

No. 1-12-2690

**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).

---

IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

---

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 10 CR 19336
	)	
GUY ODOM,	)	Honorable
	)	James M. Obbish,
Defendant-Appellant.	)	Judge Presiding.

---

JUSTICE PUCINSKI delivered the judgment of the court.  
Presiding Justice Hyman and Justice Mason concurred in the judgment.

**ORDER**

¶ 1 *Held:* Defendant's conviction on one of two armed robbery counts must be vacated where only one act of robbery occurred via the taking of a store's property and nothing was taken from any person present, and the evidence supported convictions of both armed robbery and aggravated unlawful restraint as to the same victim.

¶ 2 Following a bench trial, defendant Guy Odom was convicted of two counts of armed robbery and three counts of aggravated unlawful restraint. Defendant was sentenced to 21 years on each armed robbery count and 5 years on each aggravated unlawful restraint count, with all of those sentences to run concurrently for a total sentence of 21 years in prison. On appeal,

defendant contends this court should vacate his convictions on one armed robbery count and one aggravated unlawful restraint count based on different applications of the one-act, one-crime rule. For the reasons set out below, we vacate one of defendant's armed robbery convictions and affirm his convictions on the remaining counts.

¶ 3 Defendant was arrested in connection with the October 18, 2010, robbery of a Family Dollar store at 63rd and Ashland in Chicago. At trial, Vincent Brown, the store manager, testified that at about 7:40 p.m., he was at the back of the store when he heard screams from store cashier Katrina Brown and heard a gunshot. As Vincent approached the checkout area, he observed three men wearing masks. A man in a green plaid jacket, who was later identified as defendant, was holding Katrina by the hair and telling her to stay still. A female customer, Shacori McDuffy, was lying on the floor.

¶ 4 Vincent testified that as he walked to the front of the store, one of the men said, "Hit the floor, lay on the ground," and Vincent complied. When the men asked Katrina to open the cash register, Vincent told them he was the store manager. The men told Vincent to open the register, which was five or six feet away from him. When Vincent walked to the register, one man stood near Katrina, one man stood in front of the register and one man went behind the counter to the register with Vincent. As Vincent opened the register, defendant was slapping McDuffy.

¶ 5 Vincent testified he was nervous and scared when trying to open the register. A man on the other side of the counter approached, pointed a gun at Vincent and told him he had a certain amount of time to open the register. Vincent opened the register, and defendant came around the counter and removed the money drawer from the register. Before the three men left the store, Vincent viewed defendant's face when defendant removed his mask in the store's vestibule.

Defendant wore a green jacket, and Vincent identified defendant in his green jacket sitting in a police car. The State played the store's surveillance video, and Vincent described various points to the court. Vincent identified defendant in court as the offender who wore the green jacket during the robbery.

¶ 6 Katrina Brown testified that three men entered the store, and one man wore a black mask and bandana and a black hoodie. The other two men wore a tan jacket and a plaid jacket.

Defendant, who wore the plaid jacket, announced it was a robbery. Defendant grabbed her by the hair and threw her on the floor, saying this was serious and he would kill her. Another man fired a weapon into the air. Defendant told Katrina to open the register, and she responded she could not open it because she was not the manager. Vincent came to the front of the store and opened the register. McDuffy, the store customer, testified the robber wearing the green plaid jacket pulled her by the hair and threw her to the floor, where she remained until the robbers left the store.

¶ 7 Chicago police officer Miguel Deltoro testified he was on a routine patrol in a police car when a bus driver stopped and notified him and his partner of a robbery in progress at the Family Dollar store. When the officers arrived at the store, they observed defendant walking out of the store with a cash register tray. Defendant dropped the tray and ran but was apprehended a few blocks away.

¶ 8 Defendant testified he was waiting at the bus stop at 63rd and Ashland on the night in question and did not go inside the Family Dollar store. Defendant said he ran from the bus stop after hearing a gunshot and was chased and caught by police. Defendant said he wore a green plaid jacket that night.

