack of an alleged mental state in defendant's indictment here is insufficient to warrant reversal. Instead, the relevant questions are whether defendant was apprised of the precise offense with enough specificity to (1) allow preparation of his defense; and (2) allow pleading a resulting conviction as a bar to future prosecution arising out of the same conduct. See *DiLorenzo*, 169 Ill. 2d at 322. Stated more succinctly, the question is whether the alleged defect in the charging instrument prejudiced defendant in preparing his defense. *People v. Childs*, 407 Ill. App. 3d 1123, 1130

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(2011).

¶ 27 A review of the record indicates that the above sufficiency criteria were satisfied. We find nothing in the record to indicate that defendant was not fully apprised of the precise offense he was charged with such that he would be unable to prepare his defense. Indeed, the record shows that defense counsel mounted a capable and well-prepared defense. The State's witnesses were thoroughly cross-examined on the relevant issues by defense counsel, who also presented evidence advancing a theory related to the incident which could have absolved defendant. Furthermore, we find it notable that defendant's sole argument of suffered prejudice is that he did not challenge the existence of intent at trial. This is a rather vacuous contention, since defendant vigorously argued at trial that he was an innocent bystander. Under this theory, defendant would necessarily also lack the requisite mental state of the alleged offenses. His theory of defense, therefore, was also aimed explicitly at the absence of intent on his part. We also find, after looking to the indictment and record, that defendant is protected from any subsequent prosecution of the same offense. Defendant does not dispute this. For these reasons, defendant's indictment was not fatally defective and we decline to reverse on this issue.

¶ 28 B. Sufficiency of the Evidence

¶ 29 Defendant next contends that the evidence at trial failed to prove him guilty of mob action and aggravated battery beyond a reasonable doubt. When reviewing the sufficiency of the evidence, the appropriate standard of review 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 offense were proven beyond a reasonable doubt. *People v. Pollock*, 202 Ill. 2d

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189, 217 (2002) (citing *Jackson v. Virginia*, 443 U.S. 307, 318-19 (1979)). It is not the function of this court to retry the defendant. *People v. Tenney*, 205 Ill. 2d 411, 428 (2002). Instead, it falls upon the trier of fact to judge the credibility of witnesses, resolve conflicts in the evidence, and draw conclusions based on all the evidence. *People v. Bomar*, 405 Ill. App. 3d 139, 146 (2010).

¶ 30 This argument is based on alleged contradictions within the testimony of various witnesses. He primarily takes issue with Patrice Willie's testimony regarding the incident. First, he argues Patrice contradicted Snow's testimony in that although she testified she saw defendant strike Snow at Keeler and Brummel, she later testified that defendant first punched Snow at the side of the apartment building and did not see him at the intersection. Patrice then later clarified, after further questioning, that she did see defendant at the intersection but was not sure what his involvement was. During cross-examination, Patrice stated she did not see contact between Snow and defendant at the intersection. Defendant also points out that Patrice testified that she saw defendant strike Snow in front of the apartment building, although Snow only testified that defendant grabbed him in front of the building. In addition to Patrice's testimony, defendant claims that Snow's explanation of how his shirt was ripped was contradicted. Although Snow testified that his shirt was ripped when defendant grabbed onto him in front of the building, defendant observes that Detectives Glad and Larson indicated that Quach admitted to ripping Snow's shirt at the intersection.

¶ 31 After reviewing the record and considering defendant's arguments, we cannot agree that the evidence was insufficient to sustain a finding of guilt here. Defendant's statement that the

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testimony was "replete" with contradictions, discrepancies and conflicts, is an exaggeration. We recognize that Patrice's testimony was inconsistent at times and, in our view, would have been insufficient to sustain a conviction by itself. Snow's testimony, on the other hand, was consistent throughout, with the relevant events and identities of his attackers being recounted with specificity. Furthermore, several significant portions of Snow's testimony were corroborated by other witness testimony. Defendant goes to great lengths to painstakingly establish how and when Snow's shirt was ripped, but it is entirely possible that both defendant and Quach had ripped Snow's shirt. Snow testified defendant tore his shirt in front of building while other witness testimony indicates Quach tore Snow's shirt as well at the intersection. At worst, it is unclear as to how many times Snow's shirt was grabbed onto and torn; however, the testimony regarding the event does not create a "glaring" inconsistency as defendant alleges. If anything, this overwrought argument reveals nothing more than a niggling inconsistency of no legal moment.

