

THIRD DIVISION
January 18, 2017

No. 1-14-2942

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 JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County.
)	
v.)	No. 12 CR 20281
)	
STEVEN GALLEGOS,)	Honorable
)	James B. Linn,
Defendant-Appellant.)	Judge Presiding.

PRESIDING JUSTICE FITZGERALD SMITH delivered the judgment of the court.
Justices Lavin and Cobbs concurred in the judgment.

O R D E R

¶ 1 *Held:* Defendant's convictions for robbery, aggravated battery and unlawful restraint affirmed because they do not violate the one-act, one-crime doctrine where the offenses were based on separate acts; mittimus amended to correct offense.

¶ 2 Following a bench trial, defendant Steven Gallegos was convicted of robbery, aggravated battery and unlawful restraint and sentenced to concurrent terms of three years' imprisonment for each offense. On appeal, defendant contends that his convictions for aggravated battery and unlawful restraint should be vacated because they violate the one-act, one-crime rule where they are based on the same physical act as his robbery conviction. Defendant also contends, and the State agrees, that his mittimus should be amended to reflect that he was convicted of unlawful restraint rather than aggravated unlawful restraint. We affirm and correct the mittimus.

¶ 3 Defendant was charged with two counts each of armed robbery, aggravated battery, and aggravated unlawful restraint. At trial, Victor Hernandez testified that about 12:30 a.m. on September 21, 2012, he was riding his bicycle home after work and sustained a flat tire, and consequently, walked his bicycle the rest of the way home. As Hernandez walked down the sidewalk around 52nd and Honore Streets, a block from his home, defendant and two other men exited a house, surrounded him, and asked if he had any money. Hernandez replied that he had no money, and the men then asked him what he "was." Hernandez thought that they were asking if he belonged to a gang, and replied that he "was nothing." Hernandez recognized all three of the men because he often saw them standing on that block when he came home from work. He also knew defendant by his nickname "Tanque."

¶ 4 Hernandez testified that one of the men with defendant pointed a knife at his stomach. The three men then began punching Hernandez, and he dropped his bicycle to the ground. The man with the knife was no longer holding that weapon, but Hernandez could not recall what happened to it. As the men continued punching Hernandez, three people walked past them and he asked them for help, but they did not stop. Defendant and the two men continued punching

Hernandez until he broke free from them and ran down the block towards his home, leaving his bicycle on the ground. Hernandez testified that the men had not taken any property from him at this point, but his bicycle was never returned.

¶ 5 Defendant and the two men chased Hernandez down the block, caught up with him in front of his house, and again began punching him all over his body. Defendant then pointed a gun at Hernandez's head and told him to "give up the money" or he would kill him "right then and there." Hernandez then told defendant that he would give him his money. While defendant pointed the gun at Hernandez's head, one of the other men held Hernandez's hands behind his back while the third man searched his pockets. The men took Hernandez's iPod, phone, paycheck and wallet, which contained \$630. Defendant and the men then fled, and as they ran, Hernandez yelled at them "I can recognize you." Defendant then turned around and said "shit."

¶ 6 The police arrived shortly thereafter and Hernandez told them that defendant was one of the men who attacked him. Hernandez went with the police to defendant's house, but no one was there. Hernandez testified that he sustained fractures to his head, had pain in his stomach and back, and was bleeding. His wife and parents took him to the hospital where he was treated and released after a few hours. On the way to the hospital, Hernandez saw one of his attackers standing by a gate at a house on 52nd and Wood Streets.

¶ 7 Later that night, Hernandez told his wife, Sonia, that one of the men who attacked him was Tanque. Sonia found a photograph of defendant on Facebook and showed it to Hernandez, and he recognized defendant as one of his attackers. The day after the robbery, Hernandez identified defendant in a photo array, and a couple of days later, he identified one of his other

attackers in another photo array. Two weeks after the robbery, Hernandez identified defendant in a lineup at the police station, and he also identified defendant in court.

¶ 8 Chicago police officer Steven Barsch testified for the defense that he showed Hernandez a photo array at which time Hernandez identified defendant as one of his attackers. Officer Barsch did not recall Hernandez mentioning that a knife was used during the offense, nor did Hernandez say that defendant had brandished a gun. The defense also presented a stipulation that Officer Robert Leclair responded to the robbery at 12:45 a.m. and prepared the general offense case report which did not mention the use of a knife or firearm during the offense.

