

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).

2013 IL App (3d) 110553-U

Order filed January 15, 2013

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2013

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the Circuit Court
)	of the 21st Judicial Circuit,
Plaintiff-Appellee,)	Kankakee County, Illinois,
)	
v.)	Appeal No. 3-11-0553
)	Circuit No. 10-CF-559
)	
KATHLEEN J. BANACH,)	Honorable
)	Clark E. Erickson,
Defendant-Appellant.)	Judge, Presiding.

PRESIDING JUSTICE WRIGHT delivered the judgment of the court.
Justices Schmidt and McDade concurred in the judgment.

ORDER

¶ 1 *Held:* Defendant's conviction for resisting a peace officer did not violate the one-act, one-crime rule.

¶ 2 Defendant, Kathleen J. Banach, was convicted of aggravated battery, a Class 2 felony (720 ILCS 5/12-4(b)(18) (West 2010)), and resisting a peace officer, a Class A misdemeanor (720 ILCS 5/31-1 (West 2010)). On appeal, defendant argues that her misdemeanor conviction for resisting a peace officer is invalid under the one-act, one-crime rule. We affirm.

¶ 3

FACTS

¶ 4 On November 5, 2010, defendant was charged by indictment with one count each of aggravated battery and resisting a peace officer. The aggravated battery count alleged defendant:

“knowingly made physical contact of an insulting or provoking nature with Kraig Horstmann, an employee of a unit of local government engaged in the performance of his authorized duties, in that said defendant struck Kraig Horstmann in the hand with her purse, knowing Kraig Horstmann to be a peace officer.”

Count II alleged that defendant resisted a peace officer when she:

“knowingly resisted the performance of Officer Kraig Horstmann and Officer Jared Hurley of an authorized act within their official capacity, being the arrest of said defendant, knowing Officer Kraig Horstmann and Officer Jared Hurley to be peace officers engaged in the execution of their official duties, in that said defendant wrestled and struggled with Officer Kraig Horstmann and Officer Jared Hurley.”

¶ 5 On May 16, 2011, the case proceeded to a bench trial. Jared Hurley testified he was on duty as a Kankakee County sheriff's deputy and was assigned to courtroom 110 on October 26, 2010. During the afternoon session, Hurley observed defendant testify in a civil case. While on the witness stand, defendant became irate, stood up, and said “I'm done with this.” Judge Adrienne Albrecht asked that defendant be removed from the courtroom. As defendant walked past Hurley and Horstmann, her jacket touched Horstmann. Defendant turned toward the officers and said “don't fucking touch me.” Judge Albrecht ordered defendant into custody for contempt of court. As Hurley and Horstmann attempted to escort defendant out of the courtroom, she turned and swung her purse, striking Horstmann's hand. The officers gained control of defendant

and placed her into handcuffs.

¶ 6 Kraig Horstmann testified on the date of the incident he was in courtroom 110 and defendant was testifying. Defendant became upset, shouted profanities at Judge Albrecht, left the witness stand, and began gathering her papers. As Horstmann approached defendant to escort her out of the courtroom, defendant continued shouting. Consequently, Judge Albrecht held defendant in direct criminal contempt of court. Thereafter, defendant walked toward the back of the courtroom while dragging her coat. She shouted at Horstmann to “get off my fucking coat,” turned around with her purse in hand and struck Horstmann's hand with her swinging purse. According to Horstmann, she also threw a handful of papers at his chest. The State introduced the security recordings of the courtroom incident.

¶ 7 Defendant testified she became frustrated while testifying in a civil case before Judge Albrecht and she told the judge “that she was a fucking idiot and that [she] was done with it.” Defendant walked off the witness stand, gathered her belongings, and ignored an officer's direction to stop and drop her belongings, so she could follow her son out of the courtroom. She testified that her son had a history of epileptic seizures when he becomes upset. According to defendant, an officer threw her against the wall, instructed her to drop her papers, and put her hands behind her back. In response, defendant swung around and dropped her purse on the last bench in the courtroom gallery. Shortly thereafter, she was placed in handcuffs and escorted out of the courtroom.

¶ 8 The trial court found defendant guilty of aggravated battery and resisting a peace officer. During a subsequent sentencing hearing, the court sentenced defendant to 120 days in jail and 36 months' probation for the felony offense of aggravated battery and ordered the State to prepare a

mittimus without imposing a sentence for Count I, the misdemeanor offense. After addressing an unrelated case, the prosecutor requested whether the “resisting a peace officer count” would be “just a straight conviction?” The court responded, “Yes, straight conviction on Count II.” Thereafter, the court signed an order bearing case no. 10-CF-559 assessing fines, fees, and costs totaling \$1,185, including assessments for a misdemeanor offense.

¶ 9 The trial court denied defendant's motion to reconsider sentence. Defendant appeals.

