

2012 IL App (2d) 101291-U
No. 2-10-1291
Order filed July 31, 2012

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IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

THE PEOPLE OF THE)	Appeal from the Circuit Court
STATE OF ILLINOIS,)	of Du Page County.
)	
Plaintiff-Appellee,)	
)	
v.)	No. 07-CF-889
)	
LORENZO I. ALVAREZ,)	Honorable
)	Timothy Q. Sheldon,
Defendant-Appellant.)	Judge Presiding.

PRESIDING JUSTICE JORGENSEN delivered the judgment of the court, with opinion.
Justices Hutchinson and Schostok concurred in the judgment and opinion.

ORDER

Held: Because defendant fired a series of shots at two separate victims and received two convictions (one for murder, one for aggravated discharge), the one-act, one-crime rule did not apply.

¶ 1 Following a bench trial, the court convicted defendant, Lorenzo I. Alvarez, of first degree murder (720 ILCS 5/9-1(a)(1) (West 2006)) and aggravated discharge of a firearm (720 ILCS 5/24-1.2(a)(2) (West 2006)). The court sentenced defendant to 55 years for the murder (30 years plus a 25-year add-on for personally discharging the firearm) and 10 years for the aggravated discharge of

a firearm, to be served consecutively. Defendant appeals, arguing that the court violated the one-act, one-crime rule, which generally prohibits multiple convictions based on the same physical act. Because defendant fired a series of shots at two separate victims and received two convictions (one for murder, one for aggravated discharge), the one-act, one-crime rule did not apply. Therefore, we affirm.

¶ 2

I. BACKGROUND

¶ 3 This case involves a gang shooting wherein defendant, age 19 and a Latin King, fired at least four shots at a van driven by Juan Gonzalez (victim A), age 39 and an Insane Deuce. Each of these shots pierced the van. A single shot killed passenger Oscar Campos (victim B), age 36 and also an Insane Deuce.

¶ 4 The State charged defendant with both first degree murder and aggravated discharge of a firearm. The aggravated-discharge indictment charged defendant with “knowingly discharg[ing] a firearm in the direction of a motor vehicle, being a 1991 Chevy Astro Van, with knowledge that the vehicle was occupied by a person.” The murder indictment charged defendant with “personally discharg[ing] a firearm which proximately caused *** death to Oscar Campos.”

¶ 5 The driver, Juan Gonzalez, testified as a witness to the shooting. That day, Gonzalez drove the van and Campos sat in the passenger seat. While stopped at an Aurora intersection, they saw three teenagers on the sidewalk: defendant, David Jauregui, and Joel Zapata. The teenagers displayed gang signs, and Campos decided to get out of the vehicle and “greet” them.

¶ 6 At this point, the State interrupted Gonzalez’s testimony and sought clarification: “[Campos] actually opened the [vehicle] door?” Gonzalez answered: “He actually opened the door and got out. *** [he] took two steps out of the vehicle.” Gonzalez continued: “Then [Campos] just turned around

and he says, oh ‘s**t,’ and all of a sudden I heard three or four gunshots go off.” Campos jumped back in the van and Gonzalez sped away as Campos tried to close the door. At some point in the commotion, Campos told Gonzalez that he had been shot in the back. Gonzalez took Campos to receive medical attention, but it was too late.

¶ 7 Jauregui and Zapata, the other teenagers with defendant, also testified as witnesses to the shooting. That day, they were walking home from the high school. They were aspiring Latin Kings, but the route home went through Insane Deuce territory. As they approached an intersection, they noticed a stopped van. The passenger, Campos, asked them to which gang they belonged. Defendant answered that they were Latin Kings. When Campos replied that he was an Insane Deuce, defendant pulled a gun out of his waistband and started shooting. Jauregui and Zapata saw defendant fire two shots, and then they ran away. As they ran, they heard two to four additional shots.

¶ 8 Jauregi’s and Zapata’s accounts differed on one point. Jauregi thought that Campos had fully exited the vehicle when defendant pulled his gun, whereas Zapata thought that Campos never fully exited the vehicle.

¶ 9 Susan May, a neutral witness, testified that she lived near the intersection at issue. She was sitting on her couch when she heard five or six shots fired in rapid succession. She looked out the window and saw three young men, one of whom had a gun in his hand.

¶ 10 Forensics showed that defendant hit Gonzalez’s van with four bullets, and four shell casings were found at the scene. The single bullet that hit and killed Campos went through the van door before entering his back and striking several vital organs. Campos’s entrance wound was frayed, suggesting that the door served as an intermediate target.

¶ 11 The trial court convicted defendant as charged. At sentencing, defense counsel argued that the aggravated-discharge conviction should merge with the murder conviction because the convictions were based on the same act. The court disagreed and sentenced defendant as stated. The court subsequently denied defendant's motion to reconsider. This appeal followed.

