2015 IL App (1st) 132090-U

SECOND DIVISION
June 16, 2015

No. 1-13-2090

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 12888
	)	
DARRYL K. LIPSCOMB,	)	Honorable
	)	Michele M. Simmons,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE NEVILLE delivered the judgment of the court.
Presiding Justice Simon and Justice Liu concurred in the judgment.

O R D E R

¶ 1 *Held:* Defendant's conviction for unlawful use or possession of a weapon by a felon and armed violence predicated on possession of cocaine did not violate the one-act, one-crime doctrine.

¶ 2 Following a bench trial Darryl K. Lipscomb, the defendant, was convicted of armed violence predicated on possession of a controlled substance and unlawful use or possession of a weapon by a felon (UUWF). Defendant was sentenced to concurrent prison terms of 17 years

and 5 years, respectively. On appeal, defendant contends that his conviction for UUWF should be vacated under the one-act, one-crime doctrine. We affirm.

¶ 3 The testimony at trial showed that defendant was approached by two detectives from the Harvey Police Department in a parking lot near Dixie Highway and 154th Street, at 4 p.m. on July 15, 2011. Defendant fled on foot, keeping his left hand against his waist. After a brief chase, one of the detectives encountered defendant in another lot and defendant drew a gun. The detective pointed his own firearm at defendant and ordered him to drop his weapon. Defendant complied. A custodial search of defendant's pockets revealed a plastic bag containing smaller bags with a white, rocky substance. Two of the eleven bags were tested and found to contain cocaine.

¶ 4 At the close of trial, the court found defendant guilty of armed violence predicated on possession of a controlled substance and UUWF based on a prior conviction for felony possession of a stolen vehicle.

¶ 5 On appeal, defendant contends that his conviction for UUWF violates the one-act, one-crime doctrine because it is premised on the same physical act of possessing a weapon as his conviction for armed violence.

¶ 6 As an initial matter, defendant acknowledges that he forfeited review of this issue because he failed to object to the conviction for UUWF. Ill. S. Ct. R. 615(a) (eff. Jan. 1, 1970). However, because one-act, one-crime arguments are a question of law and implicate the integrity of the judicial process, we review the issue *de novo*. *People v. Johnson*, 237 Ill. 2d 81, 97 (2010); *People v. Nunez*, 236 Ill. 2d 488, 493 (2010).

¶ 7 According to the one-act, one-crime doctrine, a defendant's conduct cannot result in multiple convictions if the convictions are based on precisely the same physical act and any of the convictions are for lesser-included offenses. *People v. Rodriguez*, 169 Ill. 2d 183, 186 (1996); *People v. King*, 66 Ill. 2d 551, 566 (1977). First, the court ascertains whether the defendant's conduct consisted of a single act or separate acts, defined as any overt or outward manifestations that support different offenses. *Rodriguez*, 169 Ill. 2d at 186; *King*, 66 Ill. 2d at 566. Where only one physical act was undertaken, multiple convictions arising out of that single act are improper. *Rodriguez*, 169 Ill. 2d at 186. Second, if defendant committed separate acts, the court then determines whether any conviction is for a lesser-included offense. *Id*. Multiple convictions for included offenses are also improper. *Rodriguez*, 169 Ill. 2d at 186. However, a defendant may be guilty of two offenses when a common act is an element of both charges. *Rodriguez*, 169 Ill. 2d at 188-89.

¶ 8 Conflicting decisions exist as to whether convictions for simultaneous offenses involving possession violate the first prong of the one-act, one-crime doctrine. In *People v. Williams*, 302 Ill. App. 3d 975, 976-77 (1999), a case decided by the Second District Appellate Court, a defendant was arrested while in possession of a gun and cocaine and convicted of UUWF and armed violence predicated on possession of a controlled substance. On appeal, the defendant contended that the sentence for UUWF violated the one-act, one-crime doctrine because both convictions were carved from the same physical act, namely, the simultaneous possession of a gun and drugs. *Williams*, 302 Ill. App. 3d at 977-78. The Second District agreed with the defendant:

> "[T]he common act is a felon possessing a gun and drugs simultaneously. There is no separate act. In one instance the gun is combined with possession of a controlled substance to constitute armed violence, and in the other it is combined with the act of a convicted felon status to create a separate offense. We hold that the one-act, one-crime rule does apply to these convictions." *Williams*, 302 Ill. App. 3d at 978.

