2015 IL App (4th) 140108-U

NO. 4-14-0108

FILED
December 15, 2015
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from
Plaintiff-Appellee,	)	Circuit Court of
v.	)	McLean County
KEONA L. HAMILTON,	)	No. 12CM1472
Defendant-Appellant.	)	
	)	Honorable
	)	David W. Butler,
	)	Judge Presiding.

JUSTICE APPLETON delivered the judgment of the court.
Presiding Justice Knecht and Justice Holder White concurred in the judgment.

ORDER

¶ 1 *Held*: (1) The appellate court affirmed, finding no violation of the one-act, one-crime rule because the record on appeal did not demonstrate error.

(2) The appellate court vacated the circuit clerk's report of conviction for the purpose of federal firearm disqualification because the record did not demonstrate the State intended to pursue the battery charges against defendant as offenses occurring within a domestic relationship.

¶ 2 Defendant, Keona L. Hamilton, was convicted of two counts of battery after a bench trial and sentenced to 24 months' conditional discharge. She appeals, raising two claims of error: (1) one count of battery should be vacated under the one-act, one-crime rule; and (2) the circuit clerk erred in filing a federal firearms disqualification report indicating defendant was in a domestic relationship with the victim. We affirm in part and vacate in part.

¶ 3 I. BACKGROUND

¶ 4 In August 2012, the State charged defendant with two counts of battery. In count I, the State alleged defendant knowingly made physical contact of an insulting or provoking nature with Dawn Abbott by hitting her in violation of section 12-3(a)(2) of Criminal Code of 1961 (Criminal Code) (720 ILCS 5/12-3(a)(2) (West 2010)). In count II, the State alleged defendant knowingly "caused bodily harm, bruising, to *** Abbott by hitting her" in violation of section 12-3(a)(1) of Criminal Code (720 ILCS 5/12-3(a)(1) (West 2010)). The charges stemmed from a physical altercation at a public establishment between two groups: defendant, Katie Welch, and Hector Alvarez against Abbott and Abbott's daughter (Devin Miramontes).

¶ 5 The bench trial began on October 11, 2013, and continued over the course of four trial dates through January 8, 2014. The record before us does not include a transcript or a report of proceedings of the trial. However, defendant submitted a bystander's report that was "approved as to form," as indicated by the signatures of the trial judge, the prosecutor, and defendant's counsel pursuant to Illinois Supreme Court Rule 323 (eff. Dec. 13, 2005). The bystander's report summarizes only the testimony of each witness. We need not reiterate the majority of the content of the bystander's report. We will summarize only that testimony necessary for a full understanding of our disposition.

¶ 6 According to the witnesses' testimony at trial, as set forth in the bystander's report, Abbott went to Eric's Restaurant on August 17, 2012, with her father, Mark Abbott, and her cousin, Chad Smith. When Abbott got home, she realized she had left her debit card at the restaurant. Her daughter, Devin Miramontes, and Devin's friend, Detric Blakely, accompanied Abbott back to the restaurant to retrieve her debit card. When they arrived, around 1 a.m., Abbott saw her ex-boyfriend, Hector Alvarez, and his new girlfriend, Katie Welch, outside of the

restaurant. As they approached, Welch directed racial comments toward Miramontes, threw a drink in her face, and then physically attacked her. There is no indication where defendant was in relation to Welch and Alvarez. According to the testimony, defendant had never before met Abbott or Miramontes.

¶ 7 Abbott saw defendant go after Miramontes as well. Abbott tried to get defendant off Miramontes, but Alvarez and defendant threw Abbott to the ground and beat her. Defendant struck Abbott on the head with a beer bottle and struck her repeatedly in the face and head with a closed fist. Several people pulled defendant off Abbott. The State produced photographic exhibits of Abbott's injuries, which showed cuts and bruising to her face and bruising on her body.

¶ 8 The trial court found defendant guilty of both counts of battery and immediately conducted a sentencing hearing. The record before us does not include a transcript of the proceedings, a bystander's report, or an agreed statement of facts. See Ill. S. Ct. Rs. 323(c), (d) (eff. Dec. 13, 2005). Thus, we have no record of the (1) evidence presented; (2) arguments and recommendations made by counsel; (3) court's imposition of the sentence, including its bases, reasoning, or findings; or (4) objections or arguments made by the parties as to any issues raised, if any. According to the court's docket entry, defendant was sentenced to 24 months' conditional discharge and ordered to pay various fines and fees.

