

No. 1-13-0999

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 12 CR 5051
	)	
WAYNE JONES,	)	Honorable
	)	Carol M. Howard,
Defendant-Appellant.	)	Judge Presiding.

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

**O R D E R**

¶ 1 *Held:* Defendant's convictions for robbery and aggravated battery did not violate one-act, one-crime principles where defendant's punch supported the aggravated battery conviction and the robbery conviction was supported by the additional act of taking the victim's phone. Reversal of lesser conviction was not required under *People v. Crespo*, 203 Ill. 2d 335 (2003), where the State properly apportioned defendant's acts between the charges.

¶ 2 Following a bench trial, defendant Wayne Jones was found guilty of robbery and aggravated battery and sentenced to concurrent terms of 10 years and 5 years in prison respectively. On appeal defendant contends that his aggravated battery conviction should be

vacated as it is based on the same act as his robbery conviction, in violation of the one-act, one-crime principles of *People v. King*, 66 Ill. 2d 551, (1977), and *People v. Crespo*, 203 Ill. 2d 335 (2003). We affirm.

¶ 3 Defendant was charged with robbery, aggravated battery and unlawful restraint. The charges arose out of an incident where a man took Karl Krafft's phone and then punched him in the face on February 16, 2012. Krafft later identified defendant in a photo array and subsequent lineup.

¶ 4 In the robbery charge, the State alleged defendant "knowingly took property, to wit: telephone, from the person or presence of Karl Krafft, by use of force or by threatening the imminent use of force." The aggravated battery charge alleged defendant "knowingly made physical contact of an insulting or provoking nature with Karl Krafft, to wit: struck victim about the head, while they were on or about a public way."

¶ 5 At trial, Krafft testified that he talked on his phone while sitting on a concrete ledge at the CTA train stop entrance at 20 South State Street on the night of February 16, 2012. Krafft hung up the phone and defendant walked toward him. Defendant approached until he was one foot from Krafft and asked to borrow his phone. When Krafft refused to give defendant the phone, defendant said, "Give me the phone or I'll put you on the ground." Krafft handed the phone to defendant who put it in his pocket. He told Krafft that he had made "a big mistake," that he "owned the streets, he had people on every corner, and that this was his city." Defendant began to walk north. Krafft hopped off the ledge and began to walk to a nearby store to call the police. Defendant then punched Krafft in the left side of his face. Defendant walked south on State Street. The entire encounter took two to three minutes.

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¶ 6 The trial court denied defendant's motion for a directed finding. Defendant presented no evidence and did not testify.

¶ 7 At the close of evidence, Defendant argued, *inter alia*, that in regards to the battery charge, there was reasonable doubt as to whether defendant had struck Krafft. Defendant also argued that his threat to put Krafft "on the ground" was insufficient to support the robbery charge.

¶ 8 The State argued in rebuttal that the punch used in the escape could provide the force required for robbery, and that the threat was equally sufficient to prove robbery. Specifically, the State argued:

"As to the imminent threat or force — or force, your Honor, in this case you have both. As to the force used, the case law in Illinois states that if the defendant uses force in making good his escape from the situation during the robbery, that's still a robbery. Just because he takes the property and then punches Mr. Krafft, cold-cocks him in the jaw, that's force under the statute, in Illinois. So we have force."

The State then argued that the threat also supported a finding of guilty, before stating:

"You also have the fact that, as Karl Krafft is starting to walk into that Urban Outfitters to call the police, the defendant — it's reasonable to assume— knew that's what Karl Krafft was doing, because Karl Krafft no longer had a cell phone, because it's in that defendant's pocket; that Karl Krafft walking into Urban Outfitters to call the police, and the Defendant turned around and cold-cocks him in the jaw. That's force."

¶ 9 The trial court found defendant guilty of robbery, aggravated battery, and unlawful restraint. In its finding, the court stated,

"I do believe that the threat was threat regarding the use of force, and was only because Mr. Jones threatened to use force that Mr. Krafft turned over his phone.

I do think that there is enough evidence to establish the charge of robbery beyond a reasonable doubt.

