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IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the Circuit Court of Du Page County.
Plaintiff-Appellee,)	
v.)	No. 10-CF-1993
CHRISTOPHER R. EINECKER,)	Honorable
Defendant-Appellant.)	Blanche Hill Fawell, Judge, Presiding.

JUSTICE McLAREN delivered the judgment of the court.
Justices Hutchinson and Spence concurred in the judgment.

RULE 23 ORDER

¶1 *Held:* The evidence that beyond a reasonable doubt a gunshot caused the leg wound sustained by the victim was sufficient to support defendant's conviction of aggravated battery with a firearm; defendant's convictions for aggravated battery with a firearm and aggravated discharge of a firearm involving the same victim did not violate the "one-act, one-crime" rule.

¶2 Defendant, Christopher R. Einecker, was convicted after a jury trial of two counts of aggravated battery with a firearm, (720 ILCS 5/12-4.1(a)(1)(West 2010)); seven counts of aggravated discharge of a firearm (720 ILCS 5/24-1.1(a)(West 2010); unlawful possession of a firearm by a street gang member (720 ILCS 5/24-1.8(a)(1)(West 2010)); unlawful use or possession of a weapon by a felon (720 ILCS 5/24-1.1(a)(West 2010)); aggravated unlawful use of a weapon (720 ILCS 5/24-

1.6(a)(1), (a)(3)(A), (a)(3)(C) (West 2010)); aggravated unlawful use of a weapon by carrying an uncased, loaded and immediately accessible firearm (720 ILCS 5/24-1.6(a)(1) and (a)(3)(A) (West 2010)); possession of a firearm without a FOID card (430 ILCS 65/2(a)(1) (West 2010)); and possession of firearm ammunition without a FOID card (430 ILCS 65/2(a)(2) (West 2010)). Defendant filed a motion for a new trial on October 28, which was amended on November 14. The trial court denied the amended motion on December 15, 2011.

¶ 3 After a hearing held on February 2 and 8, 2012, the trial court sentenced defendant to consecutive terms of 18 years' imprisonment on count 1 and 8 years' imprisonment on count 2. Defendant was sentenced to five years' imprisonment on each of counts 3 through 9, to run concurrently with each other and with counts 1 and 2. Counts 11 through 15 merged with count 3. Defendant's motion to reconsider the sentence, filed on February 24, 2012, was heard and denied on the same day. On appeal, defendant argues that he was not proved guilty beyond a reasonable doubt of aggravated discharge weapon against Hernandez; or, in the alternative, the offenses of aggravated discharge of a weapon against Martinez and Hernandez should be vacated under the one-act, one-crime rule. We affirm.

¶ 4

I. BACKGROUND

¶ 5 Defendant was charged by indictment with two counts of aggravated battery with a firearm by shooting Alex Martinez and Samuel Hernandez (720 ILCS 5/12-4.1(a)(1)(West 2010)); one count of unlawful possession of a firearm by a street gang member (720 ILCS 5/24-1.8(a)(1)(West 2010)); seven counts of aggravated discharge of a firearm, by shooting a firearm in the directions of Martinez, Hernandez, Samuel Resendez, Eli Resendez, Martin Favela, Anthony McBride, and Aldo Gibran Marrufo-Santillanes; one count of unlawful use or possession of a weapon by a felon (720 ILCS 5/24-1.1(a)(West 2010)); one count of aggravated unlawful use of a weapon without a FOID card (720 ILCS 5/24-1.6(a)(1), (a)(3)(A), (a)(3)(C) (West 2010)); one count of aggravated unlawful use of a weapon

by carrying an uncased, loaded and immediately accessible firearm (720 ILCS 5/24-1.6(a)(1) and (a)(3)(A) (West 2010)); one count of possession of a firearm without a FOID card (430 ILCS 65/2(a)(1) (West 2010)); and one count of possession of firearm ammunition without a FOID card (430 ILCS 65/2(a)(2) (West 2010)).

¶ 6 Officer Daniel Herbert, assigned to the Street Operations Unit of the West Chicago Police Department, testified that West Chicago holds a festival named “Railroad Days” on the weekend after July 4 every year. Herbert stated that defendant was a known member of the Gangster Disciples gang; Bradley Taylor was a member of the “Sin City Boy” gang; and Eli and Sam Resendez were members of the “LaRaza” gang. Herbert further stated that conflict could “spark up in a second over the slightest thing.” Yelling gang names and “throwing” gang signs show disrespect to rival gangs, who then have an incentive to retaliate. Gang members generally are uncooperative with police investigations.