¶ 9 This appeal followed.

¶ 10 II. ANALYSIS

¶ 11 Defendant raises two arguments on appeal. First, she claims one of her battery convictions should be vacated under the one-act, one-crime rule. She contends because the State

did not apportion the crime into multiple acts in the information, alleging only in each count that defendant injured Abbott by "hitting her," one of her convictions must be vacated.

¶ 12 Pursuant to the one-act, one-crime rule, "a criminal defendant may not be convicted of multiple offenses when those offenses are all based on precisely the same physical act." *People v. Stull*, 2014 IL App (4th) 120704, ¶ 42 (citing *People v. King*, 66 Ill. 2d 551, 566 (1977)).

> "Under *King*, a court first determines whether a defendant's conduct consisted of separate acts or a single physical act. Multiple convictions are improper if they are based on precisely the same physical act. [Citations.] If the court determines that the defendant committed multiple acts, the court then goes on to determine whether any of the offenses are lesser included offenses. [Citations.] If so, then, under *King*, multiple convictions are improper; if not, then multiple convictions may be entered." *People v. Rodriguez*, 169 Ill. 2d 183, 186 (1996).

Whether a violation of the one-act, one-crime rule has occurred is subject to *de novo* review. *Stull*, 2014 IL App (4th) 120704, ¶ 43.

¶ 13 The record before us does not indicate whether defendant raised this issue in the trial court. Regardless of whether defendant forfeited the issue, this court may review it under the plain-error doctrine.

> "The plain-error doctrine *** permits a reviewing court to consider unpreserved error when (1) a clear or obvious error occurred and the evidence is so closely balanced that the error

> alone threatened to tip the scales of justice against the defendant, regardless of the seriousness of the error, or (2) a clear or obvious error occurred and that error is so serious that it affected the fairness of the defendant's trial and challenged the integrity of the judicial process, regardless of the closeness of the evidence." *People v. Sargent*, 239 Ill. 2d 166, 189 (2010).

¶ 14 "[A]n alleged one-act, one-crime violation and the potential for a surplus conviction and sentence affects the integrity of the judicial process, thus satisfying the second prong of the plain error rule." *People v. Harvey*, 211 Ill. 2d 368, 389 (2004). As a result, we consider whether any error occurred based on a violation of the one-act, one-crime rule.

¶ 15 As stated, defendant argues on appeal the charges against her in counts I and II of the charging instrument were based on a single physical act. She maintains it is improper to permit the State to obtain multiple convictions against her when the State's clear intent—as evidenced by its charging instrument—was to portray defendant's conduct as a single physical act. Defendant cites *People v. Crespo*, 203 Ill. 2d 335, 343-45 (2001), for the proposition that the State must apportion, in the charging instrument, various and separate acts that occur during one altercation in order to support separate criminal charges.

¶ 16 In *Crespo*, the defendant was convicted and sentenced based on one count of aggravated battery and one count of armed violence in connection with the stabbing of a single victim. *Crespo*, 203 Ill. 2d at 337. Evidence at the defendant's trial showed he stabbed the victim "three times in rapid succession, once in the right arm, and twice in the left thigh." *Crespo*, 203 Ill. 2d at 338. On review, the defendant argued his aggravated battery conviction had to be vacated "because the aggravated battery charge stemmed from the same physical act

which formed the basis of the armed violence charge." *Crespo*, 203 Ill. 2d at 340. Ultimately, the court agreed that both convictions could not stand and reversed the defendant's aggravated battery conviction. *Crespo*, 203 Ill. 2d at 346.

