

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).

2012 IL App (3d) 100564-U

Order filed November 20, 2012

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2012

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the Circuit Court
)	of the 9th Judicial Circuit,
Plaintiff-Appellee,)	Knox County, Illinois,
)	
v.)	Appeal No. 3-10-0564
)	Circuit No. 09-CF-665
)	
DEMETRIUS M. HARDRICK,)	Honorable
)	Stephen C. Mathers,
Defendant-Appellant.)	Judge, Presiding.

JUSTICE McDADE delivered the judgment of the court.
Presiding Justice Schmidt and Justice Lytton concurred in the judgment.

ORDER

¶ 1 *Held:* Defendant has not established ineffective assistance of counsel, and his conviction does not violate the one-act, one-crime doctrine.

¶ 2 Defendant, Demetrius M. Hardrick, was convicted of home invasion (720 ILCS 5/12-11(a)(2) (West 2008)), residential burglary (720 ILCS 5/19-3(a) (West 2008)), aggravated battery (720 ILCS 5/12-4(b)(1) (West 2008)), aggravated unlawful restraint (720 ILCS 5/10-3.1(a) (West 2008)), reckless discharge of a firearm (720 ILCS 5/24-1.5 (West 2008)), and reckless conduct

(720 ILCS 5/12-5 (West 2008)). The trial court sentenced defendant to consecutive terms totaling 24 years. Defendant appeals, arguing that: (1) he was deprived the effective assistance of counsel when trial counsel failed to object to jury instructions regarding the home invasion charge which differed from the offense as charged in the indictment; and (2) his conviction for residential burglary should be vacated because it violated the one-act, one-crime doctrine. We affirm.

¶ 3

FACTS

¶ 4 Following an incident in Knox County, defendant was charged with multiple offenses, including home invasion and residential burglary. The charging instrument stated that defendant committed the offense of home invasion because he knowingly, and without authority, entered and remained in the dwelling place of another, knowing or having reason to know that one or more persons were present within the dwelling place, and intentionally caused injury to a person within the dwelling by shooting him in the chest. The cause proceeded to a jury trial.

¶ 5 At trial, evidence established that defendant shot an individual in the chest while the victim was inside the residence of a friend. Defendant testified that he had entered the residence without permission with the intention of committing a theft. He was not expecting the victim to be in the residence and, when defendant discovered the victim, defendant pointed a gun at him and hit him on the head with the gun. Defendant then intentionally struck the victim in the head a second time, and the gun accidentally discharged. Dr. Joseph Krug testified that the victim suffered obvious blunt trauma to his head and face as well as a gunshot wound to the chest. The injuries caused the victim to experience acute respiratory difficulties.

¶ 6 At the close of the evidence, the trial court instructed the jury regarding the home

invasion charge. The court stated that a person commits the offense of home invasion when he:

"not being a police officer acting in the line of duty, without authority, knowingly enters the dwelling place of another and remains in such dwelling place until he knows or has reason to know that one or more persons is present, and while armed with a dangerous weapon he uses force or threatens the imminent use of force upon any person within the dwelling place, whether or not injury occurs."

¶ 7 Defense counsel did not object to the instruction. The jury found defendant guilty of home invasion, residential burglary, aggravated battery, aggravated unlawful restraint, reckless discharge of a firearm, and reckless conduct. Defendant appeals.

¶ 8 ANALYSIS

¶ 9 I. Ineffective Assistance of Counsel

¶ 10 Defendant first argues that he was deprived the effective assistance of counsel when trial counsel failed to object to a jury instruction regarding the home invasion charge, which differed from the offense as charged in the indictment. Specifically, defendant contends that counsel's performance was deficient because he failed to argue that the State was attempting to convict defendant on a theory that was not charged in the indictment. Defendant argues that he was prejudiced because the offense was charged under subsection 12-11(a)(2), which requires proof that defendant "[i]ntentionally causes any injury" (720 ILCS 5/12-11(a)(2) (West 2008)), but the jury was instructed that defendant could be convicted for being armed with a dangerous weapon and using either force or the threat of force upon an individual. Defendant also claims that counsel was ineffective because had he objected, he would have been entitled to a mistrial.

