

THIRD DIVISION  
September 14, 2015

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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<i>In re</i> AARON P., a Minor	)	Appeal from the Circuit Court
	)	of Cook County.
(The People of the State of Illinois,	)	
Petitioner-Appellee,	)	Nos. 12 L 1732, 10 M6 2163
	)	(consolidated)
v.	)	
	)	The Honorable
Aaron P., a Minor,	)	Lorna Propes,
Respondent-Appellant).	)	Judge Presiding.

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JUSTICE PUCINSKI delivered the judgment of the court.  
Justices Fitzgerald Smith and Lavin concurred in the judgment.

**ORDER**

¶ 1 *Held:* (1) The evidence was sufficient to adjudicate the respondent minor delinquent for aggravated kidnapping based on using a dangerous weapon, where the evidence showed that the respondent minor used a handgun that was inoperable as a firearm but able to be used as a bludgeon, even though the court, in its findings, mentioned only the victim's belief that the gun was operable. The court had previously denied the minor's motion for a directed finding on aggravated kidnapping where the State had argued the inoperable gun could be used as a bludgeon, and the handgun itself was entered into evidence. The handgun was large enough, and the butt of the gun was heavy enough, to be used as a bludgeon. The minor respondent's adjudication for aggravated kidnapping was affirmed. (2) Although the respondent minor was sentenced on only the most serious offense of aggravated kidnapping on the dispositional order, the court found the respondent guilty of all nine counts against him both at the hearing and on the trial order. As such, the adjudications for the offenses of aggravated unlawful restraint and unlawful restraint were vacated under the one-act-one-crime rule. (3) The adjudications for

kidnapping and aggravated assault were vacated as lesser-included offenses. (4) Because the gun was broken down in a non-functioning state, the minor respondent was exempt from the offense of aggravated unlawful use of weapon pursuant to 720 ILCS 5/24-2(b)(4) (West 2014), and so the adjudication for two counts of aggravated unlawful use of a weapon were vacated. (5) The adjudication for unlawful possession of a firearm was affirmed, as there was no exemption for an inoperable gun under 720 ILCS 5/24-3.1(a)(1) (West 2014), and the evidence established that, although the gun was rusty and was missing its cylinder, it still had the appearance and characteristics of a firearm and was not in such a state of disrepair or so altered that it could no longer be used as a firearm.

¶ 2

## BACKGROUND

¶ 3

The State filed a petition for adjudication of wardship charging the minor respondent, Aaron P., with the following nine counts of offenses for events that occurred on July 28, 2014: aggravated kidnapping; kidnapping; aggravated assault; vehicular invasion;<sup>1</sup> aggravated unlawful restraint; unlawful restraint; aggravated unlawful use of a weapon (AUUW) for failing to have a valid firearm owner's identification (FOID) card; AUUW for being under 21 at the time of the offenses; and unlawful possession of a firearm (UPF). The charge for aggravated kidnapping alleged that Aaron attempted to commit the act of kidnapping while armed with a dangerous weapon.

¶ 4

The victim, Gwendolyn Davis, testified that on July 28, 2014, she was 27 years old and had two children. Between 4 and 5 p.m., she drove to a store a few blocks away to buy a pack of cigarettes. Davis drove a two-door, Chevrolet Monte Carlo. When she returned home from the store, Davis parked her car in her usual parking space in the alley next to her building. Davis opened her car door, got one foot out, and saw Aaron standing there with a gun. Aaron had a white shirt and a black shirt "tied up across his face so [Davis] could only see his eye." Aaron also had a gun in his hand tucked into his sleeve, exposing only the barrel of the gun. Davis believed she was being robbed and gave Aaron her keys, a phone, and money. Aaron refused

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<sup>1</sup> Aaron does not contest his adjudication for vehicular invasion.

these items and instead got into the passenger seat of the car by climbing over Davis from the driver's side door. As Aaron climbed over Davis, he held the gun in one hand and held Davis by her clothes in his other hand so Davis could not get out of the car.

