SIXTH DIVISION
June 26, 2015

No. 1-12-2317

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. 05 CR 18154
	)	
ASUQUO ESANG,	)	Honorable
	)	Nicholas Ford
Defendant-Appellant.	)	Judge Presiding.

JUSTICE ROCHFORD delivered the judgment of the court.
Presiding Justice Hoffman and Justice Hall concurred in the judgment.

ORDER

¶ 1 *Held*: Defendant's conviction for aggravated battery is affirmed, where defendant did not demonstrate he was prejudiced by the State's purportedly improper impeachment or the purported failure of the trial court to properly respond to the jury's questions; however, defendant's conviction for resisting or obstructing a police officer is vacated under one-act, one-crime principles.

¶ 2 After a jury trial, defendant-appellant, Asuquo Esang, was convicted of aggravated battery and resisting or obstructing a police officer. He was then sentenced to concurrent terms of two years' imprisonment. On appeal, defendant contends that he is entitled to a new trial due to the State's improper impeachment of defendant's trial testimony and the trial court's improper response to the jury's questions, and, alternatively, his conviction for resisting or obstructing a

police officer must be vacated under one-act, one-crime principles. While we vacate defendant's conviction for resisting or obstructing a police officer, we otherwise affirm.

¶ 3 I. BACKGROUND

¶ 4 Defendant was charged by indictment with aggravated battery and resisting or obstructing a police officer. The counts contained in the indictment generally alleged that, on July 21, 2005, defendant injured Scott Hunter, a Cook County deputy sheriff, while defendant "struck and kicked and scratched" the deputy.

¶ 5 Following defendant's indictment, concerns regarding defendant's fitness to stand trial arose. Defendant underwent a number of clinical evaluations, was initially found fit, then found unfit, and then returned to fitness. A jury trial commenced in June of 2007, at which defendant represented himself. Defendant was found guilty of one count of aggravated battery and one count of resisting or obstructing a peace officer. The trial court sentenced him to a two-year term of imprisonment for each count, to be served concurrently. Defendant appealed, and this court reversed and remanded the matter to the trial court after concluding that the hearing that restored defendant to fitness was insufficient. *People v. Esang*, 396 Ill. App. 3d 833, 841 (2009).

¶ 6 Upon remand, defendant was again found fit to stand trial following a new fitness hearing, a determination not challenged on appeal. This matter then proceeded to a second jury trial in June of 2012.

¶ 7 At trial, the State presented the testimony of Deputy Phillip Mackey, Sergeant Bennedicto Carandang, and Deputy Scott Hunter. Deputy Mackey testified that he was a Cook County Sheriff employee, and on July 21, 2005, he was assigned to the Daley Center in Chicago and dressed in full uniform. He first observed defendant on the fourth floor after responding to a radio call that someone needed to be removed from the building. Defendant was upset,

screaming, and yelling at the deputies on the scene. Sergeant Carandang was called to the scene, and ordered defendant to be escorted out of the building. Defendant refused to leave, even after being told he would be placed under arrest. Defendant, who was estimated to weigh 350 pounds at the time, then violently and physically attempted to resist his arrest. Defendant was striking and kicking at Deputy Mackey, Sergeant Carandang, and other deputies. This resistance continued as defendant was finally escorted into an elevator, transported to the concourse level to a security area, placed in handcuffs, and then placed in a lockup. Deputy Mackey thereafter escorted defendant to the hospital, where he refused any treatment.

¶ 8 Sergeant Carandang, also an employee of the Cook County Sheriff assigned to the Daley Center and in full uniform on the date of the incident, provided testimony that was largely consistent with Deputy Mackey's. Sergeant Carandang specifically testified that defendant was constantly swearing and refused to leave. Defendant also physically resisted his arrest, exhibiting incredible strength while physically kicking and striking the deputies present. Defendant was not subdued and handcuffed until he was brought to the concourse level and additional deputies, including Deputy Hunter, provided assistance. Sergeant Carandang testified that Deputy Hunter's leg was injured during the incident, and his pants were ripped.

¶ 9 Deputy Hunter testified that he was a Cook County Sheriff employee assigned to the Daley Center's concourse-level lockup on the date of the incident. He was in full uniform. He responded to the commotion when the elevator reached the concourse level and assisted other deputies and Sergeant Carandang in subduing defendant. Defendant was swearing, punching, and kicking, and Deputy Hunter was knocked to the ground during the struggle. Defendant was ultimately secured by three sets of handcuffs and placed in the lockup. Deputy Hunter then

realized that his pants were ripped and he was bleeding from his leg. Deputy Hunter was subsequently treated for minor injuries at the hospital.