¶ 17 In reaching its decision, the supreme court found that, although "each of [the victim's] stab wounds could support a separate offense," such was "not the theory under which the State charged [the] defendant, nor [did] it conform to the way the State presented and argued the case to the jury." *Crespo*, 203 Ill. 2d at 342. The court specifically looked to the indictment in the case, which it found failed to "differentiate between the separate stab wounds" and made no "attempt to apportion [the] offenses among the various stab wounds." *Crespo*, 203 Ill. 2d at 342-43. It held that "to apportion the crimes among the various stab wounds for the first time on appeal would be profoundly unfair." *Crespo*, 203 Ill. 2d at 343. Additionally, the court also looked to the State's closing argument, finding "the State's theory at trial, as shown by its argument to the jury, amply support[ed] the conclusion that the intent of the prosecution was to portray [the] defendant's conduct as a single attack." *Crespo*, 203 Ill. 2d at 343-44.

¶ 18 Unfortunately, due to the insufficient record before us, we are unable to discern the State's theory of the case. The bystander's report summarizes the evidence only, without regard to the parties' opening statements or closing arguments. Based on the summary of the testimony, Abbott testified defendant hit her on the head with a beer bottle and then hit her with her fists. We cannot tell whether the State charged defendant with battery based upon a single act or multiple acts of "hitting." However, we can conclude the record here does not support defendant's assertion she was charged and convicted of two offenses based on the same physical act. "Without an adequate record preserving the claimed error, the court of review must presume the circuit court's order had a sufficient factual basis and that it conforms with the law." *In re*

Marriage of Gulla, 234 Ill. 2d 414, 422 (2009). We find insufficient evidence to conclude defendant's two convictions for battery violated the one-act, one-crime rule.

¶ 19 Second, defendant claims the trial court erred in filing a federal firearms disqualification report with the Illinois State Police indicating defendant was in a domestic relationship with Abbott. On the day of sentencing, the court entered an order for conditional discharge, with the condition that defendant was prohibited from possessing a firearm or other dangerous weapon. The order continued with the following: "In all felony and/or domestic battery convictions, the defendant shall surrender his/her Firearm Owners Identification (FOID) card to the probation officer as directed."

¶ 20 Defendant's notice of appeal was dated February 10, 2014. On February 13, 2014, the circuit clerk filed a "Report of Conviction for Misdemeanor Crimes of Domestic Violence Federal Firearms Disqualification." This report lists defendant's relationship with Abbott as "unidentified." The State claims this court is without jurisdiction to review this issue because the contested report was filed subsequent to the filing of defendant's notice of appeal. However, this court allowed defendant, without objection, to file a late notice of appeal on March 24, 2014. As such, we have jurisdiction to review the propriety of this report. See *People v. Gutierrez*, 2012 IL 111590, ¶ 14.

¶ 21 Section 112A-11.1 of the Code of Criminal Procedure of 1963 (725 ILCS 5/112A-11.1 (West 2012)) requires the State to file a notice within 45 days after the defendant's arraignment claiming a conviction of the charged offense would subject the defendant to the federal firearms disqualification. That is, the State must notify the defendant if it intends to proceed in the prosecution of a misdemeanor crime of domestic violence. See 18 U.S.C. § 922 (g)(9) (2012). After being notified, the defendant may either admit or deny the applicability of

the disqualification. See 725 ILCS 5/112A-11.1(c) (West 2012). If the defendant denies or stands mute, the State must prove beyond a reasonable doubt the offense qualifies. See 725 ILCS 5/112A-11.1(c) (West 2012).

¶ 22 There is no indication in the record the State intended to pursue these charges as having occurred within a domestic relationship. We find no notice filed by the State so indicating. Because the record does not support a finding that the charges here are qualifying offenses, we find the circuit clerk erred in submitting the federal firearms disqualification report to the Illinois State Police. We vacate the circuit clerk's filing of the report of conviction asserting defendant's federal firearms disqualification.

¶ 23 III. CONCLUSION

¶ 24 For the reasons stated, we affirm the trial court's judgment and vacate the circuit clerk's report to the Illinois State Police of defendant's federal firearms disqualification. Because the State has successfully defended a portion of the criminal judgment, we grant the State its statutory assessment of $50 against defendant as costs of this appeal. See *People v. Smith*, 133 Ill. App. 3d 613, 620 (1985) (citing *People v. Nicholls*, 71 Ill. 2d 166, 179 (1978)).

¶ 25 Affirmed in part and vacated in part.