¶ 11 To establish ineffective assistance of counsel, a defendant must show that: (1) counsel's

representation fell below an objective standard of reasonableness; and (2) there is a reasonable probability that but for counsel's unprofessional errors, the result of the proceeding would have been different. *People v. Albanese*, 104 Ill. 2d 504 (1984). A reasonable probability is a probability sufficient to undermine confidence in the outcome. *People v. Haynes*, 192 Ill. 2d 437 (2000). Defendant must satisfy both prongs in order to prevail on a claim of ineffective assistance of counsel; however, if the claim can be disposed of on the ground that defendant did not suffer prejudice, a court need not determine whether counsel's performance was deficient. *Id.*

¶ 12 Here, we find that defendant has not established a reasonable probability that the proceedings would have been different absent counsel's alleged deficient performance. If the jury had been instructed on home invasion as it was charged in the indictment, the only additional fact it would have had to find was that defendant intentionally caused an injury to a person within the dwelling place. See Illinois Pattern Jury Instructions, Criminal, No. 11.54 (4th ed. 2000).

Defendant contends that the jury would have also had to find that defendant shot the victim in the chest, as was alleged in the indictment, and that, had the jury been so instructed, it would likely have acquitted defendant. We disagree. While defendant is correct in pointing out that the jury probably would not have found that he intentionally shot the victim, the proper instruction would not have necessitated such a finding. The standard jury instruction for subsection 12-11(a)(2) only requires that the jury find defendant "intentionally caused an injury." Illinois Pattern Jury Instructions, Criminal, No. 11.54 (4th ed. 2000). Defendant himself testified that he intentionally struck the victim in the head with his gun. Krug testified that the victim had obvious blunt trauma to his face and head. There was no credible testimony to the contrary. Therefore, we find that even with the proper instruction, there is not a reasonable probability that the result of the

proceeding would have been different.

¶ 13 Defendant also argues that ineffective assistance of counsel was shown in that defendant would have been entitled to a mistrial had counsel objected to the improper instruction. Even if defendant is correct in arguing that the instruction was improper, defendant would not have been entitled to a mistrial. Had counsel objected to the instruction, the error could have been easily remedied by issuing a proper instruction. As stated above, had a proper instruction been issued, the result of the proceeding would not have been different.

¶ 14 Based on the foregoing, we conclude that defendant has not established that there is a reasonable probability that the result of the proceeding would have been different absent counsel's alleged deficient performance, and therefore he cannot succeed on his ineffective assistance claim.

¶ 15 II. One-Act, One-Crime

¶ 16 Defendant next argues that his conviction for residential burglary should be vacated because it violated the one-act, one-crime doctrine. In *People v. Miller*, 238 Ill. 2d 161 (2010), our supreme court provided a two-step analysis for one-act, one-crime cases. First, we must determine whether a defendant's conduct involved multiple acts or a single act. Multiple convictions are improper if they are based on precisely the same physical act. *Id.* Second, and only if the conduct involved multiple acts, we must determine whether any of the offenses are lesser-included offenses. *Id.* If based on multiple acts, then a violation of the one-act, one-crime doctrine occurs only if one of the offenses is a lesser-included offense of the other. *Id.*

¶ 17 Applying the first step, we conclude that home invasion and residential burglary involve multiple physical acts. Although both offenses include the unauthorized entry into a dwelling

place, home invasion contains an additional act, causing injury to the victim. Therefore, we must proceed to the second step and determine if residential burglary is a lesser-included offense of home invasion. Under the abstract elements approach, all of the elements of the first offense must be included within the second offense, and the first offense must contain no element that is not included in the second offense. *Miller*, 238 Ill. 2d 161. If these criteria are satisfied, the first offense is deemed the lesser-included offense.

¶ 18 In the present case, we conclude that all of the elements of residential burglary are not included within all of the elements of home invasion. Home invasion and residential burglary only share the act of entry. *People v. Price*, 2011 IL App (4th) 100311. Commission of home invasion requires a defendant: (1) who is not a peace officer acting in the line of duty, (2) to knowingly and without authority enter the dwelling of another, (3) having reason to know one or more persons are present within that dwelling, and (4) intentionally cause injury to one of the persons. 720 ILCS 5/12-11(a)(2) (West 2008). Residential burglary requires that a defendant knowingly and without authority enter a dwelling place of the victim with the intent to commit a theft therein. 720 ILCS 5/19-3(a) (West 2008). Thus, home invasion required defendant to intentionally cause injury to a resident, whereas residential burglary required defendant to intend to commit theft within the dwelling. As a result of the differing elements, residential burglary is not a lesser-included offense of home invasion, and therefore defendant's convictions do not violate the one-act, one-crime doctrine.

¶ 19 CONCLUSION

¶ 20 The judgment of the circuit court of Knox County is affirmed.

¶ 21 Affirmed.