

No. 1-13-1634

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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. 10 CR 21145
)	
ZACHARY BORNE,)	Honorable
)	James Michael Obbish,
Defendant-Appellant.)	Judge Presiding.

JUSTICE McBRIDE delivered the judgment of the court.
Presiding Justice Palmer and Reyes concurred in the judgment.

ORDER

¶ 1 *Held:* (1) The trial court did not err in denying defendant's motion to quash arrest and suppress evidence where the officer had a reasonable suspicion that a bulge in defendant's jacket could be a weapon; (2) defendant's convictions for aggravated vehicular hijacking and vehicular hijacking do not violate one-act, one-crime rule when each conviction is based on a separate victim, and possession of a stolen motor vehicle was not part of the same act as vehicular hijacking; and (3) defendant is entitled to 865 days of presentence credit.

¶ 2 Following a bench trial, defendant was convicted of aggravated vehicular hijacking, vehicular hijacking, robbery, and possession of a stolen motor vehicle. The trial court

subsequently sentenced defendant to four concurrent terms of 15 years in the Illinois Department of Corrections.

¶ 3 Defendant appeals, arguing that: (1) the trial court erred in denying his motion to quash arrest and suppress evidence because the police officer violated defendant's Fourth Amendment rights against unreasonable searches and seizures; (2) defendant's convictions for aggravated vehicular hijacking, vehicular hijacking, and possession of a stolen motor vehicle violate the one-act, one-crime rule; and (3) defendant is entitled to 865 days of presentence credit for time spent in custody.

¶ 4 Defendant was arrested in November 2010 and subsequently indicted on multiple counts of aggravated vehicular hijacking, vehicular hijacking, armed robbery, vehicular invasion, and possession of a stolen motor vehicle.

¶ 5 Prior to trial, defendant filed a motion to quash arrest and suppress evidence. In his motion, defendant argued that his conduct prior to his arrest "would not reasonably be interpreted by the arresting officers as constituting probable cause that [defendant] had committed or was about to commit a crime in that [defendant] was merely standing in an alley." The motion asserted that defendant's arrest was made without a valid search or arrest warrant and that his arrest was a seizure under the Fourth Amendment. Defendant asked that his arrest be quashed and all evidence obtained as a result of the arrest should be suppressed.

¶ 6 The trial court conducted a hearing on defendant's motion in February 2013. Defendant presented the testimony of one witness, Officer James Heubaum. Officer Heubaum testified that at approximately midnight on November 13, 2010, he was in uniform on patrol as a passenger with his partner driving a marked squad car near Stewart and 31st Street in Chicago. He

received a call regarding a robbery nearby at 341 West 30th Street. The call described the offenders as two black males wearing dark clothing and they were possibly armed.

¶ 7 Officer Heubaum testified that they were randomly searching for offenders from the radio call. His partner turned into an alley near 358 West 31st Street. When they turned into the alley, Officer Heubaum saw defendant approximately 20 to 30 feet away. He testified that defendant was briefly running westbound toward the squad car, but then stopped. His partner pulled up near defendant and both officers exited the vehicle. Officer Heubaum asked defendant to come toward them and defendant put his hands into his jacket pockets. Officer Heubaum stated that he told defendant to remove his hands from his pockets slowly and place them on the hood of the squad car. Officer Heubaum said defendant was wearing a black long sleeve shirt, black jacket, and black jeans.

¶ 8 Officer Heubaum then performed a protective pat down of defendant's outer clothing for weapons. At this point, he noticed "a large bulge in the defendant's jacket." He described the bulge as a large hard object, a little bigger than a fist. He said it was approximately five to six inches long and three inches thick. Officer Heubaum asked defendant what it was and if he had any weapons on him. Defendant did not answer. The officer then explained why they stopped him; that a robbery had just occurred in the area. He again asked defendant if he had any weapons on him, and defendant did not respond. Officer Heubaum then reached inside defendant's jacket and removed the item. It was not a weapon. The item was a stack of identification, including a passport and there was a child's identification card on top. The officer asked defendant why he was carrying these items. Defendant told him it was his family member's identification. He said the child's identification card belonged to his little brother, but when asked his brother's name by the officer, defendant did not respond. Officer Heubaum

testified at that point, he placed defendant into custody. Officer Heubaum placed defendant in handcuffs and searched him again. He did not recover any weapons, but did find a vehicle key to a Lexus.

