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SIXTH DIVISION  
June 22, 2012

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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 of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 10 CR 1724
	)	
JESUS SILVA,	)	The Honorable
	)	James B. Linn,
Defendant-Appellant.	)	Judge Presiding.

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JUSTICE LAMPKIN delivered the judgment of the court.  
Presiding Justice Robert E. Gordon and Justice Garcia concurred in the judgment.

**ORDER**

¶ 1 *HELD:* Defendant's multiple convictions for home invasion violate the one-act, one-crime rule where the State charged and prosecuted defendant for a single entry into the home. Defendant's convictions for unlawful restraint must be vacated where the State charged and prosecuted defendant based on the same act as that supporting defendant's armed robbery convictions. One of defendant's armed robbery convictions must be reduced to attempted armed robbery where the evidence demonstrated that nothing was taken from the victim.

1-10-3246

¶ 2 Following a bench trial, defendant, Jesus Silva, was convicted of four counts each of home invasion, armed robbery, and unlawful restraint, and two counts of false personation of a police officer. Defendant was sentenced to 12 years' imprisonment on the home invasion and armed robbery counts and 3 years' imprisonment on the unlawful restraint and false personation counts, all to run concurrently. On appeal, defendant contends his multiple convictions for home invasion violate the one-act, one-crime rule where they were based on one entry into the home. Defendant additionally contends his multiple convictions for unlawful restraint violate the one-act, one-crime rule where they were based on the same physical act as his armed robbery convictions. Defendant finally contends, and the State concedes, that one of his armed robbery convictions should be reduced to attempted armed robbery where the victim testified that no property was taken from him. Based on the following, we affirm in part, vacate a number of defendant's convictions, and remand for resentencing on the remaining convictions.

¶ 3 **FACTS**

¶ 4 On January 1, 2010, defendant impersonated a police officer to gain access into Anthony Pieroni's apartment. Defendant and his accomplices robbed Pieroni and his guests at gunpoint, forced the guests to lie on the ground, and ransacked the home for valuables. The entire incident lasted approximately 45 minutes.

¶ 5 Pieroni testified at trial that he, Jerry Blake, and Martin Sotelo had dinner on the night in question and then picked up Sigmundo Acevedo before retiring to Pieroni's apartment at 2562 West Winnemac Avenue, in Chicago, Illinois. Pieroni shared the apartment with Blake. As the men approached the apartment building in Pieroni's car, they noticed a small, silver-gray SUV

1-10-3246

illegally parked nearby. Four people were inside the vehicle and appeared to be looking at the group. After parking the car in the garage, Pieroni and his friends went to the second floor apartment. At approximately 9:30 p.m., Raul Toledo arrived and joined the rest of the group to watch television in Pieroni's apartment.

¶ 6 Around 10:15 p.m., the doorbell rang. Pieroni left his apartment and walked down the stairs to the front door of the building. An individual dressed as a police officer stood outside the front door. The individual was later identified as defendant. Defendant was wearing a "Chicago police shirt," a vest, a gun holster with a silver or chrome handgun in the holster, and a ski cap. Pieroni reached to open the door and defendant simultaneously pushed the door open. Once the door was open, defendant asked an individual standing next to him, who was later identified as Juan Miramontes, whether "this [is] the guy?" Miramontes answered in the positive and defendant instructed Pieroni to go upstairs. Pieroni testified that Miramontes was wearing a dark-hooded sweatshirt with the hood pulled over his head; however, Pieroni could see his face. Pieroni said he allowed the men to enter the building because he believed they were officers following up on a break-in that occurred in his home less than a month earlier. Pieroni led the men up the stairs and heard at least two other sets of footsteps behind his and those of the officer.

¶ 7 When they arrived at the apartment door, defendant instructed Pieroni to wait outside on the steps. Defendant informed Pieroni that there was an ongoing investigation of his apartment and inquired if there were any guns or drugs inside. Defendant and Miramontes, who had pulled a ski mask over his face, then walked into the apartment.

1-10-3246

¶ 8 According to Acevedo's testimony, Miramontes pointed a black handgun at Acevedo, Toledo, Blake, and Sotelo and demanded that "everybody [get] on the floor" for "a police search." The four men complied. Acevedo testified that defendant grabbed him by his shoulder and pulled him up against a wall to search him. Acevedo did not have a phone or wallet on his person, so nothing was taken from him.

