2019 IL App (1st) 160484-U

No. 1-16-0484

Third Division
January 29, 2019

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court of Cook County.
Plaintiff-Appellee,	)	No. 15 CR 11836 (02)
v.	)	Honorable Brian Flaherty,
ANDRE JACKSON,	)	Judge, presiding.
Defendant-Appellant	)	

JUSTICE COBBS delivered the judgment of the court.
Presiding Justice Fitzgerald Smith and Justice Howse concurred in the judgment.

O R D E R

¶ 1 *Held*: Defendant's conviction for attempt first degree murder affirmed where sufficient evidence of his guilt was presented and defendant failed to prove ineffective assistance of counsel. Defendant's convictions for aggravated discharge of a firearm and aggravated battery are vacated under the one act, one crime doctrine.

¶ 2 Following a jury trial, defendant, Andre Jackson, was convicted of attempt first degree murder, aggravated battery with a firearm and aggravated discharge of a firearm. He was sentenced to 21 years' imprisonment for attempt murder, and a concurrent term of 10 years' imprisonment for aggravated discharge of a firearm which merged with the count of

aggravated battery. On appeal, defendant argues that (1) his conviction of attempt murder under the accountability theory must be reversed because the State failed to prove beyond a reasonable doubt that he or his co-defendant had a specific intent to kill the victim; (2) his defense counsel was ineffective; and (3) his convictions for aggravated discharge of a firearm and aggravated battery should be vacated under the one act, one crime doctrine. We affirm as modified.

¶ 3 I. BACKGROUND

¶ 4 Defendant was charged with six counts of attempt first degree murder (720 ILCS 5/8-4(a) 720 ILCS 5/9-1(a)(1) (West 2014)), one count of aggravated battery (720 ILCS 5/12-3.05 (e)(1) (West 2014)), and two counts of aggravated discharge of a firearm (720 ILCS 24-1.2(a)(2) (West 2014)). We recount the facts to the extent necessary to resolve the issues raised on appeal.

¶ 5 The facts show that on September 21, 2013, the victim, Rondale Standors, was with a group of individuals, standing near a parked car located on the 13800 block of Park Avenue in Dolton, Illinois. At approximately 6:30 p.m., a maroon Chevrolet Impala drove past Standors. Defendant was driving the Impala, co-defendant, James Parson was in the passenger seat, and there was a third person identified in the rear seat. As the car neared Standors, Parson leaned out of the passenger window and said "[w]hat's up now[?]" before firing eight shots at him. Standors tried to run away, but he had been shot in both legs. Parson yelled at defendant to "pull off," and the Impala left the scene. Standors was eventually transported to Christ Hospital where he underwent surgery for the gunshot wounds. He testified that a bullet still remains in one of his legs causing him to walk with a "slight limp."

¶ 6 Dolton police detectives Darryl Hope and Major Coleman arrived at the scene and interviewed Shaquilla Meeks and Akeem Evans, witnesses to the shooting. Hope compiled a photo array using the information provided by Meeks. Coleman showed Standors the photo array at Christ Hospital on September 24, 2013. Standors identified Parson as the person that shot him. Meeks also identified Parson from the photo array as the shooter. Parson was arrested and on October 12, 2013, Standors and Meeks identified Parson a second time from a lineup.

¶ 7 A few days after the shooting, Standors and Meeks were interviewed by assistant state's attorneys (ASAs) at the Dolton police station and their statements were reduced to writing. In addition to describing the shooting, Meeks told the ASAs that on the evening of the shooting, a person named Blue met her at a gas station and asked her to come to an apartment in Calumet City. When Meeks arrived at the apartment, Parson was also present. Parson told Meeks that if she said anything about the shooting, the same thing that happened to Standors would happen to her. Meeks understood this to mean that Parson would kill her. Meeks provided the same testimony before a Cook County grand jury.

¶ 8 On the day of jury selection, defendant's counsel told the trial judge that two months before trial he received a phone call from someone claiming to be Meeks. Defense counsel stated to the court that the caller told him that defendant was not the driver in the shooting and that defendant was not involved in any way. The defense counsel did not memorialize the conversation or take any steps to verify the caller's identity.

