NOTICE
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2011 IL App (4th) 100503-U

Filed 11/29/11

NO. 4-10-0503

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from
Plaintiff-Appellee,	)	Circuit Court of
v.	)	McLean County
CHRISTINA L. BICKNELL,	)	No. 09CM1524
Defendant-Appellant.	)	
	)	Honorable
	)	John C. Costigan,
	)	Judge Presiding.

JUSTICE APPLETON delivered the judgment of the court.
Presiding Justice Knecht and Justice Cook concurred in the judgment.

ORDER

¶ 1 *Held:* Where the facts support the jury's verdict that defendant's conduct constituted two separate acts sufficient to support two separate convictions for resisting a peace officer, there was no violation of the one-act, one-crime rule.

¶ 2 I. BACKGROUND

¶ 3 In August 2009, the State charged defendant with two counts of resisting a peace officer. 720 ILCS 5/31-1(a) (West 2008). Count I alleged defendant "dropped to the floor to avoid being detained," and Count II alleged she "refused to rise from the floor to avoid being detained."

¶ 4 The evidence presented at defendant's jury trial revealed that two uniformed Bloomington police officers responded to a 9-1-1 call from defendant's daughter, Misty, on June 21, 2009. When they arrived, they discovered there was no emergency. Misty told the officers she was upset because she had been unable to contact the crisis team. Misty suffered from a mental illness

and the officers were familiar with her, having responded to her calls previously. However, on this occasion, Misty told the officers she did not need their help and assured them she would be all right; she would not harm herself. The officers started to leave defendant's residence when they saw defendant and Misty get into a physical altercation in the front yard. The two women pushed each other and Misty hit defendant in the face. The officers approached the two, intending to arrest Misty for domestic battery. She walked away. One officer tried to grab her, but defendant pushed Misty inside the house and stood in the doorway to prevent the officers' entry. Officer Eric Riegelein asked her to move, but she refused. Riegelein testified at trial that he tried to walk past defendant, but she grabbed him to prevent him from entering. Riegelein warned her to let go, but she refused. At that point, he tried to place defendant under arrest.

¶ 5 As Riegelein placed one of defendant's hands in handcuffs, defendant dropped to the floor, sat down, and pulled her handcuffed arm toward her. Riegelein testified that he asked her to "get off the floor," but she refused. The second officer assisted Riegelein, and together they forced defendant up onto her feet, handcuffed her other hand, and placed her in the squad car.

¶ 6 Defendant called her son, Gregory Marlett, as her only witness. He testified the officers saw Misty hit defendant inside the home. They told Misty that the next time they were called to the home, they would find a reason to arrest her. Marlett said defendant told the officers not to talk to Misty that way due to her mental illness. The officers told defendant to " 'be quiet.' " They started to walk toward the front door with defendant following them. One of the officers shut the screen door on defendant's arm. Misty ran out of the house as the officers were leaving. Defendant tried to stop her, and Misty hit defendant. The officers came back to the house and pushed defendant to the floor. She hit her head on the back of the couch, which "knocked her

unconscious." One of the officers pulled out his taser and pointed it at defendant while they were trying to place her in handcuffs. Defendant was limp, dizzy, and lightheaded from hitting her head, so she was unable to get up. In Marlett's opinion, defendant was not resisting arrest. She told the officers she had to go to the bathroom, but they would not let her go. On cross-examination, Marlett said he does not trust the police force because they treat people "cruelly." He said: "I can't stand the law to be honest with you. Like I don't respect the badge."

¶ 7 After considering the evidence, the jury found defendant guilty of both counts. In April 2010, the trial court sentenced her to 12 months' conditional discharge. The court ordered her to complete 100 hours of community service by September 3, 2010. The court also imposed various fines and fees totaling $570.

¶ 8 Defendant filed a motion for a new trial, claiming the State had failed to prove she was guilty beyond a reasonable doubt. After a hearing, the trial court denied defendant's motion. This appeal followed.

¶ 9 II. ANALYSIS

¶ 10 A. One-Act, One-Crime Analysis

¶ 11 Defendant appeals, claiming one of her two convictions should be vacated because they both stem from one act. She insists that dropping to the floor and remaining there did not constitute different offenses of resisting arrest such that multiple convictions could be sustained. The State maintains that defendant dropped to the floor to avoid arrest, one act of resisting. Then, the officer asked defendant to "get off the floor," which constituted an intervening act separating her dropping to the floor and her refusal to rise to her feet, which was the second act of resisting. We review the question of whether multiple convictions constitute a violation of the one-act, one-crime

rule *de novo*. *People v. Peacock*, 359 Ill. App. 3d 326, 331 (2005). Initially however, we note that defendant has forfeited review of this claim, as she raises it for the first time in this appeal. Though she concedes forfeiture, she claims review is available under the plain-error doctrine. We acknowledge that our supreme court has determined that the potential for a surplus conviction and sentence in violation of the one-act, one-crime rule affects the integrity of the judicial process and justifies application of the plain-error doctrine. *People v. Harvey*, 211 Ill. 2d 368, 389 (2004). Therefore, we will excuse defendant's procedural default and address the merits of her claim.