¶ 5 While laying back in the passenger seat, Aaron pointed the gun at Davis and forced her to drive out of the alley onto Loomis Street. Davis testified that the gun was so close to her face that she could only see the barrel of the gun. After she drove for about two minutes, Davis saw a Chicago Police squad car driving towards her car. Aaron grabbed the steering wheel, put the gun to her side and said, "don't do nothing." Once Aaron released the steering wheel, Davis turned her car into the oncoming lane of traffic in front of the police car. As she did so, Davis saw Aaron "tucking a gun under \*\*\* his passenger seat."

¶ 6 The police vehicle stopped about five feet from Davis' car and Davis jumped out of her car and screamed, "he got a gun." The police officer removed Aaron from Davis' car and removed the shirts that covered Aaron's face. Davis had never seen Aaron before that day. Davis went to the police station for about six hours but left at 11 p.m. to go home and see her children. Davis did not speak to any detectives at that time.

¶ 7 Davis testified at trial that she had been previously convicted of possession of heroin in 2005 and of delivering and manufacturing cannabis in 2008. Davis received two years' probation for her 2008 conviction. Davis admitted to smoking marijuana between 2005 and 2008 but testified that she did not use heroin or cocaine. Davis further testified that she was not under the influence of drugs or alcohol on July 28, 2014.

¶ 8 Retired Chicago Police Officer Mark Yelverton also testified at trial. On July 28, 2014 at about 5:35 p.m. Yelverton was working as a police officer and driving a marked Chicago Police squad car with his partner, Officer Duarte, northbound on the "75-block of Loomis." Yelverton

saw a two-door silver Chevrolet Monte Carlo driving towards him on Loomis veer across the double yellow center line almost causing a head-on collision with his squad car. Yelverton drove his car to the right and came to a stop on the curb. Davis exited and ran from her car yelling, "he has a gun." Yelverton then saw Aaron in the passenger seat of the car with "a rag or a shirt or \*\*\* some cloth material over his head." Yelverton drew his weapon and directed Aaron to put his hands behind his neck and opened the door. Yelverton placed Aaron in handcuffs and took the cloth off his face, while his partner talked to Davis. Yelverton then searched the driver's side of Davis' car. When Yelverton leaned over the center console, he saw a firearm wedged in between the center console and the passenger seat. Yelverton placed the firearm in a bag, went to the police station, and inventoried it. Yelverton testified that the firearm was "[b]asically" inoperable because it was missing the cylinder that holds the ammunition. The firearm was not sent for fingerprinting or DNA testing. Yelverton interviewed Aaron at the police station and discover that Aaron was 17 years old and did not have a valid FOID card.

¶ 9 At the close of the State's case in chief at trial, the firearm recovered by Yelverton was admitted into evidence as People's Exhibit No. 1.

¶ 10 Aaron moved for a directed finding on all counts. In his argument, Aaron argued that the firearm was inoperable and therefore was not a dangerous weapon, that there was no evidence presented that he had any intent to secretly confine Davis against her will, that there was no evidence to establish an intent to commit a felony inside the vehicle, and that there was no firearm. The State responded that Aaron knowingly and secretly confined Davis because he approached her in an alley when no one was around, forced her to drive somewhere to another location, and obstructed the missing cylinder of the gun. The State argued that, for purposes of the gun counts, the firearm did not have to be operable to be unlawful because it was not "broken

down into a nonfunctioning state." The State argued that the firearm was admitted into evidence and that the firearm was a dangerous weapon even though it was not functioning because it could be used to beat someone. The court denied Aaron's motion for a directed verdict.

¶ 11 Following closing arguments, the trial court found Aaron guilty of all nine counts.

¶ 12 At the dispositional hearing, the State requested that Aaron be committed to the Juvenile Justice Department. In aggravation, the State argued that Aaron refused to attend school, was affiliated with the Black Disciples gang, was a drug user, and that he was dangerous. The State also argued that Aaron had previously been adjudicated delinquent of attempt armed robbery under Petition No. 14 JD 00685 for using a handgun to rob a U.S. postal worker delivering mail. Aaron was not yet sentenced in that case because his date of sentencing for that case was July 28, 2014, the same date as the incident in this case for which he was arrested and charged.

