2018 IL App (5th) 150019-U

NO. 5-15-0019

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Bond County.
	)	
v.	)	No. 14-CF-52
	)	
JEREMIAH HOWARD,	)	Honorable
	)	John Knight,
Defendant-Appellant.	)	Judge, presiding.

JUSTICE MOORE delivered the judgment of the court.
Justices Goldenhersh and Overstreet concurred in the judgment.

ORDER

¶ 1 *Held*: The defendant's conviction of the offenses of identity theft (720 ILCS 5/16-30(a)(4) (West 2014)) of three or more individuals (*id.* § 16-30(e)(1)(D)) and aggravated identity theft (*id.* § 16-30(b)(2)) of three or more individuals (*id.* § 16-30(e)(2)(F)) was not plain error as a violation of the "one-act, one-crime" doctrine where the evidence supported a finding that the defendant possessed the personal identification documents or personal identifying information of 15 different individuals in a single plastic bag.

¶ 2 The defendant, Jeremiah Howard, appeals his November 6, 2014, conviction, in the circuit court of Bond County, of the offense of identity theft based on possession of the personal identification and financial documents of three or more individuals. 720 ILCS 5/16-30(a)(4), (e)(1)(D) (West 2014). The sole issue the defendant raises on appeal

is that this conviction should be vacated under the "one-act, one-crime" doctrine because the defendant was also convicted for aggravated identity theft based on possession of the personal identification and financial documents of three or more individuals (*id.* § 16-30(b)(2), (e)(2)(F)), premised on the same act of possession. For the following reasons, we affirm.

¶ 3 FACTS

¶ 4 On November 3, 2014, the defendant was charged, via a third-amended information, with, *inter alia*, identity theft of three or more individuals (count V) (*id.* § 16-30(a)(4), (e)(1)(D)) and aggravated identity theft of three or more individuals (count VII) (*id.* § 16-30(b)(2), (e)(2)(F)). Each count alleged that, on August 14, 2014, the defendant knowingly possessed personal identifying documents or personal identifying information of three or more individuals. Count VII, however, additionally alleged that the defendant knowingly possessed personal indentifying documents or information of three or more individuals with the intent to commit a felony and in furtherance of the activities of an organized gang. Count V and count VII of the third-amended information did not contain the names of the victims, only that there were three or more individuals affected.

¶ 5 A jury trial took place from November 3, 2014, until November 6, 2014. During the trial, Sergeant Deborah Keserauskis of the Greenville Police Department testified that after her department initiated a traffic stop on a van in which the defendant was a passenger, she recovered "a white plastic bag full of personal and financial identification" documents hidden within the defendant's reach. The plastic bag was admitted into

evidence as People's Exhibit 30, and Sergeant Keserauskis inventoried the bag for the jury, with all the items appropriately marked as exhibits. These items were identified as follows:

Exhibits 2 and 4 - driver's license, debit card, and checkbook of Tricia Austin;

Exhibits 5, 7, and 8 - driver's license, health savings debit card, and debit card of Donna Kopsic;

Exhibits 10 and 11 - two checkbooks of Vanessa Juenger;

Exhibit 12 - checks and deposit slips of Kara Fischer;

Exhibit 14 - checkbook of Daniel Lakovich;

Exhibit 16 - checking deposit slips of Claire Bost;

Exhibit 44 - social security card of Tiffany Carbonneau;

Exhibit 45 - checkbook and deposit slips of James Harvey and Tiffany Harvey;

Exhibit 46 - checks and deposit slips of Stacey Sealscott;

Exhibit 47 - checkbook and deposit slips of Brian Fleming and Dina Fleming;

Exhibit 48 - blank check of Dorthea Rigdon;

Exhibit 49 - deposit slips of Tiffany Atley;

Exhibit 50 - account number of Christina Davis;

Exhibit 58 - check of Jennifer Graft.

¶ 6 At the close of the evidence and after hearing arguments by counsel, the jury, after a period of deliberation, found the defendant guilty of, *inter alia*, counts V and VII of the third-amended information. The defendant never argued at trial, sentencing, or in his posttrial motion that his conviction on count V should be vacated based on the "one-act,

one-crime" doctrine. The circuit court, finding the defendant's then-existing criminal record to qualify him as a habitual criminal under section 5-8-2 of the Unified Code of Corrections (730 ILCS 5/5-8-2 (West 2014)), sentenced the defendant to 17 years in prison on counts V and VII, to be served concurrently with each other as well as the lesser counts of which he was convicted. The defendant filed a timely notice of appeal.

