

No. 1-13-2741

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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. 12 CR 18059
)	
LOUIS HALL,)	Honorable
)	Stanley J. Sacks,
Defendant-Appellant.)	Judge Presiding.

JUSTICE LAVIN delivered the judgment of the court.
Presiding Justice Pucinski and Justice Mason concurred in the judgment.

O R D E R

¶ 1 *Held:* Defendant's convictions for two counts of delivery of a controlled substance affirmed where each count was based on a separate physical act.

¶ 2 Following a bench trial, defendant Louis Hall was convicted of two counts of delivery of a controlled substance and sentenced as a Class X offender to concurrent terms of 10 years' imprisonment. On appeal, defendant solely contends that one of his convictions must be vacated under the one-act, one-crime principle because both counts alleged the exact same physical act.

¶ 3 The record shows that defendant was charged by information with two identical counts of delivery of a controlled substance (Counts 1 and 2), both alleging that he knowingly delivered "1 gram or more but less than 15 grams of a substance containing *** heroin." 720 ILCS 570/401(c)(1) (West 2012). In Count 3 of the same information, Eduardo Delbosque was charged with possession of a controlled substance for possessing less than 15 grams of a substance containing heroin, and in Count 4, Pedro Rivera was charged with that same offense. 720 ILCS 570/402(c) (West 2012).¹

¶ 4 Immediately before the trial began, the following colloquy occurred:

"THE COURT: Mr. Hall, you're charged in case 12 CR 18069, with delivery of a controlled substance, heroin, and – that's what you're charged with, two counts.

[THE PROSECUTOR]: I believe counts 1 and 2 are the same.

THE COURT: No.

[THE PROSECUTOR]: Oh, are they different?

THE COURT: They look the same. There are two counts that are the same.

However, there are two people also charged with possession of a controlled substance, Pedro Rivera and someone named Eduardo Delbosque, D-E-L-B-O-S-Q-U-E. You had two deliveries.

[THE PROSECUTOR]: Oh, correct, Judge.

THE COURT: Okay. You are charged in the case number I mentioned a moment ago, 12 CR 18069, with delivery of a controlled substance, two counts."

¶ 5 Defendant does not challenge the sufficiency of the evidence sustaining his convictions, and thus, a detailed discussion of the facts of this case is not necessary. The evidence presented

¹ Delbosque and Rivera were not tried with defendant and are not parties to this appeal.

at trial established that during a narcotics surveillance at 1:14 p.m. on August 23, 2012, Chicago police officer William Murphy observed defendant standing in an alley behind a residence at 3534 West Chicago Avenue. Four Hispanic men arrived separately at that location and formed a line in the alley with defendant standing in front of them. Defendant then walked through a backyard to the rear doorway of a residence, retrieved an item, returned to the line of men, and handed each man an item in exchange for cash. Defendant and the men then walked together through the alley and were detained by police at the exit of the alley. During a custodial search, \$120 was recovered from defendant, who later admitted to police that he sold heroin for a person named Anthony. The parties stipulated that police recovered one aluminum tin containing 0.1 gram of heroin from Orlando Santiago Rivera, two aluminum tins containing 0.2 gram of heroin from Jose Santiago, eight aluminum tins containing 1.1 grams of heroin from Pedro Rivera, and six aluminum tins containing 1.3 grams of heroin from Eduardo Delbosque.

¶ 6 Although charged with two counts of a Class 1 felony for delivering between 1 and 15 grams of heroin under section 401(c)(1) of the Illinois Controlled Substances Act (720 ILCS 570/401(c)(1) (West 2012)), the trial court found defendant guilty of two counts of the lesser Class 2 felony for delivering less than one gram of heroin under section 401(d) (720 ILCS 570/401(d) (West 2012)). The court pointed out that there were four buyers to whom defendant delivered heroin, and stated that it was not going to determine which buyer had which amount.