¶ 13 There was also a domestic battery that was stricken off with leave to reinstate (SOL'd) by the State subsequent to the attempt armed robbery on the postal service worker.

¶ 14 Over Aaron's objection, the State further presented evidence that Aaron was currently facing aggravated criminal sexual assault charges in adult criminal court. According to those charges, on September 10, 2014, while Aaron was on electronic monitoring in the case at bar, he approached a young pregnant college student and forced her at knife-point to get into her car and drive into an alley. Once in the alley, Aaron then forced the woman to perform sex acts on him and then he performed sex acts on her. Aaron then locked her in the trunk of her car. Because of the nature of these charges, Aaron was automatically transferred to adult criminal court and these charges were currently pending and awaiting trial at the time of adjudication of the offenses in this case.

¶ 15 The social investigation report indicated that Aaron also exhibited violent tendencies toward his family members, injuring his mother during one of the altercations with his sibling Eric, and another time knocking over a flat screen television and throwing a brick through a storm window of his family's residence. The social investigation report also indicated that Aaron refused to go to school, was involved in a gang, and has a history of drug usage.

¶ 16 Aaron sought to avoid a sentence and requested that the finding stand, arguing that he was already 18 years old and that any subsequent illegal activities would be assigned to adult criminal court. In the alternative, Aaron requested probation, arguing that he had never been placed on probation. In mitigation, Aaron argued that he had a support system with his mother and stepfather who lived together and were both employed and had no criminal history.

¶ 17 The probation officer concluded that the probation department could not provide any services to Aaron "due to the nature of the findings." The probation officer recommended commitment to the Illinois Department of Juvenile Justice "for the protection of the community."

¶ 18 While reviewing Aaron's history and background, the trial court noted that "the minor-respondent stands before the Court with two findings for violent offenses, that being the attempted armed robbery and aggravated kidnapping for which this Court found him guilty." The court made a finding to stand as to Aaron's other attempt armed robbery conviction. The court declined to make a finding to stand in this case. The court then made Aaron a ward of the court and found that it was in the best interest of Aaron and the public to commit him to the Department of Juvenile Justice.

¶ 19 A trial order was entered on March 19, 2015, which indicated that Aaron was "Guilty of count(s) 1-9 of the petition."

¶ 20 An order of commitment was entered on April 14, 2015 and committed Aaron to the Illinois Department of Juvenile Justice for aggravated kidnapping until he reaches the age of 21. The order of commitment listed the committing charge of only aggravated kidnapping, and only one sentence was imposed. Aaron appealed.

¶ 21 ANALYSIS

¶ 22 I. Adjudication and Sentence for Aggravated Kidnapping:

Inoperable Handgun as a Bludgeon

¶ 23 Aaron argues that the State failed to prove beyond a reasonable doubt that he committed aggravated kidnapping where the handgun used in this case was not a "dangerous weapon" under the statutory offense of aggravated kidnapping because it was inoperable. Under the Juvenile Court Act of 1987 (Act) (705 ILCS 405/1-1 *et seq.* (West 2014)), delinquency proceedings consist of three phases: the findings phase; the adjudicatory phase; and the dispositional phase. *In re Samantha V.*, 234 Ill. 2d 359, 365 (2009). During the findings phase of juvenile delinquency proceedings, the court holds a trial applying the rules of evidence for a criminal case and the State is required to present proof beyond a reasonable doubt of every necessary fact to find a respondent delinquent. *In re Samantha V.*, 234 Ill. 2d at 365. When a defendant challenges the sufficiency of the evidence to sustain his conviction the proper standard of review is whether, after viewing the evidence in the light most favorable to the State, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *People v. Cunningham*, 212 Ill. 2d 274, 279-80 (2004). In assessing the sufficiency of the evidence to sustain a verdict on appeal, we must view the evidence in the light most favorable to the prosecution to determine if any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *In re Malcolm H.*, 373 Ill. App. 3d 891, 893-94; see also

*People v. Bush*, 214 Ill. 2d 318, 326 (2005) (citing *Jackson v. Virginia*, 443 U.S. 307, 318-19 (1979)).