¶ 9 Pieroni testified that defendant demanded that Pieroni take him to his safe. The safe was located in the bedroom, which defendant seemingly already knew. Pieroni was instructed to open the safe. When Pieroni questioned the need to access the safe, defendant explained that he was searching for guns and drugs. Once the safe was open, defendant removed money, an iPod, a GPS navigation system, and a pair of sunglasses. Defendant directed Pieroni back into the living room at gunpoint. Defendant then told Peironi to put his dog in a cage and again forced him into the living room to lie on the ground with the others.

¶ 10 Toledo testified that, approximately 10 minutes after defendant and Miramontes entered the apartment, defendant opened the back door of the apartment where at least two additional men were waiting on the second floor landing. The additional men entered the apartment. The offenders said they were searching for money, guns, and drugs. Miramontes pulled Toledo up off of the floor and pushed him against the wall to search his person. Miramontes retrieved Toledo's wallet. After asking if Toledo had anything else on him, Toledo told Miramontes that he had a phone. Toledo placed his phone on a table.

¶ 11 Pieroni added that he believed there were a total of five offenders in his apartment collecting items of value and placing them near the back door. Defendant informed Pieroni that

1-10-3246

the items were being placed near the back door and on the back porch in order to be searched by canine dogs. According to Pieroni, the offenders took a laptop, a 52 inch plasma television, a digital camera bag with a camcorder, a few digital cameras, two video gaming systems and accessories, jewelry, liquor, and cigarettes. Pieroni further testified that all of his guests had their wallets and phones stolen, except for Sotelo. Pieroni said that he observed Miramontes and Sotelo sharing jokes. The incident lasted approximately 45 minutes, after which two men exited through the front door and three men exited through the back door. After the offenders left, Sotelo gave Pieroni his phone to call 911.

¶ 12 Officer Kast testified that he was on routine patrol on the night in question. Shortly before 11 p.m., Kast saw a man quickly walking from a car illegally parked in an alley near Winnemac Avenue and Rockwell Street. Kast and his partner, Officer Allen, pursued the individual, but lost sight of him. Kast testified that he and his partner returned to the illegally parked, Dodge minivan. The car was running with no passengers inside; however, there were two phones on the driver's seat and a ski mask in the rear. After running the plates, Kast learned that the vehicle was registered to Maria Silva. Meanwhile, his police radio provided information regarding a burglary. A victim then flagged the officers down, explaining that he had been robbed. Kast testified that he remained with the vehicle while his partner accompanied the victim.

¶ 13 Officer Esparza testified that he was also on routine patrol in the area on the night in question. Esparza received a flash message with the description of an offender. Esparza proceeded to Foster Avenue and Western Avenue where he observed a man fitting the

1-10-3246

description. The man was detained and taken to a parking lot where a show-up identification was conducted with Pieroni. Pieroni identified the man as the hooded offender. Esparza made an in-court identification of Miramontes.

¶ 14 Officer Allen testified that, on January 2, 2010 at 6 a.m., he and a tactical investigation team went to 5549 W. Dakin in Chicago, Illinois, in search of defendant. Ms. Martinez opened the door of the apartment and allowed the officers inside. Martinez directed the officers to the living room where defendant was sleeping. Defendant was detained and Martinez provided the officers with signed consent to search the apartment. The search revealed a navigation system, an iPhone, and a camera, along with a black bullet-proof vest, a blue shirt, and a duty belt with a gun holster. In the stairwell of the building, the officers recovered a white canvas bag containing a loaded Glock .40 caliber handgun and an unloaded .357 magnum revolver.

¶ 15 Officers also arrested Miramontes, Sotelo, and Alexander Vega for their participation in the incident.

¶ 16 Detective Daniel Jensen testified that defendant waived his *Miranda* rights and, at approximately 7:30 a.m. on January 2, 2010, provided a statement implicating himself in the incident. Approximately four hours later, defendant provided a memorialized written statement to Detective Jensen and Assistant State's Attorney Melissa Howlett. In his statement, defendant said he was visiting Chicago from Milwaukee on December 31, 2009, to spend time with his sister's family. On the evening of January 1, 2010, defendant was at Vega's house with Sotelo and Miramontes when Vega asked defendant if he was willing to participate in a "lick," or a robbery, by pretending to be a police officer. Sotelo informed the group that the apartment had

1-10-3246

jewelry, money, guns, and drugs, along with three safes. After trying on the uniform, defendant agreed because he needed money to pay his bills. Miramontes and defendant drove to the designated location in his sister's van while Vega and another man drove separately. Defendant said he had a chrome gun in the holster given to him by "the guys." Defendant acknowledged there was another gun resembling a .45, and that both guns belonged to Vega.