¶ 9 The trial court found that Hernandez was a credible and compelling witness, but that the State did not prove beyond a reasonable doubt that a gun was used during the offense. Consequently, the court found defendant guilty of the lesser included offense of robbery rather than armed robbery, and the lesser included offense of unlawful restraint rather than aggravated unlawful restraint with a weapon. The court also found defendant guilty of aggravated battery in a public place as charged.

¶ 10 The court subsequently sentenced defendant to concurrent terms of three years' imprisonment for each offense in this case. The court further ordered that the sentences in this case would run consecutive to the 18-year sentence imposed in case number 12 CR 20284, in which defendant was convicted of aggravated battery with a firearm in an unrelated incident.¹

¶ 11 On appeal, defendant contends that his convictions for aggravated battery and unlawful restraint should be vacated because they violate the one-act, one-crime rule where they are based

¹ Defendant's appeal in case number 12 CR 20284 challenging his 18-year consecutive sentence as erroneous and excessive is currently pending in this court under our case number 1-14-2943.

on the same physical act as his robbery conviction and were inherent in that offense. Defendant argues that the conduct which constituted the bodily harm or physical contact element for the aggravated battery offense was the same conduct used to satisfy the element of force for the robbery offense. He argues that there was not a separate act of harm or physical contact to sustain multiple convictions. Defendant also argues that the unlawful restraint was not a separate act, but instead, began and ended with the robbery.

¶ 12 The State responds that all three of the convictions should stand because they are based on separate acts. The State argues that the unlawful restraint occurred when defendant and the other men stopped Hernandez as he walked on the sidewalk and surrounded him. It further argues that the aggravated battery occurred after the unlawful restraint, when the defendants began punching Hernandez. The State asserts that the robbery then occurred during the second beating in front of Hernandez's home when defendant told Hernandez to give him money or he would kill him, and the other men held Hernandez's hands behind his back and took his property from his pockets. The State posits that although defendant initially asked Hernandez if he had any money when they first stopped him, defendant did not commit the robbery until after the unlawful restraint and aggravated battery had been separately completed.

¶ 13 As a threshold matter, defendant acknowledges that he forfeited this issue for appeal because he failed to object to the multiple convictions at trial and did not raise the issue in his posttrial motion. *People v. Enoch*, 122 Ill. 2d 176, 186 (1988). The parties agree, however, that our supreme court has repeatedly found that a one-act, one-crime violation is reviewable under the second prong of the plain error doctrine because it affects the integrity of the judicial process. *In re Samantha V.*, 234 Ill. 2d 359, 378-79 (2009). Accordingly, we will consider the issue.

¶ 14 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). Pursuant to this rule, defendant cannot be convicted of multiple offenses that are based upon precisely the same single physical act, and where he is convicted of two or more such offenses, the convictions for the less serious offenses must be vacated. *Id.*

¶ 15 Defendant, however, can be convicted of separate offenses where a common act is part of multiple crimes. *People v. Rodriguez*, 169 Ill. 2d 183, 188 (1996). Our supreme court has consistently defined an "act" as "any overt or outward manifestation which will support a different offense." *People v. Crespo*, 203 Ill. 2d 335, 341-42 (2001); *People v. King*, 66 Ill. 2d 551, 566 (1977). 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. Moreover, "when more than one offense arises from a series of incidental or closely related acts and the offenses are not, by definition, lesser included offenses, convictions with concurrent sentences can be entered." *Id.*

¶ 16 In clarifying the one-act, one-crime rule from *King*, the supreme court explained that a court must first determine whether defendant's conduct consists of one act or several acts. *Rodriguez*, 169 Ill. 2d at 186. If the court determines that defendant committed multiple acts, it must then determine whether any of the offenses are lesser included offenses. *Id.* If none of the offenses are lesser included offenses, then multiple convictions may be entered. *Id.* To sustain multiple convictions, the charging instrument must indicate that the State intended to treat defendant's conduct as separate, multiple acts. *Crespo*, 203 Ill. 2d at 345.

¶ 17 In this case, the State charged defendant with two counts of armed robbery for knowingly taking property from Hernandez by the use of force or by threatening the imminent use of force. 720 ILCS 5/18-2 (West 2012). In the first count, the State alleged that defendant was armed with a firearm, and in the second count, it alleged that he was armed with a knife.

¶ 18 The State also charged defendant with two counts of aggravated battery for striking Hernandez about the head and body while they were on Honore Street, a public way. 720 ILCS 5/12-3.05(c) (West 2012). In the first count, the State alleged that defendant knowingly caused bodily harm to Hernandez, and in the second count, it alleged that he knowingly made physical contact of an insulting or provoking nature with Hernandez.

