

No. 1-10-3066

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).

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 8126
)	
JAMALL ROBINSON,)	Honorable
)	Mary Colleen Roberts,
Defendant-Appellant.)	Judge Presiding.

PRESIDING JUSTICE SALONE delivered the judgment of the court.
Justices Steele and Sterba concurred in the judgment.

ORDER

HELD: Defendant's conviction for involuntary manslaughter must be vacated when it arose out of the same physical act as his prior conviction for aggravated battery of a child.

¶ 1 After a jury trial, defendant Jamall Robinson was convicted of involuntary manslaughter and sentenced to 10 years in prison. On appeal, he contends that his conviction for involuntary manslaughter violates the one-act, one-crime doctrine because it was based on the same physical act for which he had already pled guilty in case 00 CR 21175. We agree and vacate defendant's conviction for involuntary manslaughter.

¶ 2 The record reveals that defendant's arrest and prosecution, in both the instant case and case 00 CR 21175, arose out of an August 12, 2000, incident during which defendant shook the

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victim, his infant daughter Jamilla.¹ As a result of the incident the victim suffered brain damage and was rendered a quadriplegic.

¶ 3 Defendant was subsequently charged, by indictment, with attempted first degree murder and two counts of aggravated battery of a child in case 00 CR 21175. Defendant ultimately entered a plea of guilty to the Class X felony of aggravated battery of a child and was sentenced to nine years in prison. The count of the indictment to which defendant entered a plea of guilty alleged that defendant, who was eighteen years of age or older, caused great bodily harm to the victim such that he "grabbed [the victim] about the body, threw her and shook [the victim], a child under thirteen years of age."

¶ 4 In November 2007, the victim died of pneumonia, her death was ruled a homicide, and defendant was subsequently charged by indictment with two counts of first degree murder. The first count alleged that defendant "without lawful justification, intentionally or knowingly shook [the victim] and inflicted blunt trauma and killed [the victim]." The second count of the indictment alleged that defendant "without lawful justification, shook [the victim] and inflicted blunt trauma and killed [the victim], knowing that such act created a strong probability of death or great bodily harm to [the victim]."

¶ 5 The matter proceeded to a jury trial, where the defense successfully requested that the jury be instructed as to involuntary manslaughter. Defendant was subsequently convicted of involuntary manslaughter. Although the trial court denied the defense's request to vacate or merge defendant's conviction in this case in light of his conviction for aggravated battery of a child in case 00 CR 21175, the court ordered that his extended-term 10-year prison sentence in the instant case was to run concurrent to his sentence in that case. Defendant was credited with 3,648 days of presentence custody credit.

¶ 6 On appeal, defendant contends that his conviction for involuntary manslaughter must be vacated because it violates the one-act, one-crime rule when it was carved out of the same act

¹ The victim's name is also spelled Jameail and Jamillia in the record.

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that formed the basis of his conviction for aggravated battery of a child in case 00 CR 21175. The State responds that the victim's injuries and her death were not the same "act," and consequently, two separate proceedings were warranted.

¶ 7 The one-act, one-crime doctrine prohibits multiple convictions based on "precisely the same physical act." *People v. Nunez*, 236 Ill. 2d 488, 494 (2010). However, if a defendant commits multiple acts, then multiple convictions may stand provided that none of the offenses are lesser-included offenses. *Nunez*, 236 Ill. 2d at 494. Whether a defendant has been improperly convicted of multiple offenses arising out of the same act and whether a charge encompasses another as a lesser-included offense are questions of law that this court reviews *de novo*. *Nunez*, 236 Ill. 2d at 493.

¶ 8 One-act, one-crime analysis involves a two-step process. First, the court must determine whether the defendant's conduct consisted of multiple acts or a single act, as multiple convictions are improper when based on the same physical act. *People v. Miller*, 238 Ill. 2d 161, 165 (2010). In this context, an "act" is " 'any overt or outward manifestation which will support a different offense.' " *Nunez*, 236 Ill. 2d at 494, quoting *People v. King*, 66 Ill. 2d 551, 566 (1977). If a defendant is convicted of two offenses based upon the same physical act, the less serious offense must be vacated. *People v. Alvarado*, 2011 IL App (1st) 082957, ¶ 23.