¶ 17 In his police statement, defendant further provided that he parked his sister's van around the corner and waited until Miramontes received a phone call from Vega indicating that it was time to execute the plan. Sotelo was inside the apartment and was in communication with Vega. Defendant and Miramontes then went to the front door of the building and rang the doorbell for the apartment. When the owner opened the door, defendant announced that they were there for a routine check. Defendant said he instructed Pieroni to sit down and told everybody to remain calm so that "everything would go well." Miramontes then wore a mask and moved to the back of the apartment to open the door for Vega and the other man. Everyone was told to lie on the ground with their faces down. According to the statement, Vega and the other man gathered items to steal on the kitchen table and back steps. Meanwhile, defendant took a bookbag containing a laptop and walked out of the apartment to place it in his sister's van. When defendant returned to the apartment, he heard police sirens so he and Vega left the area and drove to his aunt's home. According to the statement, defendant gave the vest, holster, and laptop to Vega and did not receive any proceeds.

¶ 18 The trial court severed the offenders' trials; however, the trials were held simultaneously. Defendant and his codefendants were found guilty of four counts of home invasion. The trial

1-10-3246

court stated that it would give defendant and codefendants the "benefit of the doubt" and find that they were not armed with a firearm at the time of the offense. Prior to the sentencing hearing, the trial court clarified that defendant also was convicted of four counts of armed robbery and four counts of unlawful restraint. The trial court again stated that it would "give the defendant the benefit of the doubt and find that the element of a firearm, actual firearm [was] not proven beyond a reasonable doubt." Defendant additionally was convicted of two counts of false personation of a peace officer without a deadly weapon or firearm. Defendant did not file a posttrial motion. After considering evidence in aggravation and mitigation, the trial court sentenced defendant to concurrent terms of 12 years' imprisonment on the home invasion and armed robbery counts and concurrent terms of 3 years' imprisonment on the unlawful restraint and false personation counts. Defendant did not file a motion to reconsider that sentence. This appeal followed.

¶ 19

## DECISION

¶ 20

### I. Home Invasion

¶ 21 Defendant first contends that three of his four home invasion convictions should be vacated because they violate the one-act, one-crime rule. Defendant concedes that he failed to preserve his contention where he did not object at trial or raise the alleged error in a posttrial motion (*People v. Enoch*, 122 Ill. 2d 176, 86, 522 N.E.2d 1124 (1988)); however, defendant requests that we review the contention under the doctrine of plain error.

¶ 22 This court may review forfeited errors under the doctrine of plain error in two narrow instances:

“First, where the evidence in a case is so closely balanced that the jury’s guilty verdict may have resulted from the error and not the evidence, a reviewing court may consider a forfeited error in order to preclude an argument that an innocent person was wrongly convicted. [Citation.] Second, where the error is so serious that defendant was denied a substantial right, and thus a fair trial, a reviewing court may consider a forfeited error in order to preserve the integrity of the judicial process.” *People v. Herron*, 215 Ill. 2d 167, 178-79, 830 N.E.2d 467 (2005).

"The imposition of an unauthorized sentence affects substantial rights." *People v. Hicks*, 181 Ill. 2d 541, 545, 693 N.E.2d 373 (1998). We, therefore, address the merits of defendant's claim.

¶ 23 Defendant argues that three of the four counts of home invasion must be vacated where there was only one illegal entry into the home. Defendant cites to *People v. Cole*, 172 Ill. 2d 85, 102, 665 N.E.2d 1275 (1996), where the supreme court held that the home invasion statute allows for only one conviction regardless of the number of persons present or harmed during the offense (720 ILCS 5/5-2 (West 1992)). The State concedes that defendant should not have been convicted of multiple counts of home invasion based on the presence of multiple victims, but responds that defendant made two separate and distinct entries into the home and, therefore, he should have been convicted of two counts of home invasion.

¶ 24 After having established in *Cole* that only one home invasion conviction can stand no matter the number of victims, the supreme court held in *Hicks* that only one conviction can stand where there are multiple defendants that entered the home. *Hicks*, 181 Ill. 2d at 548-49. Relying

1-10-3246

on the accountability statute and interpretations thereof, the supreme court reasoned that "[i]f the number of persons present in a home does not increase the number of convictions, we do not believe that the number of entrants into a home provides a valid basis for increasing the number of convictions." *Id.* at 549.