¶ 7 Alex Martinez testified that, on July 9, 2010, he was with Hernandez and five other people in a Suburban driven by Martin Favela. At that time, he was a member of the “LaRaza” gang, as were some of the others in the car. Martinez was sitting in the rear passenger seat and Hernandez was seated next to him. Sometime after 10:00 p.m., they went to a liquor store and bought beer. As they were driving around and drinking, they passed two women and two men who were walking away from the park where “Railroad Days” was taking place. Martinez admitted that he and Eli Resendez were yelling and “throwing” gang signs. Martinez was not sure if the foursome on the street said anything or gestured, but he told Favela to turn around because he wanted to get out and “exchange words and see what was happening.” When the car stopped, Martinez got out with a little wooden bat and gunshots started right away. Martinez’s left arm went numb and he ran around to the other side of the Suburban. The group then took him to the hospital. He sustained two broken ribs and the bullet remained in his chest as the doctors were unable to remove it.

¶ 8 Samuel Hernandez testified that, on July 9, 2010, he was 17 years old. On that night, he was with Martinez “driving around” West Chicago in a Suburban driven by Favela, whom Hernandez had met once before. They had a case of beer. Hernandez was sitting in the back seat in the middle, and Martinez was seated on his right, next to the door. Hernandez was a member of “LaRaza.” He remembered that the Suburban stopped and Martinez got out. Hernandez started to get out after him but Martinez was already going around the Suburban. Someone told Hernandez to “come back because [Martinez] got shot.” Hernandez did not hear any gunshots nor did he see anyone outside. He got back in the car and they drove straight to the hospital because Martinez was bleeding from the left side of his chest. After dropping Martinez off, they drove away from the hospital and someone noticed that Hernandez’s leg was bleeding. Hernandez then saw that he had a cut on the right side of his right knee and a hole in the shorts he was wearing.

¶ 9 Hernandez testified that he was drunk after consuming ten cans of beer. He did not hear any gunshots. He did not know when he received the injury; he did not have the injury prior to getting out of the vehicle right behind Martinez; and he did not remember if he bumped the Suburban as he got out or got back in. He assumed that he was shot because “my friend got shot and I was right behind him, so I think I got shot, too.” He did not see the shooter. He did not go to the hospital and did not receive any medical treatment for his leg wound.

¶ 10 After dropping Martinez at the hospital, the group drove to an empty parking lot in West Chicago and got out. Hernandez stated that “[a]ll these cops showed up out of no where” and they brought him to the West Chicago police department. Hernandez remembered talking to the police after midnight; he was reluctant to talk. He told the police that the shooter was a male white Gangster Disciple because he heard that from someone in the Suburban. Police photos of his knee injury and the jean shorts he was wearing were admitted into evidence.

¶ 11 Eli Resendez testified that he owned the Suburban and was sitting in the front passenger seat directly in front of Martinez while Favela was driving. His window was down and he was yelling gang slogans at four people who were walking. Favela turned the car around and stopped. Resendez opened the passenger door and Martinez opened his door. Then, “shots started ringing out.” Resendez stated that no one in the Suburban had a gun. He also identified People’s Exhibits number 40 through 63 as depicting various views of multiple sites of bullet damage to the Suburban.

¶ 12 Brad Taylor, defendant’s best friend, testified for the State. Defendant was a member of the Gangster Disciples and Taylor was a member of the Sin City Boys gang, which was a part of the Gangster Disciples. Taylor stated that, on the night of July 9, he and defendant went to the “Railroad Days” festival with defendant’s girlfriend, Robin Bowie, and Taylor’s girlfriend. After attending the festival, the group started to walk to defendant’s house about five or six blocks away. When they were about a block from defendant’s house, a truck drove by with people yelling “LaRaza” gang slogans out of the windows. Robin either yelled back or gestured, and the Suburban turned around and came back. Taylor and defendant told the two girls to run to defendant’s house. When the Suburban stopped, someone wearing a white t-shirt got out with his hand under his shirt. Taylor testified that defendant fired at the Suburban but did not hit anything. After the first shot was fired, the person who had exited the Suburban ran around to the back, and Taylor ran down an alley. Taylor heard seven shots altogether.

¶ 13 Taylor testified that, when they arrived at defendant’s house, they were trying to calm down. Defendant was telling Robin that he was doing the shooting.