¶ 32 To the extent that Patrice's testimony is marginally inconsistent at times, that defect does not automatically render Snow incredible or create a reasonable doubt despite defendant's arguments to the contrary. At best, it might render Patrice's testimony less reliable. The trial court, as the trier of fact here, was responsible for making credibility determinations and resolving inconsistencies in testimony. *Bomar*, 405 Ill. App. 3d at 146. We have held that the testimony of even a single witness, if positive and credible, is sufficient to convict even if it is contradicted by the defendant. *People v. Siguenza-Brito*, 235 Ill. 2d 213, 228 (2009). A close analysis of Snow's testimony, which served as the basis of defendant's convictions, does not raise

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any apparent concerns and reveals Snow to be a positive and credible witness. Consistent with this, the trial court explicitly stated that it found Snow's version of events, which established defendant as one of the attackers, to be credible and did not find Patrice's inconsistencies to significantly affect his testimony given the circumstances of the incident. The trial court further found defendant to be incredible, in light of the fact that his testimony was contradicted by several other witness and was directly impeached in several ways by Detective Glad. After a review of the record, we find no reason to disturb these credibility assessments of the learned judge below.

¶ 33 It also merits mention that the two cases relied upon by defendant are readily distinguishable. First, in *People v. Smith*, 185 Ill. 2d 532 (1999), the supreme court reversed a conviction based on infirmities with the State's witnesses that were far more significant. In *Smith*, the supreme court found that the testimony of Debrah, the only witness that could connect the defendant to the crime, was "contradicted in important respects by the testimony of the State's more reliable witnesses and was in other respects sufficiently impeached so as to severely undermine its credibility." *Id.* at 542. The supreme court then went on to explain in detail how: (1) Debrah's testimony was inconsistent with other "more reliable" witnesses; (2) Debrah was impeached regarding her drug and statements given at the police station; (3) Debrah's alleged actions after the incident undermined her credibility; and (4) Debrah had a motive to falsely implicate the defendant. *Id.* at 544. *Smith* represents a wholly different set of circumstances than the instant case. Snow was not impeached by "more reliable" witnesses or any statements he had previously given, nor was his credibility undermined in any way by his own actions

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subsequent to the incident, and finally, there is nothing in the record indicating Snow had an improper motive in giving his testimony. In fact, the record shows that it was defendant's testimony that was contradicted and impeached by various witnesses whom the trial court found to be reliable. Furthermore, while portions of Patrice's testimony may have been inconsistent, unlike *Smith*, she was not the key witness connecting defendant to the crimes. For these reasons, we find *Smith* to be eminently distinguishable.

¶ 34 Defendant also cites to *People v. Herman*, 407 Ill. App. 3d 688 (2011), in support. Again, the key witness' testimony at trial suffered from serious infirmities that do not exist in the instant case. First, this court noted in *Herman* that physical evidence corroborated defendant's theory of innocence. Second, the witness was revealed to have been untruthful regarding her habitual drug use prior to and during the underlying incident. Finally, this court went on to discuss the witness' testimony which was so internally inconsistent that this court described it as "fraught with inconsistencies and contradictions, most notably related to the time line of events related to the encounter." *Id.* at 705.

¶ 35 In the case at bar, no evidence was offered to corroborate defendant's version of events. Snow's testimony was straightforward and remarkably consistent. It surely was not "fraught" with inconsistencies and contradictions, as defendant would have us believe. We further observe that *Herman* represents a situation where a single witness' testimony, upon which a conviction relied, was found to be incredible, thus necessitating reversal. Here, multiple witnesses testified as to defendant's direct involvement in the beating. The existence of slightly different versions of this criminal activity does not in any way limit the trial court in its role in determining the

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credibility of the witnesses that testified. As previously stated, the trial court was markedly skeptical of defendant's uncorroborated version of events. For these reasons, we also find *Herman* to be distinguishable.

¶ 36 Defendant's penultimate argument is that the state failed to prove defendant's "intention to aid in the commission of a crime" based upon an accountability theory. We acknowledge that mere presence at the scene of a crime, even coupled with flight, is insufficient to establish accountability. *People v. Perez*, 189 Ill. 2d 254, 267 (2000). Defendant argues that while "evidence placed [defendant] at the scene, the evidence failed to prove that [defendant] intentionally aided in or encourage the crime's commission." Based on the evidence in the record, this argument falls on deaf ears. Furthermore, this specious argument is based solely on defendant's self-serving testimony. In so doing, defendant has conveniently failed to acknowledge the portions of Snow's testimony specifically identifying defendant as one of the individuals actively involved in the series of attacks on the night of the incident. Defendant nevertheless maintains that it is his testimony that is reliable and not Snow's, but for the reasons discussed at length above, we disagree.

