

No. 1-13-0994

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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. 11 CR 15166
)	
TERRENCE WILLIAMS,)	Honorable
)	James B. Linn,
Defendant-Appellant.)	Judge Presiding.

PRESIDING JUSTICE FITZGERALD SMITH delivered the judgment of the court.
Justices Howse and Ellis concurred in the judgment.

O R D E R

¶ 1 *Held:* We vacate defendant's unlawful restraint conviction under the one-act, one-crime rule where it was based on the same act as his conviction for aggravated vehicular hijacking.

¶ 2 Following a bench trial, defendant Terrence Williams was convicted of aggravated vehicular hijacking with a dangerous weapon other than a firearm and unlawful restraint, and sentenced to 15 years' imprisonment for aggravated vehicular hijacking and a concurrent 3-year term for unlawful restraint. On appeal, defendant only contends that his conviction for unlawful

restraint should be vacated under the one-act, one-crime rule because it was based on the same physical act as his aggravated vehicular hijacking conviction.

¶ 3 Defendant and codefendant Donte Ferguson¹ were charged, in pertinent part, with one count of aggravated vehicular hijacking in that on or about September 5, 2011, they “knowingly took a motor vehicle *** from the person or the immediate presence of [the victim], by the use of force or by threatening the imminent use of force, and they carried on or about their person, or were otherwise armed with a firearm” in violation of section 18-4(a)(4) of the Criminal Code of 1961 (Code) (720 ILCS 5/18-4(a)(4) (West 2010)). They were also charged with one count of aggravated unlawful restraint in that they “knowingly without legal authority detained [the victim] while using a deadly weapon, to wit: a firearm,” in violation of section 10-3.1 of the Code (720 ILCS 5/10-3.1 (West 2010)). Defendant and codefendant proceeded to a joint bench trial.

¶ 4 At trial, the victim, Juvenal Sepulveda, testified that he parked his silver Chevrolet Avalanche in an alley at 3400 West 54th Place at about 9:30 p.m. on September 5, 2011. As Sepulveda exited his car, defendant and codefendant approached him. Sepulveda stated that “one of them pulled out a gun, came up to me and start[ed] going through my pockets, and I heard him say ‘give me the *** keys, and he put the gun to my head.’” Sepulveda identified defendant as the offender who placed the gun to his head. Despite the fact that defendant kept the gun to Sepulveda’s head and continued asking for the keys, Sepulveda refused to turn them over. Defendant and codefendant pulled down Sepulveda's pants and took his keys. The offenders then got into Sepulveda's car and left the scene. Sepulveda ran to his brother's apartment and called

¹ Codefendant Ferguson has a separate appeal (No. 1-13-1319).

the police. When the police arrived about 15 minutes later, Sepulveda told them what happened and they took him to the intersection of Kedzie Avenue and Marquette Road where he saw his car, which was "crashed" and "completely destroyed," and the offenders. Sepulveda acknowledged that he initially told police that the taller offender had the gun, but explained that he said that because the person with the gun was closest to him and seemed taller. The court said it would "take note that Mr. Ferguson is taller than Mr. Williams."

¶ 5 Officer Jose Lule testified that he and his partner were on patrol when he received a flash message that a vehicular hijacking had occurred. As Lule traveled northbound on Kedzie Avenue toward Marquette Road, he observed a car matching the description he had just received traveling southbound with squad cars behind it. He also observed two occupants inside of the subject car. As the subject car approached Lule's vehicle, it turned east and immediately struck a traffic monitoring device and several other vehicles. Lule exited his car and identified the occupants of the subject car as defendant and codefendant. Lule's partner, as well as other officers who were on the scene, pursued defendant and codefendant, and then brought them back to the scene where they were taken into custody. Lule looked inside of the subject car and saw a loaded gun on the passenger's side floorboard. The victim identified defendant and codefendant at the scene as the individuals who took his car at gunpoint.