¶ 19 Finally, the State charged defendant with two counts of aggravated unlawful restraint for knowingly, and without legal authority, detaining Hernandez while using a deadly weapon. 720 ILCS 5/10-3.1 (West 2012). In the first count, the State alleged that defendant was armed with a firearm, and in the second count, it alleged that he was armed with a knife.

¶ 20 The trial court found that the State failed to prove beyond a reasonable doubt that defendant was armed with a gun, and consequently, found him guilty of the lesser included offense of robbery rather than armed robbery. In doing so, the court found that defendant took property from Hernandez by the use of force, or by threatening the imminent use of force. 720 ILCS 5/18-1(a) (West 2012). The court also found defendant guilty of the lesser included offense of unlawful restraint rather than aggravated unlawful restraint, thereby finding that defendant illegally detained Hernandez. 720 ILCS 5/10-3(a) (West 2012).

¶ 21 Here, the record shows that defendant's convictions in this case were not based upon the same single physical act, but instead, were based upon multiple separate acts. Hernandez testified

that as he walked down Honore Street, defendant and two other men surrounded him and asked him if he had any money and whether he belonged to a gang. This evidence shows that defendant stopped Hernandez and prevented him from walking away. We therefore find that the evidence sufficiently established that defendant knowingly, and without legal authority, detained Hernandez, thereby committing the offense of unlawful restraint. Significantly, at this point in time, defendant was not committing any other offense.

¶ 22 Hernandez further testified that defendant and the other two men then began punching him all over his body and continued to do so until Hernandez broke free from them and ran down the block towards his home. Hernandez also testified that he sustained fractures to his head, had pain in his stomach and back, and was bleeding. The record thus shows that defendant committed aggravated battery by striking Hernandez about his head and body while they were on a public street, and knowingly caused bodily harm to Hernandez. This act was separate from defendant's initial detention of Hernandez, and therefore, the aggravated battery offense was separate from the unlawful restraint. Moreover, Hernandez testified that the men had not taken any property from him at this point, nor is there any evidence that they attempted to take his property during this beating. The record thereby shows that at the time defendant committed the aggravated battery, he was not yet committing the robbery offense.

¶ 23 Hernandez then testified that when defendant and the other men caught up with him in front of his house, they again began punching him all over his body. Hernandez testified that defendant then pointed a gun at his head and threatened to kill him if he did not give the men his money. One of the other men held Hernandez's hands behind his back while the third man took Hernandez's iPod, phone, paycheck, wallet and money from his pockets. The record thus shows

that this act which constituted the robbery offense, was separate from the acts which constituted the aggravated battery and unlawful restraint offenses.

¶ 24 Based on this record, we find that defendant committed a series of separate acts, and despite the interrelationship of those acts, they were sufficient to support defendant's multiple convictions and concurrent sentences. *King*, 66 Ill. 2d at 566. Furthermore, the indictment shows that the State intended to treat defendant's conduct as separate, multiple acts, thereby allowing for multiple convictions. *Crespo*, 203 Ill. 2d at 345. Accordingly, we conclude that defendant's convictions for robbery, aggravated battery and unlawful restraint do not violate the one-act, one-crime doctrine, and we affirm the convictions and sentences.

¶ 25 Defendant next contends, the State agrees, and we concur that his mittimus should be amended to correct one of the offenses of which he was convicted. The mittimus incorrectly indicates that defendant was convicted of aggravated unlawful restraint, a Class 3 felony, under section 10-3.1(a) of the Criminal Code (Code) (720 ILCS 5/10-3.1(a) (West 2012)). The record clearly shows, however, that the trial court found defendant guilty of the lesser included offense of unlawful restraint, a Class 4 felony, under section 10-3(a) of the Code (720 ILCS 5/10-3(a) (West 2012)). Pursuant to our authority (Ill. S. Ct. R. 615(b)(1) (eff. Aug. 27, 1999); *People v. McCray*, 273 Ill. App. 3d 396, 406 (1995)), we direct the clerk of the circuit court to amend the mittimus to reflect that defendant was convicted of the offense of unlawful restraint, a Class 4 felony, under section 10-3(a) of the Code.

¶ 26 For these reasons, we affirm the judgment of the circuit court of Cook County and amend the mittimus.

¶ 27 Affirmed; mittimus amended.