

No. 1-10-3245

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. 10 CR 1094
)	
MARTHA VANZANT,)	Honorable
)	James B. Linn,
Defendant-Appellant.)	Judge Presiding.

PRESIDING JUSTICE HOFFMAN delivered the judgment of the court.
Justices Hall and Karnezis concurred in the judgment.

ORDER

- ¶1 *Held:* Defendant was properly convicted of two counts of robbery, one count of aggravated battery, and three counts of unlawful restraint. The remainder of her convictions, for unproven or duplicative charges, must be vacated.
- ¶2 Following a bench trial, defendant Martha Vanzant was convicted of seven counts of robbery, five counts of unlawful restraint and one count of aggravated battery. Defendant was sentenced as a Class X offender to seven years in prison. On appeal, defendant contends her multiple convictions violate the one-act, one-crime doctrine in that the robbery counts were based on a single physical act

and the unlawful restraint counts were based on behavior inherent in the robbery. We affirm in part and vacate in part.

¶ 3 Defendant was tried jointly with co-defendant Elijah Colley; both were accused of taking property in an incident on November 15, 2009.¹ Beverly Robinson testified that at about 10:30 p.m., she, Helen Anderson and Walter Anderson were watching TV in the basement of a building at 11925 South Emerald in Chicago. Robinson rented a room in the building, which the Andersons owned. The basement room was a common area containing a TV, chairs and a refrigerator.

¶ 4 Colley tapped at the door and entered the room carrying a sawed-off shotgun, and defendant followed Colley into the room. Robinson recognized defendant even though a scarf covered a portion of defendant's face. Robinson testified she had known defendant for four or five years from "see[ing] her coming and going" and that she and the Andersons had given defendant money previously when defendant asked for help. Robinson also had seen Colley near the building in recent weeks.

¶ 5 Colley approached Walter Anderson and demanded money, and Anderson responded he had none. Colley pointed the weapon at each victim, said "give me your money," and told them to get on the floor. Defendant picked up a cookie tin containing cash belonging to Walter Anderson. Robinson testified that Anderson used money in the tin to assist residents or neighbors with minor expenses such as bus fare. Defendant took the cookie tin and left the basement.

¶ 6 Robinson testified that as Helen Anderson stood up, Colley aimed the gun at her and demanded her purse. Colley walked toward the basement exit with the purse, and Robinson stopped Colley. After a struggle, Robinson took the purse from Colley and tossed it back into the room toward Helen Anderson. Colley struck Robinson in the head with the weapon and fled the basement without the purse.

¹ Colley is not a party to this appeal.

¶7 Helen Anderson corroborated Robinson's description of events and testified she was 62 years old at the time of the incident. She testified the cookie tin contained \$15 or \$20. Anderson and her husband owned the building and rented single rooms to boarders; however, no one lived in the basement. Walter Anderson testified he was 75 years old and recognized defendant and Colley, and he offered testimony consistent with Robinson's account.

¶8 The court determined the evidence did not prove the charged counts of armed robbery, aggravated unlawful restraint or home invasion, noting that it had not been established that the sawed-off shotgun was operable or that the basement constituted a residence. The court found the evidence supported convictions on the lesser included offenses of robbery and unlawful restraint. The court convicted defendant of seven robbery counts, five counts of unlawful restraint and one count of aggravated battery. Based on defendant's previous convictions, the court sentenced defendant as a Class X offender to seven years on each robbery count and three years on each unlawful restraint count and the aggravated battery count, with all of defendant's sentences to run concurrently.

¶9 Before setting out defendant's contentions on appeal, we note her acknowledgment that she did not raise her current objections to the trial court. Defendant invokes the second prong of the plain error doctrine, under which this court can review a forfeited contention if the error was so serious that it affected the fairness of the defendant's trial and challenged the integrity of the judicial process. See *People v. Herron*, 215 Ill. 2d 167, 187 (2005). A one-act, one-crime error has been deemed reversible error under the second alternative of plain error. *People v. Nunez*, 236 Ill. 2d 488, 493 (2010). The first step in plain-error review is determining whether any error occurred. *People v. Thompson*, 238 Ill. 2d 598, 613 (2010).

¶ 10 Defendant first argues her seven robbery convictions and five unlawful restraint convictions should be merged into a conviction on a single count of robbery. Defendant relies upon the one-act, one-crime doctrine, which precludes multiple convictions based on precisely the same physical act.

¶ 11 To determine whether a violation of the one-act, one-crime doctrine has occurred, the court performs a two-step analysis. *People v. Miller*, 238 Ill. 2d 161, 165 (2010). First, the court determines whether the defendant's conduct involved multiple acts or a single act. A defendant can receive multiple convictions as long as multiple acts have occurred. *People v. King*, 66 Ill. 2d 551, 566 (1977). An "act" is "any overt or outward manifestation which will support a different offense." *King*, 66 Ill. 2d at 566. Second, if the conduct involved multiple acts, then the court must determine if any of the offenses are lesser-included offenses. If so, multiple convictions are improper. *Miller*, 238 Ill. 2d at 165. If none of the offenses are lesser-included offenses, then multiple convictions may stand.

¶ 12 Our consideration of this case focuses on the first step of the one-act, one-crime doctrine. That rule only bars multiple convictions for an act against a single victim. *People v. Leach*, 2011 IL App (1st) 090339; see also *People v. Grover*, 93 Ill. App. 3d 877, 881 (1981). Multiple convictions for a single act are proper when there are multiple victims. *Grover*, 93 Ill. App. 3d at 881, citing *People v. Butler*, 64 Ill. 2d 485, 489 (1976). When more than one offense arises from a series of incidental or closely related acts, despite the interrelationship of those acts, convictions with concurrent sentences can be entered. *People v. Artis*, 232 Ill. 2d 156, 161 (2009); *King*, 66 Ill. 2d at 566.