¶ 14 Taylor then identified State’s Exhibit No. 74 as a .25-caliber gun that defendant used in the shooting. Taylor had been given the gun three or four weeks before this incident. Taylor had his FOID card and had fired the gun on July 4.

¶ 15 Defendant testified that on July 9, at around 9:30 p.m., he was walking home from a festival in West Chicago with his girlfriend, Taylor, and Taylor’s girlfriend. A Suburban drove past them and people in the car yelled gang slogans at them. When his girlfriend threw up her hands in response, the Suburban turned around. Defendant yelled to the two women to run, and he and Taylor started to back into an alley. Defendant saw a man jump out of the Suburban. The man had his hand under his shirt, then brought his hand out and extended his arm. Defendant stated that the man “had a weapon of some sort” that appeared to be a pistol. Defendant then heard gunfire. Defendant stated that as soon as he heard gunshots he started to run away. Defendant denied shooting a gun.

¶ 16 City of West Chicago detective Patrick O’Neil testified for the defense that, around 3:00 a.m. on July 10, he interviewed several individuals involved in this case, including Hernandez. O’Neil testified that Hernandez stated that he may have bumped his knee on the car, but that he was uncertain as to how the injury occurred. O’Neil further testified that the injury looked “like a tiny elongated puncture” and was “more round in nature” than a line.

¶ 17 Defendant timely appealed.

¶ 18 II. ANALYSIS

¶ 19 On appeal, defendant argues that his conviction for aggravated battery of Hernandez must be reversed because “there was neither medical nor photograph evidence to support a finding beyond a reasonable doubt that Hernandez was shot.” Defendant maintains that the photographs of Hernandez’s leg showed “some sort of injury with a little bit of blood” and “some flaw in the material” of his jean shorts. However, defendant argues that the question of when and how the injury and the hole in the jean shorts were sustained was left unanswered, and, therefore, the State did not prove defendant guilty beyond a reasonable doubt of aggravated battery of Hernandez. Defendant argues that the evidence was insufficient to prove that Hernandez’s leg injury was the result of being shot by any firearm.

¶ 20 Our function is not to retry the defendant; rather, we must determine whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *People v. Beauchamp*, 241 Ill.2d 1, 8 (2011). We will reverse a conviction only where the evidence is so unreasonable, improbable or unsatisfactory that reasonable doubt of defendant's guilt remains. *Id.* at 8. The trier of fact, who saw and heard the witnesses, is responsible for determining the witnesses' credibility, weighing their testimony, and deciding on the reasonable inferences to be drawn from the evidence. *People v. Sweigart*, 2013 IL App (2d) 110885, ¶ 18. A person commits aggravated battery with a firearm by knowingly or intentionally discharging a firearm, causing injury to another person while committing a battery. 720 ILCS 5/12-4.1(a) (West 2010).

¶ 21 The jury was presented with photographic evidence of Hernandez's leg and the damage to his jean shorts. Additionally, the jury heard Hernandez testify that he thought he had been shot "because my friend got shot and I was right behind him, so I think I got shot, too." Detective O'Neil testified that, at 3:00 a.m. the next morning, Hernandez stated that he could have bumped his leg on the car door, but that he was uncertain as to how the injury occurred. Defendant avers in his reply brief that a puncture wound could be caused by various means, including a "rod of some type protruding from a car," a "large stick" or "even a bullet." Defendant continues this line of argument with the statement that a "graze wound" could be caused by various means, such as "scraping the body part against a sharp metal edge on a car, by a bullet, or by any of various other means." Defendant does not cite to any evidence in the record, nor do we find any evidence that there were any metal edges or other hazards Hernandez might have encountered on the night of the incident. A rational trier of fact could have determined that Hernandez's injury was the result of a gunshot, and not the result of bumping the vehicle door when he exited or re-entered the Suburban after Martinez was shot. Hernandez's

equivocal statement to O’Neil in the interview, during which Hernandez was recovering from drinking multiple beers, was presented as evidence. The theory of accidental injury is one that the jury must weigh and accept or reject.