¶ 9 The trial court found defendant guilty of the armed robbery of Vincent and Katrina and of the aggravated unlawful restraint of Vincent, Katrina and McDuffy. The court stated the evidence was "overwhelming" and noted the surveillance video depiction of one of the offenders shooting a gun in the air and pointing the gun at Vincent's head as Vincent opened the cash register. The video then showed defendant taking the cash drawer. The court found defendant not guilty of armed robbery as to McDuffy.

¶ 10 On appeal, defendant contends this court should vacate his conviction for the armed robbery of Katrina because he only committed a single act of armed robbery when he threatened Vincent and made him open the cash register. Additionally, defendant asserts his conviction for the aggravated unlawful restraint of Vincent should be vacated because the detention of a victim is inherent in the act of armed robbery and he cannot be convicted of both the restraint crime and of armed robbery.

¶ 11 As a threshold matter, defendant acknowledges he failed to raise these issues in the trial court. However, we agree that his claims can be reviewed under the plain error doctrine, which allows this court to address defects that implicate substantial rights if (1) the evidence is closely balanced or (2) fundamental fairness requires review. See *People v. Sargent*, 239 Ill 2d 166, 188-89 (2010). The second prong of plain error has been invoked in cases involving the one-act, one-crime rule because an additional conviction affects the integrity of the judicial process. *People v. Nunez*, 236 Ill. 2d 488, 493 (2010). Therefore, we may consider defendant's claims that his convictions on two counts must be vacated.

¶ 12 Defendant challenges two convictions based on the one-act, one-crime doctrine. The one-act, one-crime rule provides that a defendant cannot be convicted of more than one offense

that is carved from the same physical act. *People v. King*, 66 Ill. 2d 551, 566 (1977). When a defendant is convicted of more than one crime arising out of the same act, a court must vacate all of the convictions except for the most serious one. *Id.*

¶ 13 First, defendant contends that his conviction for the armed robbery of Katrina must be vacated because he committed the single act of robbing the store by forcing Vincent to open the cash register. He argues that the presence of more than one person during the robbery does not support convictions on multiple counts where only the store's property was taken.

¶ 14 A person commits armed robbery when he knowingly takes property from the person or presence of another by the use of force or by threatening the imminent use of force while carrying or armed with a firearm. 720 ILCS 5/18-1 (West 2010); 720 ILCS 5/18-2(2) (West 2010). The State concedes that no property was taken from Katrina but fails to address defendant's contention that only one conviction for armed robbery can be sustained because property was only taken from the store and not from any person. Instead, the State contends the armed robbery conviction as to Katrina should be reduced to attempted armed robbery because the offenders demanded that she open the cash register before Vincent came to the front of the store.

¶ 15 We find the authority relied upon by defendant to be dispositive of this issue. Defendant cites *People v. Mack*, 105 Ill. 2d 103, 134-35 (1984), *vacated on other grounds*, 479 U.S. 1074 (1987), in which the defendant successfully contended he could not be convicted of two counts of armed robbery as to a bank's security guard and the bank's loan officer when the only taking of money was from the bank teller's cages. *Id.* The supreme court distinguished the facts in *Mack* from cases involving the taking of property from multiple victims, and the court noted and

agreed with several appellate decisions where all but one armed robbery count was vacated when the only property taken was that belonging to the store, even though the robbery occurred in the presence of several people. *Id.* at 135-36; see also *People v. Moore*, 214 Ill. App. 3d 938, 944-45 (1991) (vacating all but two armed robbery convictions where defendant pled guilty to robbing two businesses with two complaining witnesses in each business); *People v. Hunter*, 42 Ill. App. 3d 947, 951 (1976) (two counts of armed robbery could not stand where defendant robbed cash register of restaurant in presence of two people and did not take additional property from either person); cf. *People v. Crespo*, 118 Ill. App. 3d 815, 817-18 (1983) (two counts of armed robbery upheld where the robbers took property from both the tavern's cash register and a tavern customer). Here, as in those cases, only the property of the Family Dollar store was taken; no money or valuables were taken from the victims personally. Accordingly, because only one armed robbery conviction can stand, we vacate defendant's armed robbery conviction as to Katrina.