¶ 25 The State raises its argument that defendant is guilty of two instances of home invasion, one for his own entry into the apartment and one for having opened the back door to allow Vega and the unidentified individual into the apartment, for the first time on appeal. The one-act, one-crime rule, as expressed by the supreme court in its seminal decision in *People v. King*, 66 Ill. 2d 551, 363 N.E.2d 838 (1977), provides that a defendant may not be convicted of more than one offense as a result of the same physical act. *Id.* at 566. In *People v. Crespo*, 203 Ill. 2d 335, 788 N.E.2d 1117 (2001), the supreme court added that closely related, yet separate, blows could constitute separate acts to support multiple convictions. *Id.* at 341-42. The supreme court, however, clarified that the State had to apportion those separate blows at the trial level in order to sustain multiple convictions, providing that "the indictment must indicate that the State intended to treat the conduct of defendant as multiple acts in order for multiple convictions to be sustained." *Id.* at 345. The question for us on review is whether the State alleged defendant's conduct as separate acts or a single physical act. This is a question of law that we review *de novo*. In *re Rodney S.*, 402 Ill. App. 3d 272, 282, 932 N.E.2d 588 (2010).

¶ 26 In this case, our review of the record demonstrates that the State both charged defendant and prosecuted him based on the same physical act but predicated against four separate victims. Because the State did not differentiate between separate entries into the home, the multiple

1-10-3246

convictions cannot stand. See *In re Samantha V.*, 234 Ill. 2d 359, 378, 917 N.E.2d 487 (2009); *Crespo*, 203 Ill. 2d at 345; *Rodney S.*, 402 Ill. App. 3d at 284. We, therefore, vacate three of defendant's convictions and affirm one of his convictions for home invasion. The parties agree that the mittimus must be corrected to accurately reflect the charge for which defendant was convicted, namely, section 12-11(a)(1) of the Criminal Code of 1961 (Code) (720 ILCS 5/12-11(a)(1) (West 2010)). Pursuant to Supreme Court Rule 615(b) (eff. Aug. 27, 1999), we may correct the mittimus without remanding to the trial court. We instruct the clerk of the circuit court to make the necessary corrections to defendant's mittimus. *People v. Mitchell*, 234 Ill. App. 3d 912, 921, 601 N.E.2d 916 (1992). However, contrary to the State's argument, we cannot tell from the record whether defendant's sentence was influenced by the multiple convictions. We, therefore, remand this cause to the trial court for resentencing on the single count of home invasion.

¶ 27

## II. Unlawful Restraint

¶ 28 Defendant next contends that his four unlawful restraint convictions violate the one-act, one-crime rule where they were based on the same physical act as his convictions for armed robbery without a firearm. Defendant concedes that he did not preserve this error (*Enoch*, 122 Ill. 2d at 186), but requests that we review the contention under the doctrine of plain error. Because the imposition of an unauthorized sentence is considered to affect a defendant's substantial rights, we address the merits of defendant's claim. See *Hicks*, 181 Ill. 2d at 545.

¶ 29 The question before us is whether defendant's convictions for armed robbery and unlawful restraint arose from separate physical acts. A defendant is guilty of unlawful restraint

1-10-3246

when he knowingly and without legal authority detains another. 720 ILCS 5/10-3(a) (West 2010). A defendant is guilty of armed robbery when he takes property from a person by the use of force or by threatening the imminent use of force while armed with a dangerous weapon other than a firearm. 720 ILCS 5/18-2(a)(1) (West 2010).

¶ 30 Defendant argues that his act of restraint is inseparable from the underlying armed robbery and, therefore, cannot support convictions for both crimes. Defendant maintains that the very act of armed robbery requires some level of temporary restraint to satisfy the element of force. According to defendant, his armed robbery convictions were based on his threat to use force against the victims if they failed to cooperate with his pretextual police investigation and the same act, namely, the threat of force if the victims did not cooperate, was the basis of his unlawful restraint convictions. The State responds that there was not one single act of detention; rather, defendant committed several acts of detention against all of the victims, none of which were necessary to effectuate the armed robbery and all of which exceeded the force required for armed robbery. For example, the victims testified they were forced to lie on the ground, at least two of the victims testified to being pulled up from the ground and pushed against a wall while being searched, and Pieroni was initially instructed to remain in the front stairway and then instructed to open his safe, cage his dog, and lie with the victims.