¶ 22 Defendant’s reliance on *In re T.G.*, 285 Ill. App. 3d 838 (1996), and *In re J.A.*, 336 Ill. App. 3d 814 (2003), is misplaced. Both cases involved charges of “aggravated battery causing great bodily harm” (720 ILCS 5/12-4 (West 1994)), whereas defendant’s conviction at issue is for aggravated battery with a firearm. (720 ILCS 5/12-4.1(a)(1)(West 2010)). Defendant regards these cases as “helpful” to the issue of the sufficiency of the evidence. However, here there was no requirement of presenting evidence proving that “great bodily harm” was inflicted upon the victim. The State only needed to show that Hernandez’s injury was the result of defendant’s shooting his firearm.

¶ 23 The State cites *People v. Brown*, 57 Ill. App. 3d 528 (1978), for the proposition that expert testimony is not necessary on the issue of causation when the relationship between cause and effect is readily apparent, based on common knowledge and experience. Defendant avers that knowledge of the appearance of various types of gunshot wounds is not an everyday experience for an average person, and that causation was not established by the evidence. Defendant expands the State’s discussion of *Brown*, where the victim died 11 days after the defendant stabbed her multiple times. Expert testimony by the attending doctor established that death was due to a pulmonary embolism, presumably from blood clots that formed due to the injury. *Id.* at 530-31. The appellate court held that, in a murder prosecution, the material facts of proof of death and proof of a criminal agency causing death must both be established beyond a reasonable doubt. *Id.* at 531. In *Brown*, the defendant’s murder conviction was reversed because the State did not demonstrate “with adequate evidence the existence of an act on the part of the defendant sufficient to cause death.” *Id.* at 532. Again, the only proof required in this case was that Hernandez’s injury resulted from a gunshot.

¶ 24 In this case, the jury had several photographs of both the wound and the jean shorts, which are included in the record on appeal, and the testimony that before the shooting Hernandez was fine, but afterward he had a leg wound. It is true that the type of wound sustained by Hernandez could have had various causes, but, unlike *Brown*, there is no medical complexity involved as to diagnosis. The photographs show a leg wound, and slight damage to the jean shorts. Defendant's logic that an average person has insufficient knowledge of gunshot wounds falters; we believe that there is no dearth of a layperson's knowledge regarding different ways one could sustain the type of injury depicted in the photographs. The jury's conclusion as the trier of fact as to causation of that wound is not against the manifest weight of the evidence.

¶ 25 Defendant next argues that both of defendant's convictions for aggravated discharge of a firearm at Martinez and at Hernandez must be vacated under "one-act, one-crime" principles. Defendant, recognizing that he did not raise this issue in the trial court, asks us to review it for plain error. Defendant asserts that, while this issue was not raised in the trial court, this court may consider this claim under the second prong of the plain-error doctrine "because the question of whether the defendant was improperly convicted and sentenced in violation of the one-act, one-crime rule implicates his substantial rights." Plain errors affecting substantial rights may be reviewed on appeal. Illinois Supreme Court Rule 615(a) (eff. Jan. 1, 1967); *People v. Hicks*, 181 Ill.2d 541, 544 (1998). An alleged one-act, one-crime violation and the potential for a surplus conviction and sentence affects the integrity of the judicial process, thus satisfying the second prong of the plain error rule. *People v. Harvey*, 211 Ill. 2d 368, 389 (2004); *People v. Marston*, 353 Ill. App. 3d 513, 516 (2004). Therefore, we will review this contention.

¶ 26 Allegations that a defendant's convictions violate the one-act, one-crime rule are reviewed *de novo*. *People v. Hagler*, 402 Ill. App. 3d 149, 152 (2010). "[W]hen more than one offense arises from a series of incidental or closely related acts and the offenses are not, by definition, lesser included

offenses, convictions with concurrent sentences can be entered.” *People v. King*, 66 Ill. 2d 551, 566 (1977).

¶ 27 Our 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.’ ” *People v. Nunez*, 236 Ill.2d 488, 494 (2010) (quoting *King*, 66 Ill. 2d at 566). 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. If the reviewing court determines that more than one physical act was involved, then the court moves on to the second step and must determine whether any of the offenses are lesser-included offenses. *Marston*, 353 Ill. App. 3d at 516-17. If any of the offenses are lesser-included offenses, then, pursuant to *King*, the excess convictions must be vacated. *Id.* at 517. If none of the offenses are lesser-included offenses, then multiple convictions are proper and may be entered against the defendant. *Id.*