¶ 12

II. ANALYSIS

¶ 13 Although we ultimately resolve this appeal by finding that the one-act, one-crime rule does not apply, we begin by setting forth for context defendant's one-act, one-crime argument. Defendant argues that, by refusing to vacate his conviction and sentence for aggravated discharge of a firearm, the trial court violated the one-act, one-crime rule. This rule states that, generally, a defendant may not be convicted and sentenced for more than one offense based on the same physical act. *People v. King*, 66 Ill. 2d 551, 566 (1977). An "act" in this context means any overt or outward manifestation that will support a different offense. *Id.* Where a defendant commits a series of interrelated acts, the State may not apportion the related acts as separate offenses for the first time on appeal. *People v. Crespo*, 203 Ill. 2d 335, 345 (2003) (stabbing the same victim three times in rapid succession). Rather, the indictment, evidence, and argument at trial must indicate that the State intends to treat defendant's conduct as multiple acts for which multiple convictions may be sustained. *People v. Amaya*, 321 Ill. App. 3d 923, 930-31 (2001). The purpose of this rule is to inform the defendant 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 prosecution arising from the same conduct. *Crespo*, 203 Ill. 2d at 345.

¶ 14 Defendant implicitly concedes that each separate shot is an overt, outward manifestation *capable* of supporting a different offense. However, he maintains that the State failed to so

apportion the shots in the indictment and at trial. Therefore, defendant is not so much alleging a *per se* violation of the one-act, one-crime rule as he is alleging that, here, the State presented the series of shots as one act, for which no more than one conviction may be obtained. While an alleged violation of the one-act, one-crime rule is a question of law subject to *de novo* review, *People v. Span*, 2011 IL App (1st) 083037, ¶ 79, some deference should be afforded to the trial court's determination of whether the State apportioned the interrelated acts at trial. See, e.g., *Lauman v. Vandalia Bus Lines, Inc.*, 288 Ill. App. 3d 1063, 1073 (1997) (in the context of jury instructions, trial court has discretion to decide which issues have been raised by the evidence).

¶ 15 The State, however, argues that, regardless of how the State presented its case, the one-act, one-crime rule (and the corresponding requirement to apportion separate but interrelated acts) does not apply here because there is more than one victim (Gonzalez and Campos). The State points to a long line of authority holding that crimes committed against separate victims constitute separate criminal "acts," capable of supporting different offenses. *People v. Shum*, 117 Ill. 2d 317, 363 (1987) (the defendant was properly convicted of both murder and feticide for shooting the mother of an unborn child, since the mother and the fetus were two separate victims of the defendant's single action); *People v. Thomas*, 67 Ill. 2d 388, 389-90 (1977), distinguishing *King*, 66 Ill. 2d at 566; *People v. Williams*, 131 Ill. App. 3d 597, 610 (1985) (single act of arson supported three murder convictions for three victims). "Where a single act injures multiple victims, the consequences affect, separately, each person injured. [] Thus, there is a corresponding number of distinct offenses for which a defendant may be convicted." *People v. Pryor*, 372 Ill. App. 3d 422, 434 (2007) (internal citation omitted); see also *People v. Beltran*, 327 Ill. App. 3d 685, 693 (2002) (where the defendant fired a series of shots against three victims, the defendant could only be convicted of one crime per

victim, because, as to each victim, defendant committed a single act that supported a single conviction).

¶ 16 Defendant does not respond to the State's argument that a single act may support as many offenses as there are victims. Instead, he continues to operate within the framework of a one-act, one-crime analysis, maintaining that the State failed to apportion the series of shots into separate offenses. Here, not only do we have multiple victims, but we also have multiple, yet interrelated, acts. For these reasons, and as set forth below, the one-act, one-crime rule does not apply.

¶ 17 We find *People v. Leach*, 2011 IL App (1st) 090339, instructive because it, too, involves multiple victims and multiple, yet interrelated, acts. In *Leach*, the defendant and drug dealer Nicole White entered into an altercation. Nicole physically attacked the defendant. The defendant pulled out a gun and shot Nicole twice in the chest, killing her (victim A). The defendant then fired his gun at least once more toward the group of onlookers who had been observing the fight, one of whom was Nicole's brother, Anthony White (victim group B). The State charged the defendant with murder (as to Nicole), attempted murder (as to Anthony), and aggravated discharge of a firearm (as to Anthony). The aggravated-discharge charging instrument specified that the defendant discharged the firearm "in the direction of Anthony White." *Id.* ¶ 8. The original aggravated-discharge jury instruction also specifically referenced Anthony White, as opposed to the group of onlookers in general. During deliberations, the jury sent the court a question: "Does the [a]ggravated [d]ischarge charge apply only to shooting in the direction of Anthony White?" *Id.* ¶ 9. In response, the trial court withdrew the original instruction and replaced it with one that required the jury to find that defendant discharged the firearm "in the direction of another person." *Id.* The jury returned its verdict "a short time later." *Id.* It found the defendant guilty of murder (as to Nicole) and of