¶ 9 At the conclusion of the hearing, the trial court denied defendant's motion. The court found Officer Heubaum "to be an extraordinarily credible witness." The court made the following findings:

"The defendant was running. Stopped on his own. And then the officers stopped their vehicle and asked him to approach. The defendant did at that point. Something that was created a great deal more of --- provided the officer with a great deal more reason to allow him to conduct the pat down. And that was the defendant immediately put his hands in his jacket [pocket] concealing them from the view of the officer. That is conduct that although may not be somehow nefarious or criminal I certainly find though that is reasonable for an officer to take additional steps at that point to determine why someone would conceal their hands from view of an officer in uniform. Almost become custom and practice by individuals when they are given a little traffic stop to make sure their hands are on the wheel as an officer approaches to avoid any misunderstanding by the officer as to the intent of the driver of the vehicle. But in this case although that's no exactly [*sic*] what happened here.

He is not driving the car. Certainly the defendant does something at the point which gives the officer grounds to be suspicious that this defendant might be an offender, might possibly be one of the robbers, might possibly be in possession of a handgun which could certainly do damage to the officer or his partner.

So at that point he does order him to slowly remove his hands, does conduct a protective pat down at that time which I find to be reasonable under the circumstances. He asks the defendant whether or not he has any weapons. The defendant denies it. But during the course of the pat down he notices and also feels a bulge that is described as around three by six inches inside the defendant's jacket.

Significantly I find he asked the defendant, you know, what is the hard large object basically that the officer has felt in the jacket. The defendant does not answer. The officer explains to the defendant why he has been stopped and why he is asking and the defendant does not respond as to what it is. I believe the officer was justified at that point in time to search the defendant and remove that large hard object from the defendant's jacket to determine whether or not it was a weapon that could have hurt the officer or his partner or the citizens in the area. What the officer discovers is that it's a large stack of identification material. And

that the --- what he immediately notices about the object is he has removed is it's not identification for [defendant.] He asks him about it. [Defendant] says it's a family member. The officers ask him to provide the name of the family. [Defendant] is unable to do that.

I believe at that point the officer now has probable cause to place the defendant under arrest, he is carrying around identification cards from someone other than himself. And someone that he cannot even identify to or give any kind of rational or reasonable explanation as to why he would be in possession of a child identification card."

¶ 10 The following evidence was presented at defendant's March 2013 bench trial.

¶ 11 Sammenah Ali testified that in November 2010, she lived with her husband and three children at 2611 West Fitch Avenue in Chicago. At approximately 7 p.m. on November 11, 2010, Ali was returning home from buying groceries with her children. She parked her 1999 Lexus RS 300 in the alley behind her house. The keys were in the ignition and the engine was running. Her sons went inside their apartment. Ali was taking the groceries out of the vehicle while her daughter, Neha Jaffery, was sitting in the passenger seat. Ali saw two men coming toward them.

¶ 12 Ali described the men as one was taller, around 5 feet 7 inches or 5 feet 8 inches, and African American, and the other was shorter and Hispanic. Ali stated that Hispanic man kept walking, but the African American man got into the driver's seat of her vehicle. Ali was on the passenger side of the car when this happened. Ali testified that she tried to take her purse from

the floor of the passenger seat, but the man pulled out a gun and said, "Do not touch anything, I'm going to shoot you." She described the gun as "black ash colored." Ali pulled her daughter out of the car and shut the door. Her purse contained jewelry, her passport, her children's identification, her identification, her debit card, her unemployment card, and her naturalization certification as well as \$400 in cash. She identified defendant in court as the person who got into her vehicle. Defendant left in her car and he picked up the second man in the alley.

¶ 13 After defendant took her car, Ali called her husband and the police. On November 13, 2010, Ali received a call from the police. She went to the station and viewed a lineup. She identified defendant in the lineup as the man who entered and took her vehicle. Ali also received her family's identification, the debit card, and her vehicle back from the police. She did not receive her money or jewelry back.