¶ 16 Defendant also contends this court should vacate his conviction for the aggravated unlawful restraint of Vincent under the one-act, one-crime doctrine. He asserts that offense involves the knowing detention of a person, which is inherent in many other criminal offenses including armed robbery. Therefore, defendant contends, he cannot be convicted both of armed robbery and of aggravated unlawful restraint as to Vincent based on the same physical act.

¶ 17 As noted previously, a person commits armed robbery when he knowingly takes property from the person or presence of another by the use of force or by threatening the imminent use of force while carrying or armed with a firearm. 720 ILCS 5/18-1 (West 2010); 720 ILCS 5/18-2(2) (West 2010). A person commits aggravated unlawful restraint when he knowingly and

without legal authority detains another person while using a deadly weapon. 720 ILCS 5/10-3.1 (West 2002).

¶ 18 In determining whether the one-act, one-crime rule has been violated, this court must undertake a two-step process. First, the court must determine whether the defendant's conduct consisted of multiple acts or a single act, since one physical act cannot be the basis for multiple convictions. *People v. Miller*, 238 Ill. 2d 161, 165 (2010). For purposes of the one-act, one-crime rule, a single act is any overt or outward manifestation that will support a different offense. *King*, 66 Ill. 2d at 566. When a defendant's conduct involved multiple acts, this court must determine whether any of the offenses are lesser-included offenses, as a conviction for a lesser-included offense and a greater offense as to the same victim is improper. *Miller*, 238 Ill. 2d at 165.

¶ 19 Vincent testified that he heard screaming and a gunshot before he approached the front of the store. One of the offenders told him to lie on the ground, and Vincent testified that he complied. Vincent was then ordered to open the cash register after he announced he was the store manager. While Vincent opened the register, one man pointed a gun at him and urged him to hurry, and defendant approached Vincent and removed the cash drawer. The conduct of defendant and his accomplices therefore consisted of multiple acts. Even though the offense of unlawful restraint is often committed in conjunction with other offenses, it is punishable as a separate crime if the restraint is independent of the other offenses and arose out of a separate act. *People v. Alvarado*, 235 Ill. App 3d 116, 117 (1992).

¶ 20 As to the second part of the one-act, one-crime analysis, where multiple acts are found, it must be decided if either armed robbery or aggravated unlawful restraint is a lesser-included

offense of the other. This court has held that unlawful restraint is not a lesser-included offense of armed robbery because the two crimes require proof of different elements. *Crespo*, 118 Ill. App. 3d at 823 (unlawful restraint involves an act of detention, while armed robbery involves the taking of property by force or threat or force).

¶ 21 We also agree with the State's reliance on *Crespo*, because its facts are comparable to those here. In *Crespo*, the defendant forced customers of a tavern to lie on the floor while an accomplice held a tavern employee at knife-point while he took money and jewelry from the cash register. *Id.* at 816-17. Affirming the defendant's convictions for both armed robbery and unlawful restraint, this court observed that the restraint of the employees was not necessary for the commission of the armed robbery, even though it may have been done to facilitate the crime. *Id.* at 823-24.

¶ 22 Defendant compares the facts here to those in *People v. Lee*, 376 Ill. App 3d 951, 956-57 (2007), in which this court accepted the State's concession that the defendant's conviction for aggravated unlawful restraint was carved from the same physical act on which his armed robbery conviction was based. In *Lee*, the defendant approached a man, his wife and their son as they left a liquor store after using an automated teller machine within the store. *Id.* at 953. The defendant demanded money as he stood behind the male victim. *Id.* The man gave \$10 to the defendant, who asked for all of his cash and left after receiving it. *Id.* Here, in contrast to the circumstances in *Lee*, the testimony described individual acts to support the offenses of armed robbery and aggravated unlawful restraint as to Vincent. Vincent was ordered to lie on the floor and, in a different action, was ordered to open the cash register. Therefore, we affirm defendant's conviction for the aggravated unlawful restraint of Vincent.

1-12-2690

¶ 23 In conclusion, defendant's conviction for the armed robbery of Katrina is vacated.

Defendant's remaining convictions are affirmed. We note that defendant's sentence is unaffected by this holding, as defendant's armed robbery sentences were ordered to be served concurrently.

¶ 24 Affirmed in part; vacated in part.