¶ 31 In *People v. Crespo*, 118 Ill. App. 3d 815, 455 N.E.2d 854 (1983), this court held that the defendant committed separate acts sufficient to support convictions for armed robbery and unlawful restraint when he threatened to shoot anyone who withheld money during the robbery while his codefendant produced a knife and also forced the victims to lie on the floor while his

1-10-3246

codefendant held a victim at knife-point before and during the robbery. *Id.* at 823-24. The Crespo court said:

“Although the purpose of restraining the victims may have been to facilitate the commission of the robbery, we have already noted that under *King*, the offender’s general criminal objective is no longer the standard by which the propriety of multiple convictions with concurrent sentences is determined. So long as there were separate and distinct acts \*\*\* which would constitute a crime which is not a lesser-included offense of the more serious crime charged, conviction and concurrent sentencing for both offense is proper.” *Id.* at 824.

¶ 32 The evidence in this case supports convictions for both armed robbery and unlawful restraint. However, the State did not apportion separate acts of detention to support convictions for both unlawful restraint and armed robbery. Rather, the indictments alleged defendant detained each victim knowingly and without legal authority while using a handgun and defendant took property from the victims by force or by threatening the use of force while armed with a weapon. The charges do not differentiate between different acts of “detention” or the use of force. Moreover, at trial, the theory of the case was the offenders used the ruse of defendant’s impersonation of an officer to gain entry into the home and then ordered the victims to lie on the ground while they retrieved items for the robbery. The supreme court clearly stated that the State cannot chose to change its theory of the case on appeal by specifically apportioning distinct acts to support separate convictions. *Crespo*, 203 Ill. 2d at 344. The supreme court reasoned:

“Under Illinois law, a defendant has a fundamental right to be informed of the nature and cause of the criminal accusations against him so that he may prepare a defense and so that the charged offense may serve as a bar to subsequent prosecutions arising out of the same conduct. [Citation.] If we were to agree with the State, defendant would not have known until the cause was on appeal that the State considered each of the separate stabs to be separate offenses, and therefore he would not have been able to defend the case accordingly.” *Id.* at 345.

We, therefore, vacate defendant’s unlawful restraint convictions.

¶ 33 III. Armed Robbery

¶ 34 Defendant finally contends, and the State concedes, that one of his armed robbery convictions must be reduced to attempted armed robbery. Specifically, the armed robbery conviction wherein Acevedo was the victim must be reduced to attempted armed robbery because Acevedo testified at trial that no property was taken from him.

¶ 35 As previously stated, in order to sustain a conviction for armed robbery, the evidence must demonstrate the defendant took property from the person or presence of the victim by force or threat of the imminent use of force while armed with a dangerous weapon. 720 ILCS 5/18-2(a)(1) (West 2010). Where the evidence does not support an armed robbery conviction, it must be vacated or reduced. *People v. Robinson*, 92 Ill. App. 3d 397, 398-99, 416 N.E.2d 65 (1981).

¶ 36 We agree with the parties that the evidence did not support defendant’s armed robbery conviction against Acevedo where no property was taken from him. Pursuant to Rule 615(b), we may reduce defendant’s conviction. In order to sustain a conviction of attempted armed robbery,

1-10-3246

the evidence must demonstrate the intent to commit armed robbery plus an act constituting a substantial step toward the commission of the offense. *Robinson*, 92 Ill. App. 3d at 399. The record demonstrates that defendant pulled Acevedo from the floor, pushed him against a wall, and searched him for property. The evidence supported a finding of attempted armed robbery. We, therefore, reduce one of defendant's armed robbery convictions to attempted armed robbery. Because we cannot tell from the record whether defendant's sentence was influenced by the improper armed robbery conviction, we must remand the cause to the trial court for resentencing.

¶ 37

#### CONCLUSION

¶ 38 We affirm one of defendant's home invasion convictions and instruct the clerk to correct the mittimus to accurately reflect the charge for which defendant was convicted, namely, section 12-11(a)(1) of the Code. We affirm three of defendant's armed robbery convictions. We further affirm defendant's false personation convictions. We vacate the remaining three home invasion convictions and vacate defendant's unlawful restraint convictions. We reduce one of defendant's armed robbery convictions to attempted armed robbery. We remand the cause to the trial court for resentencing on the remaining convictions.

¶ 39 Affirmed in part; vacated in part; remanded.