¶ 9 The defense counsel then stated that he "felt the need to advise [his] client, as well as the court and the State, of a potential conflict of being a witness in [defendant's] case [regarding the] conversation that [he] had with Ms. Meeks." Counsel presented defendant with an

affidavit and defendant signed the affidavit waiving "any and all conflict of [counsel] being a potential witness and still indicating to [him] that [defendant] wishes [him] to remain the attorney in the case."[1] The trial court then instructed defendant that "[i]f Ms. Meeks testifies, your lawyer will not be allowed to get into any conversation with her, will not be able to question her regarding any alleged phone call that she may or may not have made to your attorney. Do you understand that?" Defendant replied: "Yes." The trial court informed defendant that he would be giving up his ability to cross-examine the witness about the alleged telephone call because his attorney would otherwise have to withdraw from the case and another attorney would represent him going forward. Defendant stated he understood.

¶ 10 At trial, Standors testified to being shot and the extent of his injuries. Standors did not identify defendant in court and could not remember going to the police station or speaking to an ASA. When confronted with his handwritten statement, Standors identified his signature, but could not remember signing the document. Standors also could not remember viewing a lineup and identifying Parson in the lineup. Standors denied that he told the police and the ASA that Parson said “what’s up now” and shot him.

¶ 11 Meeks testified that she knew defendant as "Dre" and identified him in court. She also identified Parson known as "Lord" and the third person in the Impala, Corey Blanchard, known as "Blue." On the night of the incident, she was charging her cell phone in a car that Standors was standing next to when she saw a dark car with people inside approach. She did not recall who was inside of the car, but she heard gunshots. When she got out of the car, she saw Standors had been shot and was on the ground.

[1]The affidavit is absent from the record.

¶ 12 Meeks testified that she did not remember details from the shooting. She was presented with her written statement and grand jury testimony, but testified that she did not remember speaking to the ASA or testifying before the grand jury.

¶ 13 The State called ASA Eleanor San and ASA Anna Sedelmaier who had taken written statements from Standors and Meeks, respectively, and published each statement to the court. Sedelmaier confirmed that Meeks had previously related defendant was driving the Impala. The State also called ASA Jason Coehlo, who elicited testimony from Meeks when she testified to the grand jury. He testified that Meeks had previously stated to him that she knew the driver of the car as defendant and she placed Parson in the front passenger seat and Blanchard in the rear middle seat. Coehlo further testified that Meeks had stated that Parson was the shooter.

¶ 14 Alfred Rowels also testified on behalf of the State. He is a convicted felon and was on probation at the time of his testimony. On the date of the shooting, Rowels testified that he was "just chillin" with some guys on Kanawha Street in Dolton when, around 6:30 p.m., he saw a burgundy Impala driving toward Park Street. Rowels recognized the Impala because he had seen the car a few times in the neighborhood. Rowels saw defendant driving the vehicle and recognized Parson as the passenger. There was a third person in the back passenger seat, but Rowels was not able to identify this person. Parson and defendant nodded to Rowels as they drove past him. A few moments later, Rowels heard about eight to ten gunshots from the next block and saw people running. Rowels left the area before the police arrived. On cross-examination Rowels acknowledged that he did not see anyone with a gun nor did he see Parson shoot at anyone.

¶ 15 The parties stipulated that the eight shell casings recovered from the scene were all fired from the same gun. Defendant moved for a directed verdict arguing that there was a lack of evidence of his involvement in the incident. The trial court denied his motion. Defendant did not testify and presented no evidence.

¶ 16 The jury found defendant guilty of attempt first degree murder, aggravated battery with a firearm, and aggravated discharge of a firearm. Defendant filed a written motion for a new trial, which argued that the State failed to prove him guilty beyond a reasonable doubt of attempt murder because it failed to show specific intent, and that his defense counsel was ineffective with regard to the potential conflict stemming from the alleged phone call made by Meeks to defendant's counsel. He further argued that Parson was found not guilty of attempt murder and therefore he also should have been found not guilty. Lastly, he argued that because the jury only deliberated for one hour, and they did not fully consider the evidence.

¶ 17 Defendant's motion for a new trial was denied. In so doing, the court noted that there was a different trier of fact for Parson and "apparently the jury disagrees with me. So I don't know if I'm right or they're wrong and I'm right [*sic*]. But there certainly was enough evidence that there [were] multiple shots fired and Mr. Standors was hit on a couple of occasions even though it was in his legs he was still hit by bullets." [2]

¶ 18 Defendant was sentenced to 21 years' imprisonment for attempt murder, and a concurrent term of 10 years' imprisonment for aggravated discharge of a firearm which merged with the count of aggravated battery. This appeal followed.