¶ 14 Neha Jaffrey testified that at the time of the trial she was 14 years old. She stated that on the evening of November 11, 2010, she was in the passenger seat of her family's Lexus RS 300 while her mother began to unload groceries. A man got into the driver's seat of the car and pulled out a gun. He threatened to shoot her mother when her mother tried to get her purse from near Jaffrey's feet. Jaffrey said her mother then unlocked Jaffrey's seat belt and pulled her out of the car. Her testimony was substantially similar to her mother about the events of November 11, 2010. Jaffrey identified defendant in court as the person who entered her family car. On November 13, 2010, Jaffrey went to the police station with her mother and identified defendant in photo array as the man who entered her family car.

¶ 15 Officer Heubaum testified substantially similar to his testimony about the events of November 13, 2010, from the hearing on defendant's motion to quash and suppress evidence. He identified defendant in court as the individual he observed in the alley at 31st and Stewart.

Officer Heubaum testified that he was "nervous" when defendant placed his hands in his pockets while in the alley for a field interview. He stated that after he removed the packet of identification from defendant's pocket, he reviewed the names on them. He said there was one for Sammenah Ali, Neha Jaffrey, and two boys whose names he could not recall. He placed defendant into custody for theft of property. After that, Officer Heubaum discovered vehicle keys to a Lexus and a cell phone.

¶ 16 Officer Heubaum asked if the vehicle belonged to defendant and if it was parked in the area. Defendant responded that it was his car, but it was not parked in the area. Officer Heubaum stated that he had noticed a Lexus parked illegally around the corner while he was patrolling. He checked the key and it operated the vehicle. He then ran the license plates and it came back that the vehicle was stolen.

¶ 17 Detective Phil Greco testified that he was assigned to investigate the aggravated vehicular hijacking at 2611 West Fitch that occurred on November 11, 2010. He spoke with both Ali and Jaffrey about the incident. He arranged the lineup for Ali to view and was present when Ali identified defendant as the offender. Detective Greco stated that Jaffrey did not view a physical lineup because she was "very, very nervous, actually physically trembling at the thought of having her view this person that pointed the gun at her." He assembled a photo array for Jaffrey, in which she identified defendant. Detective Greco stated that defendant agreed to speak with him after waiving his *Miranda* rights. Detective Greco said that defendant would not acknowledge what he was saying.

¶ 18 The State then rested its case. Defendant moved for a directed finding, which the trial court denied.

¶ 19 Defendant testified on his own behalf. He stated that his ethnicity is Caucasian and Spanish. Defendant admitted that he had two prior felony convictions.

¶ 20 He stated that on November 12, 2010, he received a call from a guy he knew who "had some stuff for [him] to look at." Defendant testified that he was "a fence man. I buy and sell things." He met with two individuals around 8 p.m. They brought some identification, a passport, a cell phone, and an older model Lexus. Defendant stated that he told them he was not interested in the car because the body shops were closed. He gave the man 10 grams of cocaine for the phone. He said he took the identifications, the passport, and the car, even though he was not interested in them.

¶ 21 Defendant denied stealing a car from Ali. He denied pointing a gun at her and denied ever having possession of a gun. He described the two individuals he met with as two Hispanic "shorties."

¶ 22 On cross examination, defendant described a "fence man" as "a person that buys things off the streets, laptops, phones, computers, cars, radios." He then resells the items. He said that he was going to let the Lexus sit until Monday and then take it to a body shop and see if he could get some money for the two men.

¶ 23 Following arguments, the trial court found defendant guilty of aggravated vehicular hijacking against Jaffery because the person in the car was under the age of 16, vehicular hijacking against Ali, robbery, and possession of a stolen motor vehicle. The court held that the State failed to prove beyond a reasonable doubt that defendant was armed with a firearm at the time of the incident. At the subsequent sentencing hearing, the parties agreed that defendant was subject to mandatory class X sentencing. The trial court imposed concurrent 15-year terms for each offense, and defendant received credit for 857 days for time spent in presentence custody.

¶ 24 This appeal followed.