¶ 6 Following closing arguments, the trial court stated that "[t]here's no question that Mr. Sepulveda had his car hijacked and that the two offenders who were caught in the car trying to get away from the police[.]" The court also acknowledged that there was an issue regarding who had the gun during the incident, and noted that it was never fired but used as bludgeon. The court found both defendants guilty "of the lesser offense of aggravated vehicular hijacking without a

firearm with a dangerous weapon showing the gun used in the nature of a bludgeon in this case.”

The court also found them both guilty of unlawful restraint. Defendant was subsequently sentenced to 15 years’ imprisonment for aggravated vehicular hijacking with a dangerous weapon other than a firearm, and a concurrent term of 3 years for unlawful restraint.

¶ 7 On appeal, defendant contends that pursuant to the one-act, one-crime doctrine the trial court erred in convicting him of unlawful restraint because the conviction was based on the same physical act as his aggravated vehicular hijacking conviction. The State maintains that both convictions should stand because each conviction is supported by distinct acts.

¶ 8 Although defendant concedes that he waived this issue by failing to object to this error at trial, we review one-act, one-crime issues pursuant to the second prong of the plain error doctrine because the potential for an unwarranted conviction and sentence threatens the integrity of the judicial process. *People v. Nunez*, 236 Ill. 2d 488, 493 (2010).

¶ 9 We review *de novo* whether a defendant's convictions violate the one-act, one-crime doctrine. *People v. Johnson*, 237 Ill. 2d 81, 97 (2010). The one-act, one-crime doctrine involves a two-step analysis. *People v. Miller*, 238 Ill. 2d 161, 165 (2010). First, the court must determine whether the defendant's conduct constituted a single act or multiple acts. *Id.* The one-act, one-crime doctrine prohibits multiple convictions when they are carved from precisely the same physical act. *Id.* If the court determines that the defendant's conduct involved multiple acts, the court must then determine whether any of the offenses are lesser-included offenses. *Id.* If any of the offenses are lesser-included offenses, multiple convictions are improper. *Id.*

¶ 10 First, we must decide whether defendant's conduct consisted of a single physical act or separate acts. *People v. Harvey*, 211 Ill. 2d 368, 389 (2004). Defendant argues that his

convictions for aggravated vehicular hijacking and unlawful restraint were based on the same physical act, *i.e.*, pointing a gun at Sepulveda and demanding his car keys to effectuate the aggravated vehicular hijacking.

¶ 11 A person commits the offense of unlawful restraint when he knowingly without legal authority detains another. 720 ILCS 5/10-3 (West 2010). A person commits aggravated vehicular hijacking under section 18-4(a)(3) of the Code when he takes a motor vehicle from the person or the immediate presence of another by the use of force or by threatening the imminent use of force while carrying or armed with a dangerous weapon other than a firearm. 720 ILCS 5/18-4(a)(3) (West 2010).

¶ 12 "In determining whether a defendant committed a separate physical act of unlawful restraint, Illinois courts have looked at whether the restraint was 'independent' of the physical act underlying the offense [citations]; went 'further than' the restraint inherent in the other offense [citation]; or occurred simultaneously [citation]." *People v. Daniel*, 2014 IL App (1st) 121171, ¶ 51. "Nearly every offense against the person necessarily involves a degree of restraint; for example, a rape precludes mobility; and to take an extreme example, a homicide precludes mobility—a corpse cannot move from one place to another." *People v. Kuykendall*, 108 Ill. App. 3d 708, 710 (1982).