[2]James Parson is not a party to this appeal and has a separate appeal docketed as No. 1-16-2348. Parson elected to have a bench trial and the trial judge found Parson not guilty of attempt first degree murder.

¶ 19 II. ANALYSIS

¶ 20 On appeal, defendant raises three contentions. First, defendant argues that the State failed to prove beyond a reasonable doubt that he was guilty of first degree attempt murder. Second, defendant argues that defense counsel was ineffective by not arguing to the trial court that counsel could have continued to represent defendant, cross-examine Meeks, and testify at trial. Lastly, defendant argues that his convictions for aggravated discharge of a firearm and aggravated battery should be vacated under the one act, one crime doctrine.

¶ 21 A. Sufficiency of The Evidence

¶ 22 Defendant first contends that, under the accountability theory, his jury conviction of attempt first degree murder must be reversed because Parson was found not guilty of attempt first degree murder in a bench trial.[3] Defendant further argues that the State failed to prove beyond a reasonable doubt that he was guilty of attempt first degree murder because (1) there was no medical evidence introduced at trial that proved the severity of Standors's injuries; (2) he and Parson did not have the specific intent to kill Standors and (3) even if he or Parson had a specific intent to kill, Parson was in the perfect position to kill Standors but did not. Conversely, the State contends that the evidence presented was more than sufficient to support defendant's conviction of attempt murder.

¶ 23 Our inquiry on review of a sufficiency of the evidence claim is whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *People v. Siguenza-*

[3]We note in passing that Parson's acquittal does not establish a basis for defendant's innocence. "In separate trials before different triers of fact, the acquittal of one defendant is of no consequence to the trial of the co-defendant." *People v. Torres*, 306 Ill. App. 3d 301, 312 (1999). Thus, the relevant inquiry is whether there is sufficient evidence to support a guilty finding by the trier of fact selected by the convicted defendant. *Id*. The verdicts of the co-defendant and defendant need not be consistent if the defendant's conviction is supported by sufficient evidence. *Id*.

Brito, 235 Ill. 2d 213, 224 (2009). In a challenge to the sufficiency of the evidence, a reviewing court will not retry the defendant, substitute its judgment for that of the trier of fact, or reverse a conviction if any rational trier of fact could have reached the same conclusion based on the evidence viewed in the light most favorable to the prosecution. *People v. Adair*, 406 Ill. App. 3d 133, 137 (2008). We will not overturn a criminal conviction "unless the evidence is so improbable or unsatisfactory that it creates a reasonable doubt of the defendant's guilt." *People v. Givens*, 237 Ill. 2d 311, 334, (2010).

¶ 24 Defendant was charged and convicted under the accountability theory. A defendant is legally accountable for another person's criminal conduct when "either before or during the commission of an offense, and with the intent to promote or facilitate that commission, he or she solicits, aids, abets, agrees, or attempts to aid that other person in the planning or commission of that offense." 720 ILCS 5/5-2(c) (West 2014). To establish that a defendant intended to promote or facilitate a crime, "the State may present evidence that either (1) the defendant shared the criminal intent of the principal, or (2) there was a common criminal design." *People v. Fernandez*, 2014 IL 115527, ¶ 13.

¶ 25 To sustain an attempt first degree murder conviction "the State must prove beyond a reasonable doubt that the defendant, with specific intent to commit murder, did any act that constituted a substantial step toward the commission of murder." *In re T.G.*, 285 Ill. App. 3d 838, 843 (1996). "'Intent is a state of mind, which, if not admitted, can be established by proof of surrounding circumstances, including the character of the assault, the use of a deadly weapon, and other matters from which an intent to kill may be inferred. [Citations.] Such intent may be inferred when it has been demonstrated that the defendant voluntarily and willingly committed an act, the natural tendency of which is to destroy another's life.'"

People v. Green, 339 Ill. App. 3d 443, 451 (2003) (holding that the act of shooting at police officers was sufficient proof of intent to kill to support a conviction of attempt murder).

¶ 26 We briefly address and reject defendant's claim that a lack of medical evidence proving the severity of the victim's injuries is cause for reversal. The State is not required to present medical evidence to prove defendant guilty of attempt murder. The State need only show that defendant intended to kill and took a substantial step toward killing his intended victim. *People v. Smith*, 402 Ill. App. 3d 538, 547 (2010).

¶ 27 Defendant's remaining claims for reversal assert that neither he nor Parson had the specific intent to kill Standors. Even if they had the specific intent to kill Standors, defendant cannot be convicted for attempt murder because Parson did not kill Standors when he had the opportunity. We disagree.