¶ 12 In *People v. King*, 66 Ill. 2d 551, 566 (1977), the supreme court explained that a criminal defendant cannot be convicted of multiple offenses based on precisely the same physical act. The court reaffirmed and clarified *King* in *People v. Rodriguez*, 169 Ill. 2d 183, 186 (1996), noting there were two steps in a *King* analysis. First, courts must determine whether the defendant's conduct consisted of separate acts or a single physical act. *Rodriguez*, 169 Ill. 2d at 186. There cannot be multiple convictions based on "precisely the same physical act." *Rodriguez*, 169 Ill. 2d at 186. If there are separate acts, then second, courts must determine whether any of the offenses are lesser-included offenses. *Rodriguez*, 169 Ill. 2d at 186. If not, then multiple convictions are permissible. *Rodriguez*, 169 Ill. 2d at 186.

¶ 13 In conducting this analysis, we must determine whether defendant's conduct consisted of separate acts or a single physical act. *Rodriguez*, 169 Ill. 2d at 186. The State charged defendant with two counts of resisting a peace officer (720 ILCS 5/31-1(a) (West 2008)) for knowingly preventing her detention when she "dropped to the floor to avoid being detained" (count I) and "refused to rise from the floor to avoid being detained" (count II). Under *King*, the definition of an "act" is "any overt or outward manifestation which will support a different offense." *King*, 66 Ill.

2d at 566. The question then becomes: How many "acts" were involved in the incident giving rise to the charges that were filed?

¶ 14 Prior to *Sienkiewicz*, the supreme court had never applied or endorsed the six-part test that had been frequently used by appellate courts when determining how many individual acts were involved in a particular incident. See *People v. Sienkiewicz*, 208 Ill. 2d 1, 8 (2003). Those factors are: (1) whether the defendant's actions were interposed by an intervening event; (2) the time interval between the successive parts of the defendant's conduct; (3) the identity of the victim; (4) the similarity of the acts performed; (5) whether the conduct occurred in the same location; and (6) the prosecutorial intent, as shown by the wording of the charging instruments. In *Sienkiewicz*, the court noted that consideration of these six factors may be particularly useful in certain cases, such as the one before the court, and decided to employ it there. *Sienkiewicz*, 208 Ill. 2d at 8. Likewise, we note that the first factor is particularly relevant to the case before us. Whether defendant's actions were interposed by an intervening event is of significance under the facts of this case.

¶ 15 According to Riegelein, defendant dropped to her bottom and sat on the floor after Riegelein had secured one arm in handcuffs. This constituted the first physical act which would support a resisting-a-peace-officer conviction. After defendant dropped to the floor, Riegelein asked her to stand up so he could place the other handcuff on her. She refused. This is the second physical act which would support a resisting-a-peace-officer conviction. Her refusal amounted to "an overt or outward manifestation sufficient to support a different offense." See *King*, 66 Ill. 2d at 566. The first act was an act of force in that she pulled away and dropped to the floor. The second act was simply an act of defiance or obstruction with no force or contact involved. Each act separately

constitutes an offense of resisting a peace officer. "A person resists arrest when he or she commits a physical act of resistance or obstruction, that is, a physical act that impedes, hinders, interrupts, prevents or delays the performance of the officer's duties, such as going limp, forcefully resisting arrest, or physically helping another party to avoid arrest." *People v. Haynes*, 408 Ill. App. 3d 684, 689-90 (2011) (citing *People v. Raby*, 40 Ill. 2d 392, 399 (1968)).

¶ 16 Even though (1) the entire incident of taking defendant into custody spanned over a matter of seconds, (2) the only victim was Officer Riegelein, (3) the acts of sitting and remaining seated are similar, and (4) the acts both occurred at the same location in the doorway, the facts still demonstrate that defendant committed two separate acts sufficient to support two separate charges of resisting a peace officer. This is so primarily (1) because of the officer's intervening act of asking defendant to stand up and (2) based on the wording in the charging instruments, which specifically separated the two acts into two different counts.

¶ 17 In her reply brief, defendant questions whether the State could effectively charge defendant with 25 counts of resisting a peace officer had the officer asked her 25 times to stand up. We respond to this hypothetical only by stating that such a scenario exemplifies the "forest-for-the-trees" admonition the supreme court issued in *Rodriguez*. *Rodriguez*, 169 Ill. 2d at 188 ("We do not specifically address the merits of the six-factor test ***. However, we caution that a court must not lose sight of the forest for the trees.").

¶ 18 We find the facts, as testified to at defendant's trial, supported both convictions for resisting a peace officer. Defendant's conduct constituted two separate and distinct acts, separated by the officer's intervening request to comply. Accordingly, we affirm both of defendant's convictions.

¶ 19 B. Imposition of Fines and Credit

¶ 20 Defendant also claims she is entitled to a $5 credit against her fines for the one day she spent in pretrial custody. The State concedes this fact, and we accept the State's concession. Accordingly, we remand this case to the trial court to amend the sentencing judgment to reflect the proper credit of $5 toward the fines imposed.

¶ 21 Defendant had also claimed this case should be remanded to the trial court with directions for the court to "personally impose" the fines and costs. Defendant initially believed the fines and costs had been imposed by the circuit clerk. In its brief, the State pointed out that the record clearly demonstrated that the fines and costs had been judicially imposed. In her reply, defendant conceded and withdrew this contention of error.

¶ 22 III. CONCLUSION

¶ 23 For the foregoing reasons, we affirm defendant's convictions on both counts as charged. We remand this case to the trial court with directions to amend the sentencing judgment to reflect $5 credit toward the fines and costs imposed. Because the trial court's judgment was affirmed, at least in part, as part of our judgment, we award the State its $50 statutory assessment against defendant as costs of this appeal.

¶ 24 Affirmed in part and reversed in part; cause remanded with directions.