¶ 25 Defendant first argues that the trial court erred in denying his motion to quash arrest and suppress evidence. Defendant does not challenge that Officer Heubaum had a reasonable suspicion to conduct an investigatory stop with a pat-down pursuant to *Terry v. Ohio*, 392 U.S. 1, 23-24 (1968). However, defendant contends that the officer lacked probable cause to perform an exploratory search by reaching inside defendant's jacket to retrieve the packet of identifications cards. According to defendant, Officer Heubaum never indicated that he believed the bulge in defendant's jacket pocket was a firearm.

¶ 26 The State initially asserts that defendant has forfeited this argument by failing to raise it in his posttrial motion. Generally, to preserve an issue for review, defendant must both object at trial and in a written posttrial motion. *People v. Enoch*, 122 Ill. 2d 176, 186 (1988). Failure to do so operates as a forfeiture as to that issue on appeal. *People v. Ward*, 154 Ill. 2d 272, 293 (1992). However, the Illinois Supreme Court in *People v. Cregan*, 2014 IL 113600, ¶ 16, recently clarified that constitutional issues that were previously raised at trial and could be raised later in a postconviction petition are not subject to forfeiture on direct appeal under *Enoch*. *Id.* (citing *Enoch*, 122 Ill. 2d at 190). "If a defendant were precluded from raising a constitutional issue previously raised at trial on direct appeal, merely because he failed to raise it in a posttrial motion, the defendant could simply allege the issue in a later postconviction petition. Accordingly, the interests in judicial economy favor addressing the issue on direct appeal rather than requiring defendant to raise it in a separate postconviction petition." *Id.* at ¶ 18. Therefore, defendant's claim that the trial court erred in denying his motion to quash arrest and suppress evidence because the search and seizure violated his Fourth Amendment rights has not been forfeited.

¶ 27 In reviewing a trial court's ruling on a motion to suppress, this court applies a *de novo* standard of review. *People v. Sorenson*, 196 Ill. 2d 425, 431 (2001); see also *Ornelas v. United States*, 517 U.S. 690, 699 (1996). However, findings of historical fact will be reviewed only for clear error and the reviewing court must give due weight to inferences drawn from those facts by the fact finder. *Ornelas*, 517 U.S. at 699. Accordingly, we will accord great deference to the trial court's factual findings, and we will reverse those findings only if they are against the manifest weight of the evidence; however, we will review *de novo* the ultimate question of the defendant's legal challenge to the denial of his motion to suppress. *Sorenson*, 196 Ill. 2d at 431. "Further, the reviewing court may consider evidence adduced at trial as well as at the suppression hearing." *People v. Richardson*, 234 Ill. 2d 233, 252 (2009).

¶ 28 "Both the fourth amendment and the Illinois Constitution of 1970 guarantee the right of individuals to be free from unreasonable searches and seizures." *People v. Colyar*, 2013 IL 111835, ¶ 31 (citing U.S. Const., amend. IV; Ill. Const. 1970, art. I, § 6). "This court has explained that '[t]he "essential purpose" of the fourth amendment is to impose a standard of reasonableness upon the exercise of discretion by law enforcement officers to safeguard the privacy and security of individuals against arbitrary invasions.' " *Id.* (quoting *People v. McDonough*, 239 Ill. 2d 260, 266 (2010), quoting *Delaware v. Prouse*, 440 U.S. 648, 653-54 (1979)).

¶ 29 "It is well settled that not every encounter between the police and a private citizen results in a seizure." *People v. Luedemann*, 222 Ill. 2d 530, 544 (2006) (citing *Immigration & Naturalization Service v. Delgado*, 466 U.S. 210, 215 (1984)). "Courts have divided police-citizen encounters into three tiers: (1) arrests, which must be supported by probable cause; (2) brief investigative detentions, or 'Terry stops,' which must be supported by a reasonable,