¶ 28 Here, defendant drove Parson to where they believed Standors would be, and upon finding him, Parson shot at Standors eight times, striking him twice in the legs. Defendant then drove away and left Standors lying in the street. Although Parson may not have been a good marksman, his lack of accuracy does not dilute his intent to kill Standors. See *People v. Green*, 339 Ill. App. 3d 443, 451-52 (2003); see also *People v. Teague*, 2013 IL App (1st) 110349, ¶ 27 (noting that poor marksmanship is not a defense to attempt murder). Firing a gun at an individual supports the premise that a person acts with the intention to kill another. See *People v. Barnes*, 364 Ill. App. 3d 888, 896 (2006); see also *People v. Bailey*, 265 Ill. App. 3d 262, 273 (1994) ("To sustain a charge of attempted murder, it is sufficient to discharge a weapon in the direction of another individual, either with malice or total disregard for human life").

¶ 29 Defendant relies on *People v. Mitchell*, 105 Ill. 2d 1, 9-10 (1984), to support his contention that the State failed to prove his intent to kill because Parson did not kill Standors even though he had ample opportunity to commit first degree murder. In *Mitchell*, the defendant beat her 16-month-old daughter multiple times over the span of two days which ultimately resulted in the child having a seizure and losing consciousness. 105 Ill. 2d at 6-8. After the child became unconscious, the defendant placed a cool cloth on the child's head for 15 minutes. *Id*. When the child did not respond to the cool cloth the defendant took her to the hospital. *Id*. At the hospital, the defendant placed the child in the care of a nurse, stated she "had to go find the mother" and left the building. *Id*. Our supreme court found that there was insufficient evidence to establish beyond a reasonable doubt that the defendant possessed the requisite intent to kill. *Id*. at 10. In so doing, the court determined that there was ample opportunity for the defendant to complete her crime if she had intended to kill the child, however, placing a cool cloth on the child's head and transporting her to the hospital for medical attention showed that the defendant's actions were not consistent with an intent to commit murder. *Id*.

¶ 30 Defendant cannot seek refuge in *Mitchell*. Unlike the defendant in *Mitchell*, defendant did not render aid to Standors. There is no indication in the record that defendant or Parson attempted to call an ambulance or offer any support to Standors after the shooting. Instead, defendant drove away from the scene of the crime leaving Standors, a victim of multiple gunshot wounds, bleeding in the street. Defendant's actions were consistent with an intent to commit murder, and thus, *Mitchell* is inapposite.

¶ 31 The record demonstrates that Parson fired eight shots at Standors which is sufficient to prove his intent to kill. Furthermore, the fact that defendant helped Parson flee from the

scene without offering aid to Standors defeats defendant's argument that the intent to kill was negated under the analysis in *Mitchell*. Accordingly, we find that there was sufficient evidence to support the jury's finding, through the accountability doctrine, that defendant and Parson shared the same intent to commit attempt first degree murder.

¶ 32 B. Ineffective Assistance of Counsel

¶ 33 Next, defendant argues that his defense counsel was ineffective because counsel misled the trial court by stating that he had to withdraw his representation after he received a phone call from Meeks in which she denied defendant's role as a driver during the offense. Defendant asserts that defense counsel failed to assert Illinois Rules of Professional Conduct 2010 Rule 3.7(a)(3) which states that "(a) A lawyer shall not act as advocate at trial in which the lawyer is likely to be a necessary witness unless: *** (3) disqualification of the lawyer would work substantial hardship on the client." Ill. R. Prof'l Conduct (2010) R. 3.7 (eff. Jan. 1, 2010). We interpret defendant's argument to mean that defense counsel did not vigorously argue with the trial judge about defense counsel's ability under Rule 3.7(a)(3) to act as a witness and as an advocate, and but for defense counsel's failure (1) he was unable to question Meeks on cross-examination about her phone call and (2) testify about her phone call. The State responds that defendant, in effect, invited this error and waived his claim when he affirmatively and knowingly acquiesced to defense counsel forgoing the cross-examination of Meeks with respect to the alleged phone call.