¶ 37 A conviction for mob action in 2008 required proof that the individual, and at least one other person, acted together, without legal authority, with the use of force or violence to disturb the peace. 720 ILCS 5/25-1(a)(1) (West 2008). The section of aggravated battery allegedly violated by defendant required that the battery be committed on or about a public way. 720 ILCS 5/12-4(b)(8) (West 2008). Here, evidence at trial established that defendant, in concert with a group of several other individuals, attacked Snow outside of his building and at the

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intersection of Keeler and Brummel. Reliable testimony elicited from Snow further established defendant made contact with Snow outside of the apartment building and struck Snow several times at the intersection. Accordingly, we find that the evidence presented at trial was sufficient to sustain defendant's convictions and, after carefully reviewing the record, we decline to disturb the trial court's determinations here.

¶ 38 C. One-Act, One-Crime Rule

¶ 39 Finally, defendant contends that his conviction for mob action should be vacated because it violates the one-act, one-crime rule. Under the one-act, one-crime rule, this court first asks whether the defendant's conduct consisted of separate acts or a single physical act. *People v. Rodriguez*, 169 Ill. 2d 183, 186 (1996). A defendant may not be convicted of multiple offenses arising out of precisely the same criminal act. *People v. King*, 66 Ill. 2d 551, 566 (1977). An act is any "overt or outward manifestation which will support a different offense." *Rodriguez*, 169 Ill. 2d at 188 (quoting *King*, 66 Ill. 2d at 566). If defendant's conduct consisted of separate acts, then this court must ask whether any of the offenses are lesser-included offenses, and if they are, multiple convictions are again improper. *Rodriguez*, 169 Ill. 2d at 186.

¶ 40 As an initial matter, we note that the State has correctly argued that defendant has forfeited this issue by failing to: (1) object to the judgment and sentence on both counts; and (2) raise the instant issue in a posttrial motion. *People v. Enoch*, 122 Ill. 2d 176, 186 (1988). The State, however, also correctly concedes that this issue may be reviewed under the plain error doctrine. *People v. Harvey*, 211 Ill. 2d 368, 389 (2004). Under the plain error doctrine, we will review unpreserved error when either: (1) the evidence is closely balanced, regardless of the

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seriousness of the error; or (2) the error is serious, regardless of the closeness of the evidence.

People v. Herron, 215 Ill. 2d 167, 186-87 (2005). The first step of plain error analysis, however, is deciding whether any error has occurred. *People v. Walker*, 232 Ill. 2d 113, 124-25 (2009). If an error is deemed to have occurred, only then do we turn to the prongs of the plain error analysis.

¶ 41 Defendant argues that the State failed to present evidence that he was engaged in multiple acts. We disagree. In the very case defendant cites in his instant argument, this court has held that multiple strikes constitute separate acts. *People v. Jimerson*, 404 Ill. App. 3d 621, 637 (2010). Multiple strikes, despite being closely related, are not one physical act and may support multiple convictions. *Id.* In *Jimerson*, this court affirmed a defendant's convictions for mob action and aggravated battery based on evidence indicating that the defendant struck the victim multiple times, held onto the victim, and made verbal remarks inciting the situation. *Id.* at 637. The supreme court has held similarly in *People v. Dixon*, 91 Ill. 2d 346 (1982), where convictions for aggravated battery and mob action were affirmed based on evidence that defendant and a codefendant struck a victim several times, with the supreme court stating that the "separate blows, even though closely related, were not one physical act." *Dixon*, 91 Ill. 2d at 356.

¶ 42 In the instant case, even if we were to completely discount Patrice's testimony that she saw defendant strike Snow while outside the building, the remaining evidence established that defendant grabbed onto Snow while outside the building, chased Snow, punched and kicked him several times while at the intersection of Keeler Avenue and Brummel Street, and made several

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threatening remarks inciting a confrontation. Furthermore, his actions were committed in cooperation with several other individuals. As remarked above, a conviction for mob action in 2008 required proof that the individual, and at least one other person, acted together, without legal authority, with the use of force or violence to disturb the peace. 720 ILCS 5/25-1(a)(1) (West 2008). Aggravated battery, as was alleged by the State here, required that battery be committed on or about a public way. 720 ILCS 5/12-4(b)(8) (West 2008). After a review of the relevant caselaw and the evidence presented at defendant's trial, we come to the same conclusion as the courts in *Dixon* and *Jimerson* did: that defendant's acts, while closely related, were nevertheless multiple acts supporting multiple convictions. Accordingly, we find no error here.

¶ 43 For the foregoing reasons, the judgment of the circuit court of Cook County is affirmed.

¶ 44 Affirmed.