¶ 10 ANALYSIS

¶ 11 Defendant argues her conviction for misdemeanor resisting a peace officer as alleged in Count II must be set aside based on one-act, one-crime principles. Defendant acknowledges she forfeited this issue by failing to raise it in the trial court but urges that the plain error doctrine now applies. The State first contends the trial court did not impose a sentence for the misdemeanor offense of resisting a peace officer. Consequently, the State asserts there is not a final judgment on Count II triggering our jurisdiction to address the merits of the one-act, one-crime issue. See *People v. Caballero*, 102 Ill. 2d 23 (1984) (absent the imposition of a sentence, an appeal cannot be entertained). Alternatively, the State alleges that both convictions are based on separate acts and are appropriate.

¶ 12 The issues raised in this appeal relate to jurisdiction, plain error analysis, and the application of the one-act, one-crime rule, and each issue involves a *de novo* standard of review. See *People v. Richards*, 394 Ill. App. 3d 706 (2009); *People v. Johnson*, 238 Ill. 2d 478 (2010); and *People v. Johnson*, 387 Ill. App. 3d 780 (2009).

¶ 13 We reject the State's argument that the trial court did not sentence defendant for the misdemeanor offense of resisting a peace officer, as alleged in Count II, following the court's

decision finding defendant guilty of this offense. The record clearly contains the court's pronouncement that a straight conviction would enter for that offense and the court's written order assessing State's Attorney Fees of \$15.00 and a \$25.00 court fund fine for the misdemeanor offense in addition to other costs, fees, and assessments. Therefore, the record reveals the court did impose a sentence for the misdemeanor offense such that this court has jurisdiction to consider the issue related to the misdemeanor conviction presented by defendant for review.

¶ 14 While we have concluded we have jurisdiction to consider this issue, we note defendant concedes that she did not properly preserve this issue in the trial court for appellate review, by failing to raise the one-act, one-crime issue in a posttrial motion. *People v. Enoch*, 122 Ill. 2d 176 (1988). Consequently, we agree this claim may only be reviewed for plain error. *People v. Franklin*, 2012 IL App (3d) 100618.

¶ 15 The traditional plain error test considers whether the trial court erred and: (1) the evidence was so closely balanced that the error threatened to tip the scales of justice against defendant; or (2) the error was so serious that it affected the fairness of the trial and challenged the integrity of the judicial process. *People v. Piatkowski*, 225 Ill. 2d 551 (2007). Forfeited one-act, one-crime arguments are reviewed under the second prong of the plain error rule, as they implicate the integrity of the judicial process. *People v. Nunez*, 236 Ill. 2d 488 (2010).

¶ 16 The one-act, one-crime rule provides a defendant may only be convicted and sentenced on the most serious offense where multiple charges arise out of the same act. *People v. King*, 66 Ill. 2d 551 (1977). The first step in the one-act, one-crime rule is to determine whether a defendant's conduct involved multiple acts or a single act. *People v. Miller*, 238 Ill. 2d 161 (2010). Multiple convictions are improper if they are based on precisely the same act. *Id.*

¶ 17 In this case, defendant argues that her resisting a peace officer conviction was based on the same course of conduct as her aggravated battery conviction, even if the convictions did not arise out of precisely the same act. The case law provides that the following factors are relevant to a determination of whether a defendant committed one or more acts underlying the charges:

“(1) whether the defendant's actions were interposed by an intervening event; (2) the time interval between the successive parts of the defendant's conduct; (3) the identity of the victim; (4) the similarity of the acts performed; (5) whether the conduct occurred in the same location; and (6) the prosecutorial intent, as shown by the wording of the charging instrument.” *People v. Sienkiewicz*, 208 Ill. 2d 1, 7 (2003).

Our supreme court has cautioned against heavy reliance on the above-cited factors and advocates the application of the *King* doctrine as the guiding principle on this issue. *Sienkiewicz*, 208 Ill. 2d 1. However, the supreme court acknowledged the utility of the test and employed it in *Sienkiewicz*, 208 Ill. 2d 1.

¶ 18 In the case at bar, the offenses, as charged, involved different victims. Count I alleged that Horstmann alone was the victim of aggravated battery. After defendant initiated contact with Horstmann, the officers joined together to take defendant into custody and defendant subsequently resisted their efforts to restrain her. Count II required the State to prove defendant reacted with resistance when both officers, Horstmann and Hurley, later attempted to place defendant in custody after she initially struck Horstmann.

¶ 19 The officers' testimony established defendant's decision to strike Horstmann with her purse, as she was leaving the courtroom, was completed before defendant reacted to the officers' subsequent attempt to place her in custody by unlawfully struggling against both officers. Even

though the time interval between these acts was relatively short, it was sufficient to differentiate defendant's separate acts, directed at different individuals, and supporting multiple convictions in this case. Therefore, we conclude defendant's convictions for aggravated battery and resisting a peace officer were based on separate acts and do not violate the one-act, one-crime rule.

¶ 20

CONCLUSION

¶ 21 For the foregoing reasons, the judgment of the circuit court of Kankakee County is affirmed.

¶ 22 Affirmed.