¶ 34 The record shows that, prior to jury selection, defense counsel stated to the court that he "felt the need to advise [his] client, as well as the court and the State, of a potential conflict of being a witness in [defendant's] case as to the conversation that [he] had with Ms. Meeks." Defense counsel informed the court that he had previously presented defendant with an

affidavit and defendant signed the affidavit waving "any and all conflict of [counsel] being a potential witness and still indicating to [him] that [defendant] wishes [him] to remain the attorney in the case." The trial court then instructed defendant that "[i]f Ms. Meeks testifies, your lawyer will not be allowed to get into any conversation with her, will not be able to question her regarding any alleged phone call that she may or may not have made to your attorney. Do you understand that?" Defendant replied: "Yes." The trial court informed defendant that he would be giving up his ability to cross-examine the witness about the alleged telephone call because his attorney would otherwise have to withdraw from the case and another attorney would represent him going forward. Defendant stated he understood.

¶ 35 "The doctrine of invited error is sometimes referred to as 'estoppel.'" *People v. Lucas*, 231 Ill. 2d 169, 174 (2008) (citing *People v. Harvey*, 211 Ill. 2d 368, 385 (2004)). Under the doctrine of invited error, a defendant may not request to proceed in one manner and then later contend on appeal that the course of action was in error. (Internal quotation marks omitted.) *Lucas*, 231 Ill. 2d at 174. Where defense counsel affirmatively acquiesces to actions taken by the trial court, a defendant's only challenge may be presented as a claim for ineffective assistance of counsel on collateral attack. *People v. Bowens*, 407 Ill. App. 3d 1094, 1101 (2011).

¶ 36 Here, defendant, not his trial counsel, acquiesced to the instructions set forth by the trial court. He signed an affidavit presented to him by his defense counsel waiving all conflicts of his counsel being a potential witness and testifying. Defendant did not object nor did he request a new attorney. Once the trial court explained defense counsel would be limited, defendant affirmatively expressed he understood his counsel's limitation. Again, defendant did not object nor did he request a new attorney. Thus, we agree with the State that defendant

invited this error, therefore, defendant cannot "proceed in one manner and then later contend on appeal that course of action was in error." See *Lucas*, 231 Ill. 2d at 174. We could end our analysis here, however, we are inclined to review defendant's claim of ineffective assistance of counsel.

¶ 37 The United States and Illinois Constitutions grant defendants the right to effective assistance of counsel in criminal cases. U.S. Const. amends. VI, XIV; Ill. Const. 1970, art. 1 § *8; Strickland v. Washington*, 468 U.S. 668, 684-86 (1984*); People v. Albanese*, 104 Ill. 2d 504, 525 (1984). T*he Strickland* test requires defendants prove that (1) defense counsel's representation fell below an objective standard of reasonableness and, (2) but for defense counsel's deficient performance, the trial or proceedings probably would have resulted differently. *Strickland*, 468 U.S. at 690, 694. "A reasonable probability is a probability sufficient to undermine the confidence in the outcome." *Id*. The failure to satisfy either prong o*f Strickland* precludes a finding of ineffective assistance of counsel. *People v. Colon,* 225 Ill. 2d 125, 135 (2007).

¶ 38 Defendant asserts that defense counsel misled the trial court by stating he had to withdraw his representation. However, nothing in the record indicates that defense counsel attempted to withdraw from representing defendant. Rather, defense counsel appeared to be preparing to testify in the trial as a witness when he requested defendant waive the potential conflict of interest in the event counsel would have to testify. Despite defendant signing the affidavit, the trial court instructed defendant that if Meeks testified at trial defense counsel would not be able to cross-examine her about the alleged phone call. Thus, we find no attempt by defense counsel to mislead the trial court.

¶ 39 Furthermore, even if we construe defendant's argument as focused on defense counsel's failure to vigorously assert the right to testify and conduct the related cross-examination of Meeks, we do not find that defense counsel's conduct resulted in prejudice to defendant. There was overwhelming testimony showing that defendant was driving the Impala during the offense. Thus, it is highly improbable that the outcome of the trial would have been different even if defense counsel insisted on pursuing the cross-examination of Meeks or his right to testify on defendant's behalf.

¶ 40 First, although Meeks testified during trial that she could not recall who was in the Impala, two ASAs testified as to her prior statements under oath in which she identified defendant as the driver during the shooting. ASA Sedelmaier's testimony confirmed that in Meeks's written statement she stated she saw defendant as the driver of the Impala. ASA Coehlo testified that during Meeks's grand jury testimony she named defendant as the driver of the Impala. Second, Rowels also testified that he saw defendant driving in the Impala toward Park Street prior to the shooting. Furthermore, defense counsel never verified that the phone call he received had come from Meeks. Thus, allowing the cross-examination of Meeks or defense counsel's testimony would have had little weight against the totality of the evidence which depicted defendant as driving the car during the offense. Given that defendant cannot prove that defense counsel's actions resulted in prejudice to him, we need not address defendant's argument that defense counsel's performance fell below an objective standard of reasonableness. See *Colon*, 225 Ill. 2d at 135 (2007).