¶ 10 The State also introduced into evidence four photos, one each showing the elevator in the Daley Center where the altercation took place, the security area on the concourse level, the tear to Deputy Hunter's pants, and the injury to Deputy Hunter's leg.

¶ 11 Defendant testified at trial that on July 21, 2005, he was a documentary journalist working for Outspoken Corporation, a company that would do independent reporting and then sell those stories to other news organizations such as the Chicago Tribune and the Chicago Sun-Times. Defendant asserted that he was at the Daley Center investigating an increase in filing fees. He was on the fourth floor attempting to obtain a file to review when he was asked to leave by a deputy. Defendant testified that he attempted to discuss this request with that deputy, during which time he was not yelling or cursing. Defendant thereafter agreed to leave, walked to an elevator, and waited for it to arrive on the fourth floor. Defendant then observed Sergeant Carandang and Deputy Mackey. Sergeant Carandang informed defendant that he was under arrest. When defendant thereafter took a step into the elevator, Deputy Mackey placed defendant in a chokehold and he fell to the floor of the elevator.

¶ 12 Defendant testified that he thereafter went into a diabetic seizure and ultimately lost consciousness, at least partially. When defendant regained consciousness, he observed that he was in a holding cell and Deputy Mackey was urinating on him. After a lieutenant ordered Deputy Mackey to stop, defendant was taken to the hospital. He was accompanied by Deputy Mackey.

¶ 13 During his direct examination, defendant denied ever yelling, swearing, kicking or striking anyone at the Daley Center. When specifically asked by his defense counsel if he

punched anyone on the date of his arrest, defendant responded: "I never punched. Against my profession as a code of conduct. I don't have any criminal record. I never engaged in any criminal record."

¶ 14 Defendant was then subjected to cross-examination by the State. During the course of that cross-examination, the State asked defendant if he had been arrested on a number of prior occasions for the offenses of battery, disorderly conduct, assault and aggravated assault, and breach of the peace. Defendant either explicitly denied he was ever arrested for such offenses or contended he had no memory of any such arrests. In addition, defendant could not remember the name of his supervisor at Outspoken Corporation, and refused to answer whether or not he had ever published any work with news organizations such as the Chicago Tribune or the Chicago Sun-Times.

¶ 15 After the conclusion of all the evidence and closing arguments, the jury retired to deliberate. During the course of its deliberations, the jury sent out a note indicating that they had two questions: "1. What is the difference between battery and aggravated battery? [and] 2. If we feel the defendant was engaged in self-defense, does that excuse him from aggravated battery?" Without objection, the trial court responded in the following manner: "Regarding both questions[,] please re-review all the instructions and continue to deliberate."

¶ 16 The jury thereafter returned its verdict, and defendant was again found guilty of one count of aggravated battery and one count of resisting or obstructing a peace officer. Defendant's posttrial motion was denied, and the trial court sentenced him to a two-year term of imprisonment for each count, to be served concurrently. Defendant's motion to reconsider his sentence was denied, and he timely appealed.

¶ 17 II. ANALYSIS

¶ 18 Defendant raises a number of issues on appeal, and we address each in turn.

¶ 19 A. Improper Impeachment

¶ 20 We first address defendant's contention that he was prejudiced by the State's purportedly improper impeachment. Defendant initially contends that the State was improperly allowed to cross-examine him regarding his prior arrests, because defendant's direct examination at trial did not "open the door" to such questioning.