aggravated discharge of a firearm (as to “another person”), but acquitted the defendant of attempted murder (as to Anthony). *Id.* Although a jury’s deliberations are private, it seems fair to infer from this sequence—from the acquittal of the attempt charge as to Anthony to the conviction of aggravated discharge “a short time” after the court clarified that the firearm need not be directed at Anthony in particular but only toward “another person”—that the jury was hesitant to attribute to defendant an intent to shoot a specific person other than Nicole.

¶ 18 The defendant in *Leach* appealed, making an argument similar to defendant’s argument here. The defendant in *Leach* argued that his action of firing his gun three times constituted a single act (or, at least, was presented as such by the State), such that he could not be convicted of both murder and aggravated discharge of a firearm. *Id.* ¶ 33. The *Leach* court implicitly rejected the defendant’s assertion that his action of firing the gun three times constituted a single act, referring to the action of firing the gun three times as “multiple,” yet interrelated, acts. *Id.* ¶ 34. More critically, however, the court reasoned that the one-act, one-crime rule did not apply because the defendant committed multiple, yet interrelated, acts against *separate victims*. *Id.*, citing *Pryor*, 372 Ill. App. 3d at 434. In other words, because defendant’s multiple but interrelated acts were directed at more than one victim, the question of whether the State presented the defendant’s series of shots as one act no longer mattered.

¶ 19 Additionally, the *Leach* court rejected as speculative the defendant’s assertion that all three shots were fired in the direction of Nicole *and no one else*.¹ *Id.* ¶ 33. The debate at trial had been

¹ Even if the three shots were fired in the direction of Nicole only, this would not *per se* defeat the State’s case for multiple convictions. Rather, it would bring the analysis back to the one-act, one-crime framework, requiring the State to apportion each shot to a respective charge.

whether the third shot was directed at Anthony specifically or the group of onlookers generally. The appellate court noted that the name of a specific victim is not an element of the offense of aggravated discharge of a firearm. *Id.* ¶ 22; 720 ILCS 5/24-1.2(a)(2) (West 2006). The plain language of the statute sets forth only two elements for aggravated discharge of a firearm under subsection (a)(2): (1) knowingly or intentionally discharging a firearm; (2) in the direction of another person. *Id.* Therefore, the jury was not required to find that defendant took aim at any specific individual, only that defendant fired “in the direction” of “another person.” *Id.*

¶ 20 Here, as in *Leach*, certain shots (or acts) were directed at and hit a specific individual (in *Leach*, Nicole; here, Campos), forming the basis of the murder conviction. Other, separate but interrelated shots (or acts) missed all persons in the direction of those shots, forming the basis of the aggravated-discharge conviction. The shots forming the basis of the aggravated-discharge conviction were fired in the direction of a victim other than, or in addition to, the murder victim (in *Leach*, Anthony or the group; here, Gonzalez).

¶ 21 That Campos may have been the *primary* target even for those shots supporting the aggravated-discharge conviction does not mean he was the *only* person known by defendant to be in the line of his fire. Case law supports convictions for aggravated discharge where the victim was merely a collateral or incidental target. See *People v. Ruiz*, 342 Ill. App. 3d 750, 759 (2003) (where the defendant repeatedly fired a gun in the direction of a father holding his three-year-old son, the defendant was properly convicted of both murder, as to the father, and aggravated discharge of a firearm, as to the child, even though the evidence was slim that the defendant was even aware of the child’s presence—it was enough that the defendant was aware that he was firing in the direction of *any* person). The aggravated-discharge statute requires only that the defendant knowingly discharge

a firearm “in the direction” of another person (or in the direction of a vehicle defendant knows to be occupied by another person). 720 ILCS 5/24-1.2(a)(2) (West 2006). In fact, under the State’s theory of the case, which was supported by the evidence, defendant began firing when Campos was outside the van, meaning that Gonzalez was the only victim in the van when defendant first fired in that direction. The evidence supports that defendant knew the van he shot at was driven by another person. That other person, Gonzalez, was the second victim, bringing this case outside the scope of the one-act, one-crime analysis. Therefore, the court did not violate the one-act, one-crime rule when it convicted defendant of first-degree murder and aggravated discharge of a firearm.

¶ 22

III. CONCLUSION

¶ 23 For the aforementioned reasons, we affirm the court’s judgment.

¶ 24 Affirmed.