

No. 1-14-2480

**NOTICE:** This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

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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 13527
	)	
RICHARD ROBERTS,	)	Honorable
	)	Pamela M. Leeming,
Defendant-Appellant.	)	Judge Presiding.

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PRESIDING JUSTICE MASON delivered the judgment of the court.  
Justices Fitzgerald Smith and Pucinski concurred in the judgment.

**O R D E R**

¶ 1 *Held:* Defendant's convictions for one count of being an armed habitual criminal and two counts of unlawful use of a weapon by a felon (UUWF) affirmed over his challenge that one of the UUWF convictions violates the one-act, one-crime principle; mittimus corrected by vacating counts that the trial court merged and one count of which defendant was found not guilty.

¶ 2 Following a bench trial, defendant Richard Roberts was convicted of one count of being an armed habitual criminal, three counts of unlawful use of a weapon by a felon (UUWF), and four counts of aggravated unlawful use of a weapon (UUW). The trial court sentenced Roberts to

six years' imprisonment for being an armed habitual criminal, and three years' imprisonment for each of the remaining seven counts, with all sentences running concurrently.

¶ 3 The sole issue raised by Roberts on appeal is that his mittimus must be corrected to reflect only his convictions for being an armed habitual criminal and one count of UUWF. Roberts argues that six of the remaining convictions must be vacated under the one-act, one-crime rule, and that one conviction must be vacated because he was acquitted on that count. The State agrees that five of the convictions must be vacated under the one-act, one-crime rule, and that the conviction entered on the count of which Roberts was acquitted must also be vacated. The State argues, however, that Robert's conviction for UUWF on Count 7 must stand because it does not violate the one-act, one-crime rule. We agree.

¶ 4 In a 20-count indictment, Roberts was charged with 3 counts of being an armed habitual criminal, 5 counts of UUWF, and 12 counts of aggravated UUW. Six of these counts were related to Roberts's possession of a loaded Taurus firearm that was recovered from his person, one of the counts was related to the ammunition found inside that Taurus firearm, and another count was related to a separate magazine containing additional ammunition of a different caliber that was recovered from his pocket. Roberts was found guilty on these eight counts. The 12 remaining counts were related to Roberts' alleged possession of two additional firearms, a Cobray and a Hi-Point, which were recovered from a vehicle that Roberts did not own. Roberts was acquitted on these 12 counts.

¶ 5 Roberts does not challenge the sufficiency of the evidence sustaining his convictions, and therefore, a detailed discussion of the evidence presented at trial is not necessary. As relevant here, on June 23, 2012, Cicero police officer Branislav Dragisic detained Roberts and another

man as they walked down the street after they were identified by a theater security guard as being armed. Officer Dragisic recovered a loaded .45-caliber Taurus firearm from Roberts' waistband, and a Cobray ammunition magazine containing 29 live Luger hollow point rounds from his left pants pocket. After placing Roberts under arrest, Officer Dragisic relocated to a vehicle parked one block away, which the security guards had described as the vehicle used by Roberts and the other man when they left the theater. Looking through the rear driver's side window of that vehicle, Officer Dragisic saw an ammunition magazine that was identical to the one recovered from Roberts' pocket protruding from a bag on the floor. After speaking with the man who had been with Roberts, Officer Dragisic used the keys for that vehicle to unlock the door and recover the bag. From inside the bag, Officer Dragisic recovered the magazine, which was inserted inside a Cobray M11 9-millimeter firearm, a loaded Hi-Point .45-caliber handgun, and Roberts' social security card.

¶ 6 After being advised of his *Miranda* rights, Roberts told Officer Dragisic that he was carrying the firearm on him for protection, and he signed a written statement to that effect. The State submitted certified copies of Roberts' 2007 conviction for possession of a controlled substance with intent to deliver, and his 2001 conviction for delivery of a controlled substance, as well as proof that Roberts had never been issued a firearm owner's identification card.

¶ 7 The trial court found that the evidence was not sufficient to link Roberts to the guns and ammunition recovered from the bag that was inside the vehicle, and thus, found him not guilty of the 12 counts related to those weapons (Counts 2, 3, 5, 6 and 13-20). The trial court found Roberts guilty of the eight counts related to his possession of the loaded Taurus firearm

recovered from his waistband and the ammunition magazine recovered from his pants pocket (Counts 1, 4 and 7-12).

¶ 8 Specifically, the trial court found Roberts guilty of being an armed habitual criminal (Count 1) and UUWF (Count 4) for possessing the Taurus firearm and having two prior felony convictions. In announcing its findings the court expressly stated that the guilty finding for Count 4 "will merge." The court also found Roberts guilty of UUWF on Count 7 for possessing the .45-caliber ammunition that was inside the loaded Taurus firearm, and on Count 8 for possessing the 9-millimeter ammunition that was in the magazine recovered from his pants pocket. In addition, the court found Roberts guilty of four counts of aggravated UUW (Counts 9-12), which were all based on his possession of the Taurus firearm. When announcing its findings on Counts 9 and 12, the court expressly stated that those counts would "merge."

¶ 9 At sentencing, the trial court sentenced Roberts to the minimum term of six years' imprisonment for being an armed habitual criminal. It then sentenced Roberts to concurrent terms of three years' imprisonment for all of the remaining counts. The court specified those offenses as being Counts 4, 5, 7, 8, 9, 10, 11 and 12. In accordance with the court's announcement at sentencing, Roberts's mittimus shows that he was found guilty and sentenced on these nine separate counts.

¶ 10 Roberts contends that his mittimus must be corrected to reflect only his convictions for being an armed habitual criminal and one count of UUWF, that being Count 8 for the ammunition found in his pants pocket. Roberts argues that the other seven convictions reflected on his mittimus must be vacated.

¶ 11 Roberts first contends, and the State agrees, that his convictions on Counts 4, 9, 10, 11 and 12 must be vacated from his mittimus because they violate the one-act, one-crime rule. Pursuant to this rule, a defendant cannot be convicted of multiple offenses that are based upon the same single physical act, and where he is, the convictions for the less serious offenses must be vacated. *People v. Johnson*, 237 Ill. 2d 81, 97 (2010). Here, Roberts' conviction for being an armed habitual criminal (Count 1), and his convictions for UUWF (Count 4) and aggravated UUW (Counts 9-12) were all based on his single act of possessing the Taurus firearm. The record shows that when the trial court announced its guilty findings for each individual count, it expressly stated that Counts 4, 9 and 12 would "merge." But at sentencing, all of the counts were erroneously included on the mittimus. Accordingly, we concur with the parties and vacate Counts 4, 9, 10, 11 and 12 from the mittimus.

¶ 12 Roberts next contends, and the State agrees, that his conviction on Count 5 must be vacated from the mittimus because he was found not guilty of that offense. Count 5 charged Roberts with UUWF for possession of the Hi-Point firearm found inside the vehicle. The record shows that the trial court found Roberts not guilty of that offense, and thus, its inclusion on the mittimus is erroneous. Therefore, we correct the mittimus to vacate the conviction on Count 5.

¶ 13 Finally, Roberts contends that the conviction on Count 7 (UUWF) should also be vacated from his mittimus. Roberts initially contended that he was found not guilty on this count because it was related to his possession of the ammunition found inside the vehicle, but as the State correctly asserts, Count 7 was not for the ammunition found inside the vehicle, but instead, separately charged Roberts with possession of the ammunition that was inside the loaded Taurus firearm which was recovered from his waistband. In *People v. Almond*, 2015 IL 113817, our

supreme court found that the UUWF statute (720 ILCS 5/24-1.1(a) (West 2012)) authorizes separate convictions for the simultaneous possession of a firearm and the ammunition inside a single loaded firearm. *Almond*, 2015 IL 113817, ¶ 43. Consequently, Roberts' conviction under Count 7 does not violate the one-act, one-crime rule and must stand.

¶ 13 Although Roberts acknowledges that *Almond* allows for separate convictions for a firearm and the ammunition inside that firearm, he argues that *Almond* was wrongly decided and urges this court not to follow that decision. Of course, we are not at liberty to decline to follow binding precedent from our supreme court (*People v. Artis*, 232 Ill. 2d 156, 164 (2009)) and we therefore reject Roberts' argument on this point. We find that Roberts' conviction on Count 7, separately charging him for possession of the ammunition inside the Taurus firearm, is proper and does not violate the one-act, one-crime rule.

¶ 14 We vacate Counts 4, 5, 9, 10, 11 and 12 from Roberts's mittimus, and affirm his remaining convictions and sentences in all other respects.

¶ 15 Affirmed; mittimus corrected.