¶ 24 This means that we must allow all reasonable inferences from the record in the favor of the prosecution. *People v. Cunningham*, 212 Ill. 2d 274, 280 (2004). A conviction may stand if based solely on circumstantial evidence and the inferences that flow normally from that evidence. *People v. Patterson*, 217 Ill. 2d 407, 435 (2005).

¶ 25 Aggravated kidnapping is a Class X offense when a person commits the crime of kidnapping while armed with a "dangerous weapon." 720 ILCS 5/10-2(a)(5) (West 2012). A dangerous weapon is defined as "an instrument that is used or may be used for the purpose of offense or defense and capable of producing death." *People v. McBride*, 2012 IL App (1st) 100375, ¶ 40 (quoting *People v. Dwyer*, 324 Ill. 363, 364 (1927)). There are three ways for the State to prove that a gun constituted a "dangerous weapon" by presenting evidence that: (1) the gun was operable and loaded; (2) the gun was actually used during the offense as a club or bludgeon; or (3) that due to the gun's size and weight, it was capable of being used as a club or a bludgeon. *McBride*, 2012 IL App (1st) at ¶ 44; *People v. Ross*, 229 Ill. 2d 255, 275-76 (2008).

¶ 26 Aaron argues that the State did not prove that the handgun qualified as a "dangerous weapon" as a bludgeon. Aaron also argues that the trial court, in the summary of its findings, referenced only the victim's belief that the gun was an operable handgun.

¶ 27 From our review of the record, however, there was evidence that the handgun could be used as a bludgeon. As the State argues, the gun itself was entered into evidence. During closing arguments, the State argued that the handgun could be used as a bludgeon. The State argued, "[a]ny time somebody uses a dangerous weapon, and even though that's not a functioning gun, it is still a dangerous weapon. *Someone can be beaten to death with that weapon.*" (Emphasis



added.) Regardless of the fact that the trial court focused on only the victim's reasonable belief that the gun was operable in its findings, there was evidence that the gun could be used as a bludgeon. We may affirm the judgment of the circuit court on any grounds, regardless of the circuit court's reasoning. When an appeal is taken from a judgment of a lower court, the question before the reviewing court is the correctness of the result reached by the lower court and not the correctness of the reasoning upon which that result was reached. *People v. Johnson*, 208 Ill. 2d 118, 128 (2003).

¶ 28 Aaron also attempts to bolster his argument with a picture of a revolver missing a cylinder and a website reference regarding the weight of "most revolvers." These items were not entered into evidence at trial and were not properly made part of the record before us, so we disregard these materials. See Ill. S. Ct. R. 341(h)(7) (eff. Feb. 6, 2013).

¶ 29 The gun itself was entered into evidence at trial and we have the gun in the record before us on appeal. We find that the gun, even without the cylinder, is large enough and heavy enough (the butt of the gun in particular) to be used as a bludgeon and is therefore a dangerous weapon. Under the proper standard of review, looking at the evidence in the light most favorable to the State, we affirm Aaron's adjudication for aggravated kidnapping.

¶ 30 II. The Adjudications for the Offenses of Aggravated Unlawful Restraint and  
Unlawful Restraint Must Be Vacated as Based on the Same Act as  
Aggravated Kidnapping.