¶ 21 In criminal proceedings, a defendant's prior convictions are "generally inadmissible to demonstrate propensity to commit the charged crime." *People v. Donoho*, 204 Ill. 2d 159, 170 (2003); *People v. Naylor*, 229 Ill. 2d 584, 594 (2008) ("the record of the defendant's prior conviction is not introduced, and cannot be considered, for the purpose of proving the defendant's guilt or innocence of the charged offense"). In some circumstances, however, prior convictions may be admissible for impeachment purposes to attack a witness' credibility. *People v. Mullins*, 242 Ill. 2d 1, 14 (2011); *Naylor*, 229 Ill. 2d at 594. Thus, it has long been recognized that where a defendant "opens the door" to prior convictions during his direct examination, it is not improper to cross-examine that defendant regarding his prior convictions. *People v. Coleman*, 158 Ill. 2d 319, 337 (1994); *People v. Kellas*, 72 Ill. App. 3d 445, 452 (1979). As such, it is "settled that a prosecutor may cross-examine a witness regarding his prior convictions where the witness 'opens the door' by testifying on direct examination regarding some aspect of his criminal record." *People v. Bunch*, 159 Ill. App. 3d 494, 513 (1987). In addition, it has also long been recognized that where a witness affirmatively states that he has never been arrested, the State may then cross-examine regarding any prior arrests. *People v. Valentine*, 299 Ill. App. 3d 1, 4 (1998); *People v. Brown*, 61 Ill. App. 3d 180, 184 (1978); *People v. Johnson*, 42 Ill. App. 3d 194, 198 (1976).

¶ 22 Here, defense counsel asked defendant on direct examination if he punched anyone on the date of his arrest. Defendant responded by stating: "I never punched. Against my profession as a code of conduct. I don't have any criminal record. I never engaged in any criminal record." Defendant contends that these statements did not open the door to the State's cross-examination regarding his prior arrests, because defendant did not specifically or affirmatively state that he had never been arrested. Defendant contends that the line of cases allowing cross-examination regarding prior arrests—cited above—requires such an affirmative statement by a defendant. We disagree.

¶ 23 First, we acknowledge that in the cases cited above, the recognition of the State's right to cross-examine regarding prior arrests was occasioned by the defendant's specific, affirmative statements regarding the absence of prior arrests. *Valentine*, 299 Ill. App. 3d at 3; *Brown*, 61 Ill. App. 3d at 182; *Johnson*, 42 Ill. App. 3d at 198. However, none of those decisions indicated that such specific, affirmative statements would be *required*. Our supreme court has recognized that cross-examination regarding prior convictions is permissible where a defendant merely *implies* the absence of such prior convictions. *People v. Bey*, 42 Ill. 2d 139, 147 (1969) (recognizing State's right to cross-examine defendant regarding prior conviction, because "[e]ven though he did not affirmatively state that no other convictions existed, it probably may fairly be said that he hoped the jury might infer that was his only conviction of an infamous crime, for testimony as to one conviction seemingly implies the absence of others"). We fail to see why improper, incorrect implications regarding a defendant's prior convictions should be subject to cross-examination, but cross-examination should be denied in the face of similar implications regarding prior arrests.

¶ 24 Even if such affirmative statements are required, we reject defendant's contention that he made no such statement. On appeal, defendant contends he merely stated below that "he did not have a criminal record, a statement commonly understood to indicate that he had never been convicted." We reject this interpretation, as defendant's reference to his lack of "*any* criminal record" (emphasis added) was broad enough to include both arrests and convictions.

¶ 25 In fact, this was the very conclusion reached by the trial court. In denying defendant's motion for a mistrial, the trial court specifically noted that defendant had stated that he did not have "any criminal record." With respect to that comment, the trial court concluded: "What it did in my view was [leave] the impression that he never had any contact with the police, which is absolutely untrue and rebutted by the many, many arrests he has had ***." Our supreme court has recognized that a reviewing court "gives great deference to the trial court's interpretation of a witness's testimony." *People v. Harris*, 231 Ill. 2d 582, 590 (2008). Indeed, in *Harris*, our supreme court affirmed the trial court's decision to allow the State to cross-examine a defendant regarding his prior juvenile adjudications in light of the supreme court's conclusion that it had "no basis for disturbing the trial court's conclusion that defendant was attempting to mislead the jury, as it was in a far better position than we are to assess the meaning of defendant's testimony." (Emphasis in original.) *Id*. at 591.

¶ 26 We will not disturb the conclusion of the trial court, and in further support of the trial court's conclusion we note that Section 2630/2.1 of the Criminal Identification Act provides:

> "For the purpose of maintaining complete and accurate *criminal records* of the Department of State Police, it is necessary for all policing bodies of this State, the clerk of the circuit court, the Illinois Department of Corrections, the sheriff of each county, and State's Attorney of each county to submit certain criminal *arrest*, charge, and disposition

information to the Department for filing at the earliest time possible." (Emphasis added.) 20 ILCS 2630/2.1 (2014).

The Criminal Identification Act also contains provisions for expunging or sealing the record of certain *arrests* from such "criminal records." 20 ILCS 2630/5.2 (2014). Thus, the statutes of this state themselves reflect the trial court's understanding that a criminal record can contain records of arrests.