¶ 41 Defendant's reliance on *People v. Moore*, 243 Ill. App. 3d 1045 (1993) and *People v. McMurtry*, 279 Ill. App. 3d 865 (1996), fail to persuade us that a different resolution should be reached. In *McMurtry*, on appeal, the defendant contended that the trial court abused its

discretion when it would not permit the defense counsel to cross-examine a witness about a conversation that allegedly occurred between the defense counsel and the witness the previous day. 279 Ill. App. 3d at 874. The appellate court held that the trial court's refusal to allow defense counsel to testify did not amount to an abuse of discretion. *Id.* In so doing, the court noted that it is within the trial court's discretion to refuse to permit an attorney to testify, and the latitude of cross- examination is left to the discretion of the trial court. *Id.*

¶ 42 Defendant's reliance on *McMurtry*, is misplaced. In *McMurtry*, on appeal the defendant claimed that the trial court abused its discretion. Here, on the other hand, defendant claims ineffective assistance of counsel. As such, *McMurtry* is inapposite.

¶ 43 In *Moore*, the defendant sought reversal his murder conviction because his defense counsel testified during trial as a witness rather than withdrawing his representation. 243 Ill. App. 3d at 1047, 1054-55. The appellate court held that the defendant's attorney's failure to withdraw or seek leave to withdraw did not constitute ineffective assistance of counsel. *Id*. at 1056. In affirming the defendant's conviction, the court reasoned that a withdrawal from representation during trial and a substitution by another attorney that would be fully prepared to represent the defendant was improbable. *Id*. Further, the court had serious doubts that the trial court would have permitted the defense counsel to withdraw. *Id*.

¶ 44 Here, even had the trial judge permitted defense counsel to testify or cross- examine Meeks, like the attorney in *Moore*, the outcome of the trial would have remained the same. There was ample evidence provided by the testimony of ASA Sedelmaier, ASA Coehlo, and Rowels which indicated that defendant was the driver of the Impala at the time of the shooting. Thus, it is highly improbable that the result at trial would have been different.

¶ 45 C. One Act, One Crime

¶ 46 Defendant acknowledges that he forfeited this issue for appeal since he failed to object to the multiple convictions at trial and did not raise the issue in his post-trial motion. *People v. Enoch*, 122 Ill. 2d 176 186 (1988). However, our supreme court has repeatedly ruled that a one-act, one-crime violation is reviewable under the second prong of the plain error doctrine as it affects the integrity of the judicial process. *People v. Coats*, 2018 IL 121926, ¶ 10 (A one-act, one crime violation "satif[ies] the second prong of the plain-error test."). Thus, we will consider this issue despite the procedural bar caused by defendant's failure to preserve the issue. Even so, under the plain-error analysis, the burden of persuasion remains with the defendant. *In re Samantha V.*, 234 Ill. 2d 359, 368 (2009).

¶ 47 Whether a conviction should be vacated under the one-act, one-crime doctrine is a question of law which we review *de novo*. *Coats*, 2018 IL 121926, ¶ 12. Under this doctrine, if a defendant is convicted of multiple offenses which arise from a single physical act, then the lesser offense must be vacated. *People v. Artis*, 232 Ill. 2d 156, 170 (2009).

¶ 48 In this case, the State charged defendant with attempt murder, aggravated discharge of a firearm and aggravated battery with a firearm. The court ruled that defendant's convictions for aggravated battery and aggravated discharge of a firearm merged, and thus the convictions did not result in separate sentences. However, defendant asserts, and the State agrees, that the convictions for aggravated discharge of a firearm and attempt first degree murder were based on the same act. Therefore, under the one-act, one crime doctrine, we find that only defendant's most serious offense of attempt murder is permitted to stand and the remaining convictions of aggravated discharge of a firearm and aggravated battery must be vacated. Accordingly, we direct the circuit clerk to correct the mittimus.

¶ 49 III. CONCLUSION

¶ 50 For the reasons stated, we affirm defendant's conviction and order that the mittimus be corrected to reflect only one conviction for the attempt murder of Standors. Accordingly, we affirm the judgment of the trial court as modified.

¶ 51 Affirmed; mittitmus corrected.