¶ 31 Aaron argues in the alternative, if we affirm his adjudication and sentence for aggravated kidnapping, that his adjudications for kidnapping and aggravated assault should be vacated as lesser-included offenses of aggravated kidnapping, and his adjudications for aggravated unlawful restraint and unlawful restraint should also be vacated as violations of the one-act-one-crime

rule. The State argues that because the dispositional order only contains the committing charge of aggravated kidnapping, there is nothing for this court to vacate or correct. The State contends that there is no prejudice as there can only be a final judgment where there is an adjudication of guilty and an associated sentence entered on the same charge. A court's review of a one-act-one-crime rule issue is *de novo*. *In re Samatha V.*, 234 Ill. 2d 359, 369 (2009). No objections were made during the proceedings, but violations of the one-act-one-crime rule affect the fundamental fairness of the proceedings and therefore plain error review is appropriate even where counsel fails to object at trial. *In re Samantha V.*, 234 Ill. 2d at 378-79.

¶ 32 We agree that there is no final judgment without a sentence. *In re J.N.*, 91 Ill. 2d 122, 127 (1982). In proceedings under the Juvenile Court Act, the dispositional order is the final judgment. *In re J.N.*, 91 Ill. 2d at 127. There were no sentences for any of the remaining offenses other than aggravated kidnapping, and so there is no final judgment on any of the other offenses. The order of commitment in this case lists the "Committing charge(s)" as only "Aggravated Kidnapping," a Class 1 offense, and cites only "720 ILCS 5/10-2(6)." The second line for any "Committing charge(s)" is blank. We note also that the record supports this determination. During sentencing, after reviewing Aaron's criminal background, including his prior adjudication for attempt armed robbery under Petition No. 14 JD 00685 for attempting to rob a postal worker, the court noted "that the minor stands before the Court with two findings for violent offenses, that being the attempted armed robbery and the aggravated kidnapping for which this Court found him guilty." Thus, the only judgment in this case is for the offense of aggravated kidnapping. Thus, the only charge for which Aaron was sentenced was aggravated kidnapping.

¶ 33 Nevertheless, while during the sentencing phase of the delinquency proceedings the court sentenced Aaron on only one offense, aggravated kidnapping, the fact remains that during the

adjudicatory phase the court found Aaron guilty of all nine offenses he was charged with. The one act-one crime rule applies to juvenile proceedings the same as in typical criminal matters. *Samantha V.*, 234 Ill. 2d at 375. Under the one-act, one-crime rule, a defendant may be convicted for only one crime resulting from a single act. *People v. Dresher*, 364 Ill. App. 3d 847, 863 (2006). If the same physical act forms the basis for more than one offense, a defendant may be prosecuted for each offense, but only one conviction may be imposed. *People v. Segara*, 126 Ill. 2d 70, 77 (1988). If convictions are based on the same act, a conviction can only be entered on the most serious offense. *People v. Watson*, 378 Ill. App. 3d 580, 590 (2007). When multiple convictions for the same crime are entered based on a single act, those convictions must be vacated. *People v. Crespo*, 203 Ill. 2d 335 (2001). When a defendant is convicted of more than one crime arising out of the same act, the reviewing court must vacate all of the convictions except for the most serious offense. *People v. Artis*, 232 Ill. 2d 156, 167-69 (2009).

¶ 34 The purpose of the doctrine is to prevent unfair prejudice to a defendant in the future, where a conviction based on multiple offenses presents the misconception that the defendant committed multiple and separate acts. *Segara*, 126 Ill. 2d at 77. Our supreme court recognized this problem in juvenile proceedings and held the following in *Samantha V.*:

"It may be true that, generally, only one finding of delinquency is entered against a minor, and a minor receives only one sentence. However, it cannot reasonably be argued that the crimes underlying the delinquency finding will have no impact once the juvenile is sentenced and the dispositional order is entered. In the event of a future encounter with the juvenile or criminal justice systems, it is hard to imagine that the State would merely inform a court preparing to set bond, fashion a sentence, or entertain matters related to

juvenile detention or parole of the mere fact of a juvenile delinquency finding without seeking to inform the court of the crimes committed.” *Samantha V.*, 234 Ill. 2d at 373.

¶ 35 In *Samantha V.*, the minor respondent's trial order indicated that she was found guilty of both counts charged. *Samantha V.*, 234 Ill. 2d at 366. Though the State focuses on only the order of commitment, the trial order in this case is similar to *Samantha V.* and found Aaron guilty of all nine counts. Here, while the court only sentenced Aaron on aggravated kidnapping, the record and the trial order still reflect adjudications of guilty on all other offenses.