With regard to the charge of aggravated battery, after he took the phone, Mr. Krafft was walking away towards the store, and Mr. Jones for no reason, hit him in his left jaw. I believe that the State has also proved the offense of aggravated battery beyond a reasonable doubt."

¶ 10 Defendant filed a motion for a new trial which the trial court denied. The motion did not raise a one-act, one-crime issue. The court sentenced defendant to 10 years' imprisonment for robbery and 5 years' imprisonment for aggravated battery, both to run concurrently. Defendant appeals.

¶ 11 Defendant contends that his aggravated battery convictions are based upon the same act as his robbery conviction, and thus must be vacated under *King* and *Crespo*. He notes that the robbery information alleged he took Krafft's phone by "use of force or by threatening the imminent use of force." The aggravated battery information alleges defendant struck Krafft about the head. He further notes that the State argued before the trial court that defendant's punch could support the robbery charge. Thus, defendant argues, both charges were based upon the singular act of punching Krafft in the face.

¶ 12 The State responds that defendant's convictions were not carved out of the same act, and therefore do not violate *King*. It notes defendant first threatened Krafft and took his phone. When Krafft walked away, defendant hit him in the face. The State argues that while both convictions

shared the act of punching, defendant committed the additional act of taking Krafft's phone which supported only the robbery conviction, and therefore, multiple convictions were proper under *King*.

¶ 13 Defendant acknowledges that he forfeited the issue by failing to raise it at the trial level, but urges us to apply a plain error analysis. A reviewing court may consider an error, despite forfeiture, when a clear and obvious error occurred and either (1) the evidence is so closely balanced that the error alone threatened to tip the scales of justice against defendant or (2) the error is so serious as to challenge the integrity of the judicial process. *People v. Piatkowski*, 225 Ill. 2d 551, 565 (2007). The Illinois Supreme Court has ruled that a violation of the one-act, one-crime doctrine challenges the integrity of the judicial process and therefore implicates the second prong of plain error analysis. *In re Samantha V.*, 234 Ill. 2d 359, 378 (2009). One-act, one-crime challenges are subject to *de novo* review. *People v. Artis*, 232 Ill. 2d 156, 161 (2009).

¶ 14 Robbery occurs when an offender (1) takes property of another, other than an automobile, from the other's person or presence (2) through the use of force or threat of imminent force. 720 ILCS 5/18-1(a) (West 2010). Aggravated battery occurs when an offender, without legal justification, (1) causes bodily harm to an individual or (2) makes physical contact of a provoking or insulting manner, while (3) the individual is on a public way. 720 ILCS 5/12-3, 12-3.05(c) (West 2010).

¶ 15 Under one-act, one-crime principles, a defendant cannot be convicted of multiple offenses "carved from the same act." *King*, 66 Ill. 2d at 566. An analysis under *King* requires two steps: the reviewing court must determine (1) whether the defendant committed multiple acts and (2) if so, whether any of the charges are lesser included offenses. *People v. Rodriguez*, 169 Ill. 2d

183, 186 (1996). Even where multiple acts exist to support multiple charges, the State must apportion each act among the multiple charges in the charging instrument. See *Crespo*, 203 Ill. 2d at 345.

¶ 16 We first determine whether defendant's conduct constituted multiple acts under *King*, before turning to whether the State apportioned such acts between the charges as required by *Crespo*.

¶ 17 *King* defines an act as "any overt or outward manifestation that will support a different offense." *King*, 66 Ill. 2d at 566. Multiple acts may be found even where the acts are interrelated. *People v. Dixon*, 91 Ill. 2d 346, 355 (1982). In *Dixon*, the Illinois Supreme Court found that the individual blows of a club within a single beating constituted multiple acts under *King*. *Id.* at 355-56; see also *Crespo*, 203 Ill. 2d at 342 (noting that each of victim's three stab wounds could potentially support a separate charge).