articulable suspicion of criminal activity; and (3) encounters that involve no coercion or detention and thus do not implicate fourth amendment interests." *Luedeman*, 222 Ill. 2d at 544 (citing *United States v. Black*, 675 F.2d 129, 133 (7th Cir. 1982); *United States v. Berry*, 670 F.2d 583, 591 (5th Cir. 1982)). "In *Terry*, the Court held that a brief investigatory stop, even in the absence of probable cause, is reasonable and lawful under the fourth amendment when a totality of the circumstances reasonably lead the officer to conclude that criminal activity may be afoot and the subject is armed and dangerous." *Colyar*, 2013 IL 111835, ¶ 32 (citing *Terry*, 392 U.S. at 30). "If, however, 'nothing in the initial stages of the encounter serves to dispel [the officer's] reasonable fear for his own or others' safety, he is entitled for the protection of himself and others in the area to conduct a carefully limited search of the outer clothing of such persons in an attempt to discover weapons which might be used to assault him.'" *Id.* at ¶ 37 (quoting *Terry*, 392 U.S. at 30). "When reviewing the officer's action, we apply an objective standard to decide whether the facts available to the officer at the time of the incident would lead an individual of reasonable caution to believe that the action was appropriate." *Id.* at ¶ 40.

¶ 30 Here, defendant does not contest that Officer Heubaum was reasonable in conducting a *Terry* stop, but argues that the officer violated defendant's Fourth Amendment rights when he reached inside defendant's jacket and retrieved the item creating a bulge. Defendant contends that after a pat-down Officer Heubaum had no reason to believe the item was a firearm or other weapon and, thus, the intrusion into his jacket exceeded the scope of the lawful *Terry* stop. According to defendant, Officer Heubaum needed probable cause to reach into defendant's jacket. The crux of defendant's argument seems to be that Officer Heubaum did not explicitly state that he thought the hard object in defendant's pocket was a weapon. We disagree, our

review of the officer's actions support the conclusion that he believed the object could have been a weapon.

¶ 31 Here, the uncontroverted evidence at the suppression hearing supported Officer Heubaum's belief that defendant could have a weapon. Officer Heubaum testified that he encountered defendant in the vicinity of robbery in which the suspects were possibly armed and defendant appeared to match the initial description of the suspects. While approaching the officer, defendant placed his hands in his pockets, which Officer Heubaum testified at trial made him "nervous." During a pat-down, the officer felt a hard object, described as larger than a fist, estimated to be 5 to 6 inches long and 3 inches thick. Officer Heubaum asked defendant twice if he had a weapon and explained the circumstances of the stop, including the report of a robbery. Defendant remained silent. At that point, Officer Heubaum reached into defendant's jacket and retrieved the item. He saw it was several identifications, none of which were for defendant. Defendant said they belonged to family member, but did not provide the name on the identification. Officer Heubaum then placed defendant under arrest for theft of property and a search following the arrest yielded the key to a Lexus and a cell phone.

¶ 32 "The focus in *Terry* on protective weapon searches is the officer's reasonable belief that his safety or the safety of others is in danger, regardless of whether probable cause exists to arrest for a crime." (Emphasis omitted.) *Id.* at ¶ 50. The Fourth District in *People v. Day*, 202 Ill. App. 3d 536 (1990), looked to the discussion in Professor LaFave's treatise on search and seizure for support.

"If the object felt is hard, then the question is whether its "size or density" is such that it might be a weapon. But because "weapons are not always of an easily discernible shape," it is not inevitably

essential that the officer feel the outline of a pistol or something of that nature. Somewhat more leeway must be allowed upon "the feeling of a hard object of substantial size, the precise shape or nature of which is not discernible through outer clothing," which is most likely to occur when the suspect is wearing heavy clothing. Under this approach, courts have upheld as proper searches which turned up certain objects other than guns, such as a pocket tape recorder, a pipe, a pair of pliers, cigarette lighter, several keys taped together, or a prescription bottle. In making a judgment on this issue, some courts take into account other evidence bearing upon whether it appears the officer was acting in good faith, such as whether the object felt more like an item of evidence the officer apparently suspected the person might have on him than a weapon.' " *Day*, 202 Ill. App. 3d at 543-44 (quoting 3 W. LaFave, Search and Seizure § 9.4(c), at 523 (2d ed. 1987)).

¶ 33 Moreover, Illinois courts "have frequently noted that objects which are not *per se* deadly weapons may be used in such a manner as to become deadly weapons." *Id.*; *People v. Martell*, 353 Ill. App. 3d 513, 521 (2994). See also *People v. Salvator*, 236 Ill. App. 3d 824, 844 (1992) (quoting 3 W. LaFave, Search and Seizure § 9.4(c), at 523) (finding that an officer was justified in removing a "cigarette flip-top box" from the defendant's waistband because it had " 'the feeling of a hard object of substantial size' ").