¶ 9 Our supreme court has held that it would be "profoundly unfair" to permit the State to treat a defendant's conduct as separate acts for the first time on appeal. *People v. Crespo*, 203 Ill. 2d 335, 343 (2001). In that case, the defendant stabbed the victim three times and was subsequently convicted of, *inter alia*, armed violence and aggravated battery. On appeal the defendant argued that his aggravated battery conviction must be vacated because it stemmed from the same physical act which formed the basis of his conviction for armed violence. Our supreme court acknowledged that each of the three stab wounds could support a separate offense, but reversed the defendant's aggravated battery conviction because the indictment did not apportion the three stab wounds between the offenses and the State did not argue each separate

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offense to the jury. *Crespo*, 203 Ill. 2d at 343-44. Therefore, the court concluded that it would be "profoundly unfair" to the defendant to permit the State to apportion the offenses between the stab wounds for the first time on appeal. *Crespo*, 203 Ill. 2d at 343. Rather, in order for multiple convictions to be sustained, the indictment must indicate that the State intends to treat the defendant's conduct as multiple acts. *Crespo*, 203 Ill. 2d at 345.

¶ 10 Initially, this court rejects the State's argument that the separate convictions must stand because the victim's injuries and her death were separate acts each capable of sustaining a criminal conviction. In *King*, our supreme court determined that a defendant is prejudiced when more than one offense is carved from the same physical act, and defined an "act" as any overt or outward manifestation that would support a separate offense. See *King*, 66 Ill. 2d at 566. Therefore, one-act, one-crime analysis focuses on the defendant's conduct and whether it consisted of a single "act" or separate acts. See *Crespo*, 203 Ill. 2d at 343, 345.

¶ 11 A careful review of record reveals that the indictment charging defendant with first degree murder in the instant case relied upon the same conduct, shaking and throwing the victim, as did the count of aggravated battery of a child to which defendant entered a plea of guilty in case 00 CR 21175. Both cases used the same conduct to charge defendant under different theories of criminal conduct. Here, defendant entered a plea of guilty to aggravated battery of a child in case 00 CR 21175 in that he grabbed, threw, and shook the victim. In the instant case, defendant was charged with first degree murder in that he shook the victim and inflicted blunt trauma. Because neither indictment apportioned the offenses amongst the "shakes" nor other overt manifestations which could support a separate offense, the State cannot now argue on appeal that defendant's conduct consisted of separate "acts." *Crespo*, 203 Ill. 2d at 344-45.

¶ 12 Here, defendant grabbed, shook, and threw the victim, causing brain damage and quadriplegia. The victim later died as a result of her injuries. The charges of involuntary manslaughter and aggravated battery of a child were both carved from defendant's "act" of grabbing, shaking, and throwing the victim. Therefore, because the same physical act formed

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the basis of each offense, defendant could be prosecuted for each offense but only one conviction and sentence could be imposed. See *People v. Henry*, 204 Ill. 2d 267, 289-90 (2003) (when charges of involuntary manslaughter and aggravated battery were both carved from the defendant's action of striking the victim in the face, that is, the same physical act, the defendant could be prosecuted for each offense, but only one conviction and sentence may be imposed).

¶ 13 Accordingly, defendant's conviction for involuntary manslaughter was a violation of the one-act, one-crime rule (*Nunez*, 236 Ill. 2d at 494). Because defendant's conviction for the Class 3 felony of involuntary manslaughter arose from the same act as his prior conviction for the Class X felony of aggravated battery of a child, his conviction for involuntary manslaughter must be vacated. See *Alvarado*, 2011 IL App (1st) 082957, ¶ 23 (when defendant is convicted of two offenses based upon the same physical act, the less serious offense must be vacated).

¶ 14 Accordingly, this court vacates defendant's conviction for involuntary manslaughter.

¶ 15 Vacated.