¶ 18 Where two offenses share an act in common, multiple convictions are permissible where the defendant commits a second overt manifestation which supports a second offense. See *Rodriguez*, 169 Ill. 2d at 188-89. In *Rodriguez*, the defendant was charged with aggravated sexual assault based upon sexual penetration while displaying or threatening the victim with a gun. *Id.* at 190. He was also charged with home invasion predicated on unlawfully entering the victim's home and threatening her while armed with a gun. *Id.* The *Rodriguez* court held that the two convictions were based on separate acts. *Id.* at 188-89. It noted that while both convictions shared the act of threatening the victim with a gun, the defendant's entering of the victim's bedroom was an overt manifestation that supported the home invasion charge. *Id.*

¶ 19 This court addressed one-act, one-crime principles in the context of robbery and battery convictions in *People v. Pearson*, 331 Ill. App. 3d 312 (2002). In *Pearson*, the defendant grabbed a woman's purse off her shoulder, a struggle ensued, and the woman was knocked to the ground. *Id.* at 314. This court concluded that the defendant's conduct was comprised of two separate acts: (1) the taking of the purse and (2) the knocking of the woman to the ground. *Id.* at 322. We found that the separate acts were "overt outward manifestations that support the offenses of robbery and aggravated battery," and upheld both of the defendant's convictions. *Id.*

¶ 20 Krafft testified to three relevant, overt manifestations made by defendant. Defendant threatened to "put him on the ground" if Krafft did not give him the cell phone. Defendant took Krafft's phone, placing it in his pocket. Defendant returned and punched Krafft in the face. The threat, the taking of the phone, and the punch are clearly three separate, overt manifestations. Under *King*, the battery could be supported by the punch while the robbery was supported by the threat. However, even if we accept defendant's contention that both the robbery and the battery were based upon the punch, defendant's convictions were still based upon separate acts. While both charges share the common act of force, robbery is supported by the additional act of taking Krafft's phone. See *Rodriguez*, 169 Ill. 2d at 188-89; see also *Pearson*, 331 Ill. App. 3d at 322. Therefore, as in *Pearson*, defendant committed multiple acts under *King*.

¶ 21 Defendant does not argue that his aggravated battery conviction is a lesser included offense of his robbery conviction, and thus his convictions do not violate the second prong of an analysis under *King*. See *Rodriguez*, 169 Ill. 2d at 186.

¶ 22 Having determined that defendant's conduct constituted multiple acts, we now turn to whether the State properly apportioned those acts between the robbery and aggravated battery charges, as required by *Crespo*. See *Crespo*, 203 Ill. 2d at 345.

¶ 23 In *Crespo*, the defendant stabbed the victim three times in rapid succession and was charged with two counts of aggravated battery and one count of armed violence, among other charges. *Id.* at 337-38. Both in the indictment and at trial, the State referred to the three stabs as a single stabbing, rather than apportioning each individual stab to a separate charge, and therefore the reviewing court concluded that each charge was an alternative theory of culpability based on a single act. *Id.* at 343-44. The *Crespo* court stated that the three stabs could each support a separate charge, but then concluded that it would be "profoundly unfair" to allow the State to apportion the stabs separately for the first time on appeal. *Id.* at 343. The court held that even though the three stabs were multiple acts, they would be treated as a single act due to the State's failure to apportion them in the charging instrument. See *id.* at 345.

¶ 24 We find *Crespo* inapposite to the present case. Here, the State did not separate and apportion multiple, highly similar acts on appeal. The information charged defendant with robbery through taking Krafft's property by use or threat of force. It charged him with battery alleging he "struck victim about the head." Thus, the State properly apportioned the act of taking to the robbery conviction and the act of striking to the aggravated battery conviction.

¶ 25 Defendant argues that we should follow *Crespo* because the State failed to differentiate between force and the threat of force at trial and in charging defendant. However, the State did not need to differentiate between the threat and actual use of force. As already discussed, even if the robbery and aggravated battery convictions share the common act of striking Krafft,

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defendant's additional act of taking Krafft's phone provides a separate act under *King*. See *Rodriguez*, 169 Ill. 2d at 188-89; *Pearson*, 331 Ill. App. 3d at 314.

¶ 26 For the foregoing reasons, we find that defendant's robbery and aggravated battery convictions are predicated on separate acts, as defined by *King*. We further conclude that the State properly apportioned each act to the separate charges and thus defendant's aggravated battery conviction does not require reversal under *Crespo*. Accordingly, the judgment of the circuit court of Cook County is affirmed.

¶ 27 Affirmed.