¶ 13 We find *Daniel*, 2014 IL App (1st) 121171, relied on by defendant, instructive to resolving the issue of whether the offenses at issue here involved the same or separate acts. In *Daniel*, the defendant was convicted of armed robbery and aggravated unlawful restraint following a jury trial. The evidence showed that the defendant robbed a store by demanding that the victim give him money from the cash register. He also had the victim crawl to the back of the

store while beating him, demanded the victim's wallet, and put a gun in the victim's mouth. Despite restraining the victim in this manner, we found there was no separate act of restraint from the armed robbery, noting that the restraint was inherent in the armed robbery. *Id.* at ¶¶ 54-55. This court specifically held that "defendant restrained [the victim] from the beginning until the end of the armed robbery—that is, from the moment he displayed a gun and demanded money, until the moment he took [the victim's] wallet and placed a gun in his mouth." *Id.* at ¶ 55. We thus vacated the defendant's aggravated unlawful restraint conviction where it rested on the same physical act as his armed robbery conviction. *Id.*; see also *People v. Lee*, 376 Ill. App. 3d 951 (2007) (vacating one of the defendant's convictions for aggravated unlawful restraint where the State conceded it was carved from the same physical act his armed robbery conviction); *People v. Banks*, 344 Ill. App. 3d 590, 596 (2003) (vacating the unlawful restraint conviction where the defendant's convictions for aggravated kidnaping and unlawful restraint were carved from the same physical act of the defendant grabbing and dragging the victim down an alley).

¶ 14 Here, we agree with defendant that his convictions for aggravated vehicular hijacking and unlawful restraint were based on the same act, *i.e.*, pointing a gun at Sepulveda in order to force him to relinquish his car keys. There was no evidence that the detention of Sepulveda had any purpose other than to facilitate the taking of the car. Sepulveda specifically testified that "one of [the offenders] pulled out a gun, came up to me and start[ed] going through my pockets, and I heard him say 'give me the *** keys, and he put the gun to my head.'" The State's assertion that a separate act occurred where defendant had to restrain the victim in order to go through his pockets is unpersuasive, particularly where the entire reason the offenders went through Sepulveda's pockets was to retrieve the car keys that he had initially refused to turn over. A

period of detention was inherent in this vehicular hijacking because defendant had to detain Sepulveda in order to take his car keys. Similarly to *Daniel*, defendant restrained Sepulveda from the beginning until the end of the vehicular hijacking—that is, from the moment he displayed his gun until the moment he drove away with the car. We thus find that defendant's convictions violate the one-act, one-crime rule because they were carved from the same act, and need not discuss whether any of the offenses are lesser-included offenses.

¶ 15 In so finding, we must vacate the less serious offense. *People v. Lee*, 213 Ill. 2d 218, 226-27 (2004). Unlawful restraint is a Class 4 felony while aggravated vehicular hijacking is a Class X felony. 720 ILCS 5/10-3(b) (West 2010); 720 ILCS 5/18-4(b) (West 2010). Therefore, unlawful restraint is the less serious offense and is vacated.

¶ 16 In reaching this conclusion, we find *People v. Rodriguez*, 169 Ill. 2d 183 (1996), relied on by the State, distinguishable from the case at bar. In *Rodriguez*, 169 Ill. 2d at 188-89, the supreme court found that the defendant was properly convicted of both aggravated criminal sexual assault and home invasion, despite the fact that both offenses shared the common act of the defendant threatening the victim with a gun, because his unlawful entry into the victim's bedroom was an overt or outward manifestation that supported a different offense, *i.e.*, home invasion. Here, there was no overt manifestation that supported separate offenses. Defendant's entire detention was simply a means to commit the aggravated vehicular hijacking offense. *People v. Crespo*, 118 Ill. App. 3d 815, 822-24 (1983), also relied on by the State, is likewise distinguishable from the case at bar where the codefendants committed two separate acts: (1) armed robbery by producing a knife upon entering a tavern and threatening to shoot anyone who

withheld money; and (2) unlawful restraint by ordering patrons onto the floor and holding an employee at knifepoint.

¶ 17 For the foregoing reasons, we vacate defendant's unlawful restraint conviction because it was carved from the same physical act as his aggravated vehicular hijacking conviction. We otherwise affirm defendant's conviction and sentence.

¶ 18 Affirmed in part and vacated in part.