¶ 36 There are two steps to the one-act, one-crime analysis:

¶ 37 “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) (citing *People v. Rodriguez*, 169 Ill. 2d 183, 186 (1996), and *King*, 66 Ill. 2d at 566).

¶ 38 Aaron’s adjudications for aggravated unlawful restraint, unlawful restraint, and vehicular invasion are based on the same physical act as the aggravated kidnapping charge. Kidnapping is an ongoing offense. *People v. Turner*, 128 Ill. 2d 540, 577 (1989). Aaron was charged with and adjudicated delinquent for aggravated kidnapping where he: "knowingly and by the threat of force carried Gwen Davis from one place to another, with the intent to secretly confine her against her will" while armed with a "dangerous weapon." Aaron was charged with and adjudicated delinquent for aggravated unlawful restraint based on the following act: "knowingly and without legal authority detained Gwen Davis" while "using a deadly weapon." Aaron was charged with and adjudicated delinquent for aggravated assault where he: "used a deadly

weapon, a revolver, in that gun was pointed at her ribs, thereby placing Gwendolyn Davis in reasonable apprehension of receiving a battery."

¶ 39 The adjudications for aggravated unlawful restraint and unlawful restraint are based on the same ongoing act of kidnapping and cannot stand because they are also based on the single ongoing event of the aggravated kidnapping. See *Turner*, 128 Ill. 2d at 577 (held that convictions for both aggravated kidnapping and unlawful restraint could not both stand because they were premised on the single ongoing event of the aggravated kidnapping).

¶ 40 Therefore, Aaron's adjudications for aggravated unlawful restraint and unlawful restraint must be vacated.

¶ 41 III. The Adjudications for the Offenses for

Kidnapping and Aggravated Assault Must Be Vacated.

¶ 42 Aaron's adjudications for kidnapping and aggravated assault also cannot stand, because they are lesser-included offenses. Even if the conduct involved multiple acts, multiple convictions are improper if any of the offenses are lesser-included offenses. *People v. Miller*, 238 Ill. 2d 161, 165 (2010). Under the abstract elements approach used to determine if an offense is lesser-included offense, "if all of the elements of one offense are included within a second offense and the first offense contains no element not included in the second offense, the first offense is deemed a lesser-included offense of the second." *Id.* at 166. In other words, it would be impossible to commit the greater offense without necessarily committing the lesser offense. *Id.*

¶ 43 Kidnapping is a lesser-included offense of aggravated kidnapping. Aggravated kidnapping is a Class X felony, while kidnapping is a Class 2 felony. See 720 ILCS 5/10-2(a)(5), 10-1(a)(2) (West 2014). The adjudication for kidnapping (count II) must be vacated.

¶ 44 Aggravated assault (while using a deadly weapon) is a lesser-included offense of aggravated kidnapping while armed with a deadly weapon. See *People v. Roberts*, 71 Ill. App. 3d 124, 129 (1979) (aggravated assault is a lesser-included offense of aggravated kidnapping). The adjudication for aggravated assault must also be vacated.

#### IV. The Adjudications for Two Counts of

#### Aggravated Unlawful Use of a Weapon Must Be Vacated.

¶ 45 Aaron was adjudicated delinquent of two counts of aggravated unlawful use of a weapon (AUUW) under 720 ILCS 5/24-1.6 (West 2014), for carrying a firearm outside the home when he was under the age of 21, and for carrying a firearm outside the home while he did not have a valid firearm owner's identification card (FOID). Our Criminal Code provides a specific exemption from the offense of AUUW where the gun is "broken down in a non-functioning state." See 720 ILCS 5/24-1.6(c)(i) (West 2014). See also 720 ILCS 5/24-2(b)(4) (West 2014) (also providing a specific exemption from aggravated unlawful use of a weapon under 720 ILCS 5/24-1.6 when the weapon is "broken down in a non-functioning state"); *People v. Martinez*, 285 Ill. App. 3d 881, 884 (1996) (exemption to the AUUW statute requires that the gun must be non-functioning, and broken down, meaning disassembled). The evidence established that the gun used was missing the cylinder. The State concedes that Aaron was exempt from the offense of AUUW. Therefore, Aaron's adjudications for the counts for AUUW must be vacated.