¶ 34 Defendant's assertion that Officer Heubaum's suspicions should have been reduced after conducting the pat-down because "the bulges he felt could not have been a firearm or other

weapon" lacks merit. As the above cited authority shows, items can be used as deadly weapons. Officer Heubaum felt the hard object, larger than a fist, in defendant's pocket. The officer explained the circumstances of the stop and asked defendant if he had a weapon, defendant remained silent. Under an objective standard, it was reasonable for Officer Heubaum to remove the object in order to ascertain whether was a weapon. Once the officer determined that the identification did not belong to defendant and he could not name the individuals, he placed defendant under arrest. Any additional search was incident to a lawful arrest. See *People v. Fitzpatrick*, 2013 IL 113449, ¶ 19 ("Illinois has consistently recognized that police are allowed to conduct a custodial search after an arrest for a traffic or petty offense"). Officer Heubaum was reasonable in ascertaining whether the hard object bulging in defendant's jacket was a weapon. Once he found evidence of a crime, he had probable cause to arrest defendant and conduct a search incident to an arrest, which yielded the Lexus key and a cell phone. Based on the uncontroverted evidence presented at the hearing, we find that the trial court properly denied defendant's motion to quash arrest and suppress evidence.

¶ 35 Next, defendant contends that his convictions for aggravated vehicular hijacking, vehicular hijacking, and possession of stolen motor vehicle violate the one-act, one crime rule. Defendant concedes that he failed to raise this claim in his posttrial motion. As previously stated, to preserve an issue for review, defendant must both object at trial and in a written posttrial motion. *Enoch*, 122 Ill. 2d at 186. Failure to do so operates as a forfeiture as to that issue on appeal. *Ward*, 154 Ill. 2d at 293. Defendant asks this court to review the issue under the plain error doctrine.

¶ 36 Supreme Court Rule 615(a) states that "[a]ny error, defect, irregularity, or variance which does not affect substantial rights shall be disregarded. Plain errors or defects affecting

substantial rights may be noticed although they were not brought to the attention of the trial court.” Ill. S. Ct. R. 615(a) (eff. Jan. 1, 1967). The plain error rule “allows a reviewing court to consider unpreserved error when (1) a clear or obvious error occurred and the evidence is so closely balanced that the error alone threatened to tip the scales of justice against the defendant, regardless of the seriousness of the error, or (2) a clear or obvious error occurred and that error is so serious that it affected the fairness of the defendant's trial and challenged the integrity of the judicial process, regardless of the closeness of the evidence.” *People v. Piatkowski*, 225 Ill. 2d 551, 565 (2007) (citing *People v. Herron*, 215 Ill. 2d 167, 186-87 (2005)). However, the plain error rule "is not 'a general saving clause preserving for review all errors affecting substantial rights whether or not they have been brought to the attention of the trial court.'" *Herron*, 215 Ill. 2d at 177 (quoting *People v. Precup*, 73 Ill. 2d 7, 16 (1978)). Rather, the supreme court has held that the plain error rule is a narrow and limited exception to the general rules of forfeiture. *Herron*, 215 Ill. 2d at 177.

¶ 37 A violation of the one-act, one-crime doctrine affects the integrity of the judicial process, thus satisfying the second prong of the plain-error analysis. See *People v. Harvey*, 211 Ill. 2d 368, 389 (2004). However, "[t]he first step of plain-error review is to determine whether any error occurred." *People v. Lewis*, 234 Ill. 2d 32, 43 (2009).

¶ 38 Defendant argues that his convictions for aggravated vehicular hijacking and vehicular hijacking violate the one-act, one crime rule because there was only one act of taking a vehicle and, thus, only one hijacking conviction may stand. Defendant also asserts that his conviction for possession of stolen motor vehicle cannot stand because it arose out of the same facts as the hijacking convictions. The State maintains that defendant's convictions for aggravated vehicular hijacking and vehicular hijacking do not violate the one-act, one crime