¶ 28 Defendant’s argument that his convictions for aggravated discharge of a firearm violate the “one-act, one-crime” rule ignores the procedural distinction the Illinois Supreme Court has enunciated regarding the proper analysis of “one-act, one-crime” issues. In *Miller*, 238 Ill. 2d 161, the Illinois Supreme Court distinguished the “charging instrument” approach, which applies when determining whether an *uncharged* offense is a lesser-included offense of a charged crime, from the “abstract elements” approach, which applies when determining whether a *charged* offense is a lesser-included offense of another charged offense under the one-act, one-crime doctrine. *Id.* at 166. The “abstract elements” approach compares the statutory elements of the offenses charged, and if the comparison reveals that “all of the elements of one offense are included within a second offense and the first offense contains no element not included in the second offense, the first offense is deemed a

lesser-included offense of the second.” *Id.* at 166. This method is the “strictest approach” since it requires a court to find that it is impossible to commit the greater offense without also committing the lesser offense. *Id.* The “abstract elements” approach is the correct method to use when a defendant is charged with multiple offenses, and the issue is whether one offense is a lesser-included offense. *Id.* at 173.

¶ 29 The jury convicted defendant on all 15 counts of the indictment. In this case, count 1 of the indictment charged that defendant:

“committed the offense of Aggravated Battery With a Firearm in that the said Defendant, in committing a battery, in violation of 720 ILCS 5/12-3, knowingly, by means of a firearm, caused injury to Alex Martinez in that the Defendant shot the person of Alex Martinez with said firearm, in violation of 720 ILCS 5/12-4.2(a)(1) ***.”

Count 4 of the indictment charged that defendant:

“committed the offense of Aggravated Discharge of a Firearm in that the said Defendant knowingly discharged a firearm in the direction of Alex Martinez, in violation of 720 ILCS 5/24-1.2(a)(2) ***.”

Counts 2 and 5 charged identical crimes except the named victim was Hernandez.

¶ 30 The physical evidence and testimony established that multiple shots were fired. Taylor, defendant’s companion, heard seven shots altogether. Hernandez did not hear any gunshots but sustained a leg wound. Eli Resendez stated that no one in the Suburban had a gun. He stated that, when Martinez got out, “shots started ringing out” and he heard them hitting the vehicle. Martinez testified that gunshots were fired; none were fired from the Suburban. Martinez still had a bullet in his chest that remained after this incident. Further, Eli Resendez identified People’s Exhibit numbers 40 through 63 as depicting various views of multiple sites of bullet damage to the Suburban. Thus,

we determine that the first step of the analysis is satisfied; multiple shots were fired and, therefore, the charges were not founded on one physical act.

¶ 31 Further, “[t]he justifications for using the charging instrument approach with respect to uncharged offenses—the importance of providing notice to the parties of what offenses a defendant may be convicted of based on the particular facts of the crime and what instructions may be sought—have no applicability when dealing with charged offenses. When charged offenses are at issue, a defendant has notice of what the State seeks to convict him of and is able to prepare and present a defense.” *Miller*, 238 Ill. 2d at 166.

¶ 32 Defendant cites *People v. Crespo*, 203 Ill. 2d 335 (2001), where the defendant stabbed the victim three times in rapid succession, once in the right arm, and twice in the left thigh. The counts in the indictment charging the defendant with armed violence and aggravated battery did not differentiate among the separate stab wounds; rather, these counts charged the same conduct under different theories of criminal culpability. *Id.* at 341-42. The Illinois Supreme Court found that each of the stab wounds could have supported a separate offense, but this was neither the theory under which the State charged defendant, nor did the State present and argued this theory to the jury. *Id.* The supreme court found that, therefore, it would be “profoundly unfair” to apportion the crimes among the various stab wounds for the first time on appeal. *Id.*

¶ 33 Defendant also cites *People v. Beltran*, 327 Ill. App. 3d 685 (2002), where this court, holding that *Crespo* controlled, vacated the defendant’s aggravated discharge convictions. In *Beltran*, the court determined the issue using the charging instrument approach, rather than the abstract elements approach now required by *Miller*. We determine that *Beltran* is inapposite.

¶ 34

III. CONCLUSION

¶ 35 The evidence that Hernandez’s injury could have resulted from a gunshot was sufficient for a rational trier of fact to find the essential elements of the crime be proven beyond a reasonable doubt.

Further, defendant's convictions of aggravated discharge of a firearm and aggravated battery with a firearm were not based on one physical act and were proper.

¶ 36 For the reasons stated, we affirm the judgment of the circuit court of Du Page County.

¶ 37 Affirmed.