Accordingly, the Second District reversed defendant's conviction of UUWF and vacated the sentence imposed thereon. *Id*.

¶ 9 Subsequently, the Fourth District Appellate Court disagreed with the holding in *Williams*. See *People v. White*, 311 Ill. App 3d 374, 379 (2000). In *White*, as in *Williams*, a defendant was arrested while in possession of a gun and cocaine and convicted of UUWF and armed violence predicated on possession of a controlled substance. Citing *Williams*, the defendant argued that the sentence for UUWF violated the one-act, one-crime doctrine because both convictions were carved from the same physical act. *White*, 311 Ill. App 3d at 384-86. The Fourth District disagreed, holding that the convictions did not violate the one-act, one-crime doctrine. *White*, 311 Ill. App 3d at 384-86. First, the Fourth District reasoned that separate acts do not become one solely by virtue of being proximate in time, such that *Williams* wrongly determined that the simultaneous possession of a gun and drugs represented one common act. *White*, 311 Ill. App 3d at 385 (citing *People v. Myers*, 85 Ill. 2d 281, 288-89 (1981) (two cuts with knife to same victim, though close in time, were not one physical act), *People v. Dixon*, 91 Ill. 2d 346, 355-56 (1982) (separate blows to same victim, though closely related in time, were not one physical act), *People v. Segara*, 126 Ill. 2d 70, 78 (1988) (two acts of criminal sexual assault upon same victim occurring with little or no break between were not one physical act)). Second, the Fourth District reasoned that the defendant's convictions did not arise from a single act even though they shared

the common element of possessing a gun. *Id*. at 385-86. Instead, the court found that a defendant may be convicted of two offenses where a common act is included in the elements of both. *White*, 311 Ill. App 3d at 385 (citing *Rodriguez*, 169 Ill. 2d at 186 (concurrent home invasion and aggravated sexual assault derived from separate acts, despite the common element of threatening victim with a gun)). The Fourth District held in the case before it:

> "Though defendant may have possessed the weapon and the drugs close in time, or even simultaneously, we conclude nevertheless that each possession was a separate act. Although both offenses shared the common act of possession of a weapon, armed violence required the additional act of possession of the drugs, and unlawful possession of a weapon by a felon required the additional element of status as a felon. Accordingly, the two offenses did not result from precisely the same physical act." *White*, 311 Ill. App 3d at 386.

Based on the foregoing, the Fourth District upheld defendant's conviction of UUWF and armed violence predicated on possession of a controlled substance. *White*, 311 Ill. App 3d at 386.

¶ 10 We find the reasoning in *White* persuasive and find it applicable here. Following *White*, we hold that defendant's conduct consisted of two simultaneous acts: possession of a gun and possession of cocaine. *White*, 311 Ill. App 3d at 385-86. As in *White*, each possession was a separate act. *White*, 311 Ill. App 3d at 386. Although both of defendant's offenses shared the common act of possessing a firearm, the conviction for armed violence required the additional act of possessing cocaine, and the conviction for UUWF required the additional element of defendant's status as a felon. Therefore, the common act of possessing a firearm was not the only act that resulted in defendant's convictions. See *People v. Pena*, 317 Ill. App. 3d 312, 321-23 (2000) (citing *White* to support the finding that home invasion and UUWF derive from different acts, despite the common act of possessing a weapon). Accordingly, defendant's convictions did

not result from precisely the same physical act and did not violate the first prong of the one-act, one-crime doctrine.

¶ 11 Where, as here, separate acts are undertaken, the next question is whether any of the offenses are lesser-included offenses. *Rodriguez*, 169 Ill. 2d at 186. Defendant does not challenge this issue on appeal. We therefore find that defendant's convictions for UUWF and armed violence predicated on possession of a controlled substance do not violate the one-act, one-crime doctrine.

¶ 12 For all the foregoing reasons, we affirm defendant's convictions.

¶ 13 Affirmed.