¶ 27 Ultimately, "the latitude to be allowed on cross-examination and rebuttal is a matter within the sound discretion of the trial court, and a reviewing court should not interfere unless there has been a clear abuse of discretion." *Id.* In light of the above discussion, we reject defendant's contention that the trial court improperly allowed the State to cross-examine him regarding his prior arrests.

¶ 28 However, defendant also complains that the State failed to perfect its impeachment of his testimony with respect to those prior arrests. With this argument, we must agree. The record reflects that while the State asked defendant about his prior arrest record, and defendant repeatedly denied that he had been subject to the arrests described by the State in its questioning, the State never introduced evidence actually establishing defendant's prior record of arrests. This was error. *People v. Robinson*, 221 Ill. App. 3d 1045, 1051 (1991) (noting that it is improper for the prosecution to make an unsupported insinuation on cross-examination without producing supporting evidence).

¶ 29 However, in order for a failure to complete impeachment to rise to the level of reversible error, the unfounded insinuation must be "substantial, repeated and definitely prejudicial." *People v. Jurczak*, 147 Ill. App. 3d 206, 217 (1986); *People v. Redman*, 135 Ill. App. 3d 534, 542 (1985). This standard cannot be met here.

¶ 30 As an initial matter, we note that the exhibits entered into evidence below–which were comprised of the photos of the elevator, the security area of the concourse level, the tear to Deputy Hunter's pants, and the injury to Deputy Hunter's leg–have not been included in the record on appeal. As the appellant in this matter, defendant had the burden to present a sufficiently complete record of the proceedings at trial, and any doubts which may arise from the incompleteness of the record will be resolved against him. *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391-92 (1984); see also *People v. Fair*, 193 Ill. 2d 256, 264 (2000) (applying *Foutch* in the context of a criminal appeal). Because a review of all the evidence produced at trial is impossible in light of the incomplete record on appeal, we must resolve against defendant any doubt with respect to any possible prejudice occasioned by the State's failure to perfect its impeachment.

¶ 31 Incompleteness of the record aside, we further note that the State asked defendant about each of his prior arrests a single time, never returned to the issue during its cross-examination, and never even mentioned—let alone relied upon—defendant's prior arrests during its closing arguments. The trial court also specifically instructed the jury—during the State's cross-examination of defendant—that any evidence of defendant's prior arrests was only admitted for purposes of challenging defendant's veracity, and could not be considered as evidence that he committed the offenses charged in this matter. The oral and written instructions provided to the jury included Illinois Pattern Jury Instruction, Criminal, No. 1.01 (4th ed. 2000), which further instructed the jury that "[a]ny evidence that was received for a limited purpose should not be considered by you for any other purpose."

¶ 32 In addition, the State presented clear, consistent testimony from three witnesses and photographic evidence, all tending to show that Deputy Hunter was injured after defendant

became belligerent, was ordered to and refused to leave the Daley Center, violently resisted his subsequent arrest, and was taken to the hospital but refused treatment. Defendant countered the State's evidence with nothing but his own, wholly incredible testimony that he: (1) was not belligerent before he was asked to leave; (2) agreed to leave and attempted to do so peacefully; (3) was nevertheless placed in a chokehold by sheriffs as he waited for an elevator, causing him to go into a seizure and lose consciousness; (4) returned to consciousness just as Deputy Mackey was urinating on him; (5) was nevertheless accompanied to the hospital by Deputy Mackey after the officer was ordered to stop urinating on defendant by a lieutenant; (6) never informed paramedics that a deputy had urinated on him, because he was never asked that question; and (7) did not refuse treatment at the hospital, but failed to receive any treatment there because "Mackey was following me around [and] harassing [me.]" On this record, we conclude that defendant was convicted upon the strength of the State's properly introduced evidence and the weakness and inherent implausibility of defendant's own testimony regarding the events at the Daley Center, and not due to any substantial, repeated and definitely prejudicial effect of the State's failure to perfect its impeachment.

¶ 33 B. Jury Questions

¶ 34 Defendant next asserts that he is entitled to a new trial because the trial court improperly responded to the two questions asked by the jury. We disagree.