¶ 46 V. The Adjudication for Unlawful Possession of a Firearm is Proper.

¶ 47 Finally, Aaron argues that his adjudication for unlawful possession of a firearm likewise must be vacated where the gun he possessed was not in an operable condition. But, unlike aggravated unlawful use of a weapon, unlawful possession of firearm does not have any exemption for a disassembled gun that is not operable at the time of the offense. See 720 ILCS

5/24-3.1(a)(1) (West 2014). A person commits the offense of unlawful possession of a firearm when he or she is under 18 years of age and has in his or her possession any firearm of a size which may be concealed upon the person. 720 ILCS 5/24-3.1(a)(1) (West 2014). It has long been established that it is not necessary for the State to prove that an instrument recovered from the offender's possession be in operable condition for there to be a proper finding of unlawful possession of a firearm. See *People v. Williams*, 394 Ill. App. 3d 286, 289-90 (2009); *People v. Hughes*, 123 Ill. App. 2d 115, 122 (1970). It is sufficient to show that the weapon possessed the outward appearance and characteristics of a firearm, and it is immaterial that the weapon is not loaded, has no firing pin or has an open barrel and is inoperable. *Williams*, 394 Ill. App. 3d at 290-91 (citing *People v. Halley*, 131 Ill. App. 3d 1070, 1073 (1971)). A device is not a firearm if it was in such a state of disrepair or its design so completely altered that it no longer could be said to be designed for that purpose. *Id.*

¶ 48 Defendant's citations are distinguishable. In *People v. Worlds*, 80 Ill. App. 3d 628, 632 (1980), the "so-called gun" was in "so decrepit a state" because of rust and it was completely missing its handle. In *People v. Coburn*, 25 Ill. App. 3d 542, 545 (1975), the defendant could not be convicted of the crime of possessing a sawed-off shotgun where the barrel was not in place in the shotgun because the barrel itself was one of the elements of the offense of possession of "any shotgun with a barrel less than 18 inches in length." *Coburn*, 25 Ill. App. 3d at 545 (quoting Ill. Rev. Stat. 1971, ch. 38, par. 24-1(a)(7)). Here, the entirety of the gun was intact except for the cylinder, and the offense of unlawful possession of a firearm does not include the barrel or cylinder specifically as an element of the offense. The evidence in this case established that, although the gun was rusty and was missing its cylinder, it still had the appearance and characteristics of a firearm and was not in such a state of disrepair or so altered that it could no

longer be used as a firearm. It still retained its character as a gun; it was merely missing the cylinder. We affirm the adjudication for unlawful possession of a firearm.

¶ 49

#### CONCLUSION

¶ 50

We affirm the adjudication of delinquency for aggravated kidnapping, vehicular invasion, and unlawful possession of a firearm, and we affirm the adjudication for and disposition of aggravated kidnapping.

¶ 51

But we vacate the adjudications for aggravated unlawful restraint, unlawful restraint, and the adjudications for the lesser-included offenses of kidnapping and aggravated assault as violations of the one-act-one-crime rule.

¶ 52

We also vacate the adjudications for two counts of aggravated unlawful use of a weapon, as Aaron is exempt under the statute because the gun was missing the cylinder.

¶ 53

We remand the matter to the circuit court to correct the trial order accordingly (Ill. S. Ct. R. 615(b) (eff. Aug. 27, 1999)). We affirm in part, vacate in part, and remand to the clerk of the court to correct the respondent's trial order to indicate adjudications only for the counts of aggravated kidnapping, vehicular invasion, and unlawful possession of a firearm.

¶ 54

Affirmed in part; vacated in part; trial order corrected.