¶ 13 Defendant was convicted on the following seven robbery counts: Count 6 (taking currency from Robinson), Count 7 (taking currency from Helen Anderson), Count 8 (taking currency from Helen Anderson, a person over the age of 60), Count 9 (taking currency from Walter Anderson), Count 10 (taking currency from Walter Anderson, a person over the age of 60), Count 11 (taking a

purse from Helen Anderson), and Count 12 (taking a purse from Helen Anderson, a person over the age of 60).

¶ 14 Defendant argues the only count that can be affirmed is Count 8 (taking currency from Helen Anderson, a person over the age of 60). Defendant contends her convictions involved a single course of action in that the purse and the cookie tin containing cash were "simultaneously removed from [Helen's] presence." The State responds that the evidence supports convictions on two robbery counts: Count 10 (taking currency from Walter Anderson, a person over the age of 60) and Count 12 (taking a purse from Helen Anderson, a person over the age of 60). The State presents no argument as to the affirmance of the other five robbery counts.

¶ 15 A person commits robbery by taking property from the person or presence of another by the use of force or by threatening the imminent use of force. 720 ILCS 5/18-1 (West 2008) (robbery is a Class 1 felony when the victim is over 60 years of age). A defendant may be convicted of more than one robbery count when property is taken from more than one victim, despite the fact that each offense occurs at or near the same time. *People v. Prim*, 53 Ill. 2d 62, 78 (1976); *People v. Robinson*, 41 Ill. App. 3d 526, 531 (1976); *People v. Terry*, 38 Ill. App. 3d 517, 522-23 (1976). The trial testimony established that defendant and Colley, for whose actions defendant was legally accountable, committed robbery against two victims. Colley demanded and received Helen Anderson's purse. Defendant then picked up the cookie tin belonging to the Andersons and left with it. Even though Robinson regained possession of the purse from Colley, and the defendants left the basement with only the money in the cookie tin, the offense of robbery was complete when force or the threat of force caused the victim to part with possession or custody of property against his or her will. See *People v. Gaines*, 88 Ill. 2d 342, 367 (1981) (when defendant left on the floor one of two dollar bills that victim produced at gunpoint, defendant's robbery conviction affirmed even though

he did not take possession of money). Therefore, two items were stolen that belonged to two different victims.

¶ 16 Defendant further argues both the purse and the cookie tin were owned by Helen Anderson and removed from her presence, thus supporting a conviction only on Count 12, which names Helen Anderson as a victim. However, Robinson's testimony established that the cookie tin belonged to Walter Anderson.

¶ 17 In conclusion on this point, Helen and Walter Anderson were deprived of property based on two separate acts which support two robbery counts. Thus, defendant's convictions based on those acts, as set out in Count 10 and Count 12, did not violate the one-act, one-crime doctrine, and the convictions on Counts 10 and 12 are affirmed.

¶ 18 As to the remaining five robbery counts, the testimony did not show that any property belonging to Robinson was taken. Therefore, Count 6, which alleges robbery against that victim, must be vacated. The State concedes that Counts 9 and 11 are duplicates of Counts 10 and 12 because they allege the same act and the same victim, with the factor of the victim's age omitted from Counts 9 and 11. Also, Counts 7 and 8, which involve the taking of currency from Helen Anderson, cannot be sustained in light of our affirmance of Count 10, charging the taking of currency from Walter Anderson. Therefore, Counts 6, 7, 8, 9 and 11 are vacated.

¶ 19 We next consider whether the five unlawful restraint counts violate the one-act, one-crime rule. Defendant contends the act of restraining the victims was inseparable from the acts that comprised the robbery. The State asserts, and we agree, that three unlawful restraint convictions, or one for each victim, can be supported.

¶ 20 A person commits unlawful restraint when he or she knowingly and without legal authority detains another. 720 ILCS 5/10-3 (West 2008). The act of detaining the victims was distinct from the act of taking property by the use or threat of force. The testimony established that Colley pointed

a gun at all three victims and ordered them to the floor. Separate from that demand, Colley and defendant took the purse and the cookie tin. The unlawful restraint and robbery convictions did not violate the one-act, one crime rule because those convictions were based upon different acts. Therefore, defendant can receive convictions for both offenses.

¶ 21 Although defendant was indicted on five counts of aggravated unlawful restraint, the trial court found defendant guilty of the lesser included offense of unlawful restraint on each count. Pointing a weapon at each of the three victims supports a separate count of unlawful restraint for each victim. See *Grover*, 93 Ill. App. 3d at 881. Defendant's unlawful restraint convictions based on Count 15 (detention of Helen Anderson), Count 17 (detention of Walter Anderson) and Count 18 (detention of Robinson) are affirmed. Defendant's convictions on Counts 14 and 16, which duplicate counts 15, 17, and 18 except that they omit the age of the victims, are vacated.

¶ 22 In summary, defendant's convictions on Counts 10 and 12 (robbery), Count 13 (aggravated battery), and Counts 15, 17 and 18 (unlawful restraint) are affirmed. The convictions based on Counts 6, 7, 8, 9, 11, 14 and 16 are vacated.

¶ 23 Affirmed in part, vacated in part.