¶ 35 After retiring to deliberate, the jury sent out a note containing the following two questions: "1. What is the difference between battery and aggravated battery? [and] 2. If we feel the defendant was engaged in self-defense, does that excuse him from aggravated battery?" With both the State and defendant indicating no objection thereto, the trial court responded to the jury's note with the following additional instruction: "Regarding both questions[,] please re-

review all the instructions and continue to deliberate." Defendant never offered an alternative instruction, and did not include this issue in his posttrial motion.

¶ 36 Recognizing his failure to preserve this issue below, defendant asks this court to review it for plain error. However, our supreme court has consistently recognized that "a defendant will be deemed to have procedurally defaulted his right to obtain review of any supposed jury instruction error if he failed to object to the instruction or offer an alternative at trial and did not raise the issue in a posttrial motion." *People v. Sargent*, 239 Ill. 2d 166, 188-89 (2010) (citing *People v. Piatkowski*, 225 Ill. 2d 551, 564 (2007)). Indeed, under the doctrine of invited error, a defendant may not request or agree to a trial court's response to a jury's question, and then later contend on appeal that the instruction was given in error. *People v. Halerewicz*, 2013 IL App (4th) 120388, ¶ 23; *People v. Curry*, 2013 IL App (4th) 120724, ¶ 88; *People v. Pryor*, 372 Ill.App.3d 422, 432 (2007); *People v. Smith*, 71 Ill.2d 95, 104-05 (1978).

¶ 37 Such invitation or agreement to a procedure later challenged on appeal goes beyond simple procedural default; it becomes a matter of estoppel. *People v. Harvey*, 211 Ill. 2d 368, 385 (2004) (citing *People v Villarreal*, 198 Ill. 2d 209, 227); see also *Pryor*, 372 Ill. App. 3d 422, 432 ("To allow a defendant to object, on appeal, to the trial court's response to the jury's question that he agreed to at trial would offend all notions of fair play."). Therefore, such issues may not even be reviewed for plain error on appeal. *People v. Bowens*, 407 Ill. App. 3d 1094, 1101 (2011) (noting that plain-error analysis applies to cases involving procedural default, not affirmative acquiescence, and that in a situation where "defense counsel affirmatively acquiesces to actions taken by the trial court, a defendant's only challenge may be presented as a claim for ineffective assistance of counsel"); *People v. Patrick*, 233 Ill. 2d 62, 77 (2009) (refusing to

address assertion of plain error with respect to jury instruction where defendant invited any possible error).

¶ 38 Here, it is evident that defendant not only failed to object to the trial court's response to the jury's questions or include the issue in his posttrial motion, his defense counsel affirmatively indicated that there was no objection to that instruction. "Thus, defense counsel affirmatively acquiesced to the court's instruction, and under the invited error doctrine, defendant cannot object to the instruction on appeal." *Curry*, 2013 IL App (4th) 120724, ¶ 88. We, therefore, refuse defendant's request that the trial court's response to the jury's question in this case be reviewed for plain error.

¶ 39 Defendant alternatively contends that his trial counsel's failure to object to the trial court's response to the jury's questions amounted to ineffective assistance of counsel.

¶ 40 A claim of ineffective assistance of counsel is judged according to the two-prong test established in *Strickland v. Washington*, 466 U.S. 668 (1984). See *People v. Lawton*, 212 Ill. 2d 285, 302 (2004). In order to obtain relief under *Strickland*, a defendant must prove defense counsel's performance fell below an objective standard of reasonableness and that this substandard performance caused defendant prejudice by creating a reasonable probability that, but for counsel's errors, the trial result would have been different. *People v. Wheeler*, 401 Ill. App. 3d 304, 313 (2010). The defendant must establish both prongs of this two-part test (*People v. Edwards*, 195 Ill. 2d 142, 163 (2001)), and the defendant bears the burden of demonstrating he received ineffective assistance of counsel (*People v. Valladares*, 2013 IL App (1st) 112010, ¶ 52).

¶ 41 Here, the sole support for this contention in defendant's initial brief is a one-sentence assertion that "the failure to object to the circuit court's lack of response was ineffective

assistance of counsel" and a citation to a decision from our supreme court recognizing that an otherwise unpreserved claim that trial counsel improperly failed to object to *trial testimony* may be reviewed for potential ineffective assistance of counsel. See *People v. Eddmonds*, 101 Ill. 2d 44, 65 (1984). Defendant made no effort to apply the above referenced two-part test or meet his burden to demonstrate he received ineffective assistance of counsel.