¶ 7 On appeal, defendant solely contends that one of his convictions must be vacated under the one-act, one-crime principle because both counts alleged the exact same physical act, and neither count specifies to whom the heroin was delivered. Defendant acknowledges that Officer Murphy's testimony could have supported four counts of the same offense because he observed four deliveries to four separate men, but asserts that the State chose to charge him with a single

act. He also acknowledges that he failed to preserve this issue for appeal, but argues that it is reviewable under the substantial rights prong of the plain error doctrine.

¶ 8 The State responds that defendant forfeited review of this issue because he failed to preserve it for appeal. *People v. Lee*, 376 Ill. App. 3d 951, 956 (2007). Alternatively, the State argues that both convictions should stand because defendant was prosecuted for committing two separate deliveries at the same time, and the evidence differentiated between the unique amounts of heroin for each delivery.

¶ 9 We will review defendant's claim under the second prong of the plain error doctrine because an alleged violation of the one-act, one-crime principle has the potential for a surplus conviction and sentence, and thus, affects the integrity of the judicial process and defendant's fundamental rights. *People v. Harvey*, 211 Ill. 2d 368, 389 (2004). Whether a conviction should be vacated under the one-act, one-crime principle is a question of law which we review *de novo*. *People v. Johnson*, 237 Ill. 2d 81, 97 (2010).

¶ 10 Multiple convictions based on precisely the same physical act are improper (*People v. Rodriguez*, 169 Ill. 2d 183, 186 (1996); *People v. King*, 66 Ill. 2d 551, 566 (1977)), however, defendant can be convicted of two separate offenses where a common act is part of both crimes (*Rodriguez*, 169 Ill. 2d at 188). Our supreme court has consistently defined an "act" as "any overt or outward manifestation which will support a different offense." *Rodriguez*, 169 Ill. 2d at 188; *King*, 66 Ill. 2d at 566. To sustain multiple convictions, the charging instrument must indicate that the State intended to treat defendant's conduct as separate, multiple acts. *People v. Crespo*, 203 Ill. 2d 335, 345 (2001). Multiple convictions with concurrent sentences are permitted where defendant has committed multiple acts, "despite the interrelationship of those acts." *King*, 66 Ill. 2d at 566.

¶ 11 In this case, the record clearly shows that defendant was charged with and convicted of two separate acts of delivery of a controlled substance. In the charging instrument, defendant was charged with two identical counts of delivering between 1 and 15 grams of heroin. In that same charging instrument, Eduardo Delbosque and Pedro Rivera were each charged with possession of heroin. It logically follows that defendant was charged with one count for delivering the heroin to Delbosque, and the second count for delivering the heroin to Rivera, indicating the State's intent to treat defendant's conduct as multiple acts. *People v. Pittman*, 2014 IL App (1st) 123499, ¶ 37. Moreover, immediately before trial, the court and the prosecutor discussed this very issue, and agreed that defendant was charged with making two deliveries – one to Delbosque and one to Rivera. This discussion indicates why defendant did not object to the two charges and convictions at trial, why he did not raise the issue in his posttrial motion, and that the parties and the court all understood that defendant was charged with two separate acts.

¶ 12 We also reject defendant's assertion that the fact that the State charged him with two counts of delivery rather than four shows that it charged him with only a single act of delivering the heroin to all of the men collectively. As noted, defendant was charged with delivering between 1 and 15 grams of heroin, and only two of the four men were found in possession of amounts in that range – Delbosque was found with 1.3 grams of heroin and Rivera possessed 1.1 grams of heroin. The other two men each had less than one gram of heroin – Orlando Santiago Rivera was found with 0.1 gram and Jose Santiago possessed 0.2 gram. The record thus shows that the State elected not to prosecute defendant for delivering the lesser amounts of heroin to the other two men.

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¶ 13 Accordingly, we conclude that defendant was charged and convicted of two separate acts of delivery of a controlled substance, and affirm the judgment of the circuit court of Cook County to that effect.

¶ 14 Affirmed.