¶ 7 ANALYSIS

¶ 8 The sole issue on appeal is whether the defendant's conviction on count V should be vacated under the "one-act, one-crime" doctrine. Although the defendant forfeited this issue by not raising it in the circuit court, "one-act, one-crime" violations fall within the second prong of the plain error doctrine as an obvious error so serious that it challenges the integrity of the judicial process. *People v. Coats*, 2018 IL 121926, ¶ 10 (citing *People v. Nunez*, 236 Ill. 2d 488, 493 (2010)). Thus, despite the defendant's forfeiture, we will address the defendant's argument under the second prong of the plain error doctrine.

¶ 9 The "one-act, one-crime" doctrine provides that a criminal defendant may not be convicted of multiple offenses when those offenses are based on precisely the same physical act. *Id.* ¶ 11 (citing *People v. King*, 66 Ill. 2d 551, 566 (1977)). Whether a violation of the doctrine has occurred is a question of law, which we review *de novo*. *Id.* ¶ 12 (citing *People v. Robinson*, 232 Ill. 2d 98, 105 (2008)). In evaluating whether multiple convictions violate the "one-act, one-crime" doctrine, this court has long followed a two-step analysis. *Id.* (citing *People v. Rodriguez*, 169 Ill. 2d 183, 186 (1996)). First, the court ascertains whether the defendant's conduct consisted of a single physical act or separate acts. *Id.* If the court determines that the defendant committed a

single physical act, then it is required to vacate the lesser charge. *Id.* However, if the court determines that the charges are predicated on multiple physical acts, the court then moves to the second step and determines whether any of the offenses are lesser-included offenses. *Id.* If none of the offenses are lesser-included offenses, then multiple convictions are proper. *Id.*

¶ 10 Here, the defendant argues his convictions for count V and count VII are based on the single physical act of possessing the plastic bag of personal indentifying information and personal identifying documents of "three or more individuals." We disagree under the facts of this case. The definition of "act," for the purpose of a "one-act, one-crime" analysis, is " 'any overt or outward manifestation which will support a different offense.' " *Id.* ¶ 15 (quoting *King* 66 Ill. 2d at 566). The law is clear that crimes involving an act against multiple victims come within the definition of an outward manifestation supporting different offenses and therefore do not violate the "one-act, one-crime" doctrine." *People v. Leach*, 2011 IL App (1st) 090339, ¶ 33 (citing *People v. Pryor*, 372 Ill. App. 3d 422, 434 (2007)).

¶ 11 The evidence in this case provided that the plastic bag the defendant was convicted of possessing included the personal identifying documents or information of no less than 15 separate individuals. Accordingly, it is possible under the facts of this case that count V and count VII charged the defendant with the act of possessing the personal identifying information documents of two different sets of "three or more individuals." Although the defendant argues that these two counts did not identify the victims to which each count referred, he cites no authority stating that naming the victims is required. And

although the defendant cites *People v. Harvey*, 211 Ill. 2d 368, 390 (2004), in support of his position, we find that the evidence in this case of a number of victims is sufficient to support multiple charges is a determinative distinguishing factor.

¶ 12 In order to find that the defendant's convictions for both identity theft of three or more individuals (720 ILCS 5/16-30(a)(4), (e)(1)(D) (West 2014)) and aggravated identity theft of three or more individuals (*id.* § 16-30(b)(2), (e)(2)(F)) violates the "one-act, one-crime" doctrine under the facts of this case, this court would be required to hold that a defendant may only be convicted of one count of each of these crimes regardless of the number of victims over three. We decline to make such a finding. Accordingly, we find that the defendants' convictions on count V and count VII of the third-amended information are properly predicated on multiple acts, the defendant's possession of the identifying documents and information of at least two sets of "three or more individuals."

¶ 13 Having determined that the defendant's convictions are based on multiple acts, we next determine whether count V is a lesser included offense of count VII. Based on our foregoing analysis, that count V and count VII are properly charged as pertaining to the defendant's possession of identifying documents and/or information pertaining to at least two sets of "three or more individuals," it follows that one is not a lesser-included offense of the other. See *People v. Shum*, 117 Ill. 2d 317, 364 (1987) (charges involving different victims are not lesser-included offenses of each other). Accordingly, it was not a violation of the "one-act, one-crime" doctrine for the circuit court to enter a conviction for both count V and count VII.

¶ 14 CONCLUSION

¶ 15 For the foregoing reasons, the defendant's conviction is affirmed.

¶ 16 Affirmed.