¶ 42 Supreme Court Rule 341(h)(7), provides that parties waive any points not argued on appeal. Ill. S. Ct. R. 341(h)(7) (eff. Feb. 6, 2013). Moreover, a "reviewing court is entitled to have the issues clearly defined with pertinent authority cited and is not simply a depository into which the appealing party may dump the burden of argument and research." *People v. Hood*, 210 Ill. App. 3d 743, 746 (1991). In light of defendant's failure to even attempt to meet his burden of demonstrating that he received ineffective assistance of counsel, we find that he has waived any such challenge and we will not further address this issue on appeal.

¶ 43 C. One-Act, One-Crime

¶ 44 Finally, we address defendant's contention that his conviction and sentence for resisting or obstructing a police officer must be vacated on the grounds that it violates the one-act, one-crime doctrine.

¶ 45 As an initial matter, we note that defendant never raised this argument in the trial court. However, we will review defendant's contentions on this issue, as "a violation of the one-act, one-crime doctrine affects the integrity of the judicial process, thus satisfying the second prong of the plain-error analysis." *People v. Span*, 2011 IL App (1st) 083037, ¶ 81. One-act, one-crime challenges are reviewed *de novo*. *People v. Stanford*, 2011 IL App (2d) 090420, ¶ 33.

¶ 46 In *People v. King*, 66 Ill. 2d 551 (1977), our supreme court set forth what has since come to be known as the one-act, one-crime doctrine. As originally formulated, that doctrine

concerned the potential for prejudice in the imposition of multiple convictions, and specifically provided that "[p]rejudice results to the defendant only in those instances where more than one offense is carved from the same physical act. Prejudice, with regard to multiple acts, exists only when the defendant is convicted of more than one offense, some of which are, by definition, lesser included offenses." *Id*. at 566.

¶ 47 As our supreme court has more recently noted that "[d]ecisions following *King* have explained that the one-act, one-crime doctrine involves a two-step analysis. [Citation.] First, the court must determine whether the defendant's conduct involved multiple acts or a single act. Multiple convictions are improper if they are based on precisely the same physical act. Second, if the conduct involved multiple acts, the court must determine whether any of the offenses are lesser-included offenses. If an offense is a lesser-included offense, multiple convictions are improper." *People v. Miller*, 238 Ill. 2d 161, 165 (2010). When "multiple convictions are obtained for offenses arising from a single act, a sentence should be imposed on the more serious offense, and the conviction on the less serious offense should be vacated." *People v. Lee*, 213 Ill. 2d 218, 227 (2004) (citing *People v. Garcia*, 179 Ill. 2d 55, 71 (1997)).

¶ 48 The State concedes this issue on appeal, and we agree that defendant's conviction for resisting or obstructing a police officer does violate the one-act, one-crime doctrine in that both that conviction and defendant's conviction for aggravated battery each arise out of the same act: *i.e.*, injuring Deputy Hunter while defendant "struck and kicked and scratched" the deputy. Compare 720 ILCS 5/12-4(b)(6) (West 2004), with 720 ILCS 5/31-1(a-7) (West 2004). We further note that that State made no attempt to differentiate or apportion defendant's strikes, kicks or scratches—either in the indictment or at trial—and the State therefore simply chose to prosecute defendant for "the same conduct under different theories of criminal culpability."

People v. Crespo, 203 Ill. 2d 335, 342 (2001). Under such circumstances, multiple convictions and sentences arising out of such arguably separate acts cannot stand. *Id*. at 345; *People v. Keefer*, 229 Ill. App. 3d 582, 584 (1992).

¶ 49 Moreover, while aggravated battery (as charged) is a Class 3 felony (720 ILCS 5/12-4(b)(6), 4(e) (West 2004)), punishable by a term of two to five years' imprisonment (730 ILCS 5/5-8-1(a)(6) (West 2004)), resisting or obstructing a police officer (as charged) is a Class 4 felony (720 ILCS 5/31-1(a-7) (West 2004)), punishable by a term of only one to three years' imprisonment (730 ILCS 5/5-8-1(a)(7) (West 2004)). Pursuant to the principles of the one-act, one-crime doctrine, defendant's conviction and sentence for the less serious offense of resisting or obstructing a police officer are vacated.

¶ 50 III. CONCLUSION

¶ 51 For the foregoing reasons, we affirm defendant's conviction and sentence for aggravated battery, and vacate his conviction and sentence for resisting or obstructing a police officer.

¶ 52 Affirmed in part; vacated in part.