

2017 IL App (1st) 141476-U

No. 1-14-1476

Order filed November 6, 2017

First Division

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).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County,
)	
v.)	No. 09 CR 327
)	
DEVLIN ADDISON,)	Honorable
)	Steven J. Goebel,
Defendant-Appellant.)	Judge, presiding.

PRESIDING JUSTICE PIERCE delivered the judgment of the court.
Justices Harris and Simon concurred in the judgment.

ORDER

- ¶ 1 *Held:* Defendant's convictions for aggravated battery with a firearm and aggravated discharge of a firearm violate the one-act-one-crime rule, and the latter is vacated.
- ¶ 2 Following a 2014 bench trial, defendant Devlin Addison was convicted of aggravated battery with a firearm and aggravated discharge of a firearm and sentenced to concurrent 13-year prison terms. On appeal, he contends that one of his convictions must be vacated under the one-act-one-crime rule. For the reasons stated below, we vacate the aggravated discharge conviction.

¶ 3 Defendant was charged with various offenses allegedly committed on or about December 12, 2008, including the attempted first degree murder of Felicia Frazier. The aggravated battery with a firearm count alleged that he struck and injured Frazier by discharging a firearm. The aggravated discharge count alleged that he discharged a firearm at or into a specified building, which he knew to be occupied, from outside the building.

¶ 4 The evidence at trial was that, after friends or acquaintances of defendant were ejected from a birthday party being held in a rented hall at said building, defendant fired multiple shots into the hall. One of the shots struck and wounded Frazier. The court found defendant guilty of aggravated battery with a firearm and aggravated discharge of a firearm, finding him not guilty of attempted murder. Defendant's unsuccessful posttrial motion did not raise a one-act-one-crime claim. He was sentenced to concurrent prison terms of 13 years. His postsentencing motion also did not raise a one-act-one-crime claim for sentencing him on both offenses.

¶ 5 On appeal, defendant contends that his convictions for aggravated battery and aggravated discharge violate the one-act-one-crime rule.

¶ 6 Before addressing the merits, we note that defendant did not raise these issues below and thereby forfeited them. However, our supreme court has held that second-prong plain error – an obvious error so serious that it challenges the integrity of the judicial process – includes one-act-one-crime claims. *People v. Clark*, 2016 IL 118845, ¶¶ 24-25, citing *In re Samantha V.*, 234 Ill. 2d 359, 378-79 (2009).

¶ 7 The one-act-one-crime doctrine states that a defendant may not be convicted of multiple offenses based on the same physical act, with an “act” defined as any overt or outward manifestation that will support a separate conviction, and with the proviso that multiple convictions may stand when a defendant has committed multiple acts even if they are interrelated

or simultaneous. *People v. Almond*, 2015 IL 113817, ¶¶ 47-48. Convictions for multiple offenses can be sustained only if the charging instrument reflects the State's intention to apportion the defendant's conduct into multiple, separate, offenses. *Id.*, ¶ 49, citing *People v. Crespo*, 203 Ill. 2d 335, 345 (2001).

¶ 8 Here, defendant does not challenge the evidence that he fired multiple shots but contends that the State failed to apportion his shots into multiple or separate acts in the indictment as *Crespo* requires. He notes that the aggravated battery with a firearm count and aggravated discharge of a firearm count both alleged that his criminal act was discharging a firearm. The State in turn notes that the battery count alleged that defendant's discharge wounded Frazier, while the discharge count alleged that his discharge was at or into the building. While the State suggests that the indictment thus alleged different victims, defendant argues that the indictment merely alleged different theories of culpability for the same conduct.

¶ 9 We agree with defendant. The building that defendant discharged his firearm "at or into" in the aggravated discharge count is not a victim, and no victim is alleged by name in that count. Moreover, the description in the aggravated discharge count – defendant discharged his firearm at or into the building knowing it was occupied – encompasses, and applies equally to, the shot that struck Frazier as alleged in the aggravated battery count. Had the indictment distinguished between shots striking the building or an object in it and the shot that struck Frazier, or had it named as victims of the aggravated discharge other persons in the hall than Frazier, the State would have duly apportioned defendant's discharge of a firearm into separate acts. It did not.

¶ 10 We agree with defendant that this case is governed by, or at least not relevantly distinguishable from, *People v. Green*, 339 Ill. App. 3d 443 (2003), and *People v. Amaya*, 321 Ill. App. 3d 923 (2001). The *Green* defendant was convicted of two counts of attempted murder

and one count of aggravated discharge of a firearm for firing four or five shots in the direction of a group of named police officers. *Green*, at 446-447. The *Amaya* defendant was convicted of first degree murder, two counts of attempted murder, and aggravated discharge of a firearm, on an indictment alleging that he fatally shot a named person, wounded two other named persons, and committed aggravated discharge by knowingly discharging a firearm in the direction of “a person.” *Amaya*, at 924, 928-29. In both cases, we vacated the aggravated discharge conviction under the one-act-one-crime rule. *Green*, at 457-59; *Amaya*, at 930-31. We held in *Green*:

“Here, as in *Crespo*, Green committed a series of closely related but separate acts when he fired four or five shots with a pistol. And, as in *Crespo*, the State in this case did not apportion those shots in its charging instrument so that each formed the basis for separate crimes. Rather, the information relies on the fact that Green ‘discharged a firearm,’ without separation of the shots fired, to support the charges of both aggravated discharge of a firearm and attempt murder.” *Green*, at 459.

We held similarly in *Amaya*:

“The indictment did not differentiate between the three gunshots that actually struck the victims and other shots that were fired by the defendant without striking anyone. Rather, the aggravated discharge of a firearm count charged the defendant with the same conduct as the other counts but under a different theory of culpability without distinguishing between the three shots that struck the victims and any other shots the defendant may have fired.” *Amaya*, at 930.

¶ 11 Accordingly, defendant’s conviction for aggravated discharge of a firearm is vacated, and the judgment of the circuit court is otherwise affirmed.

¶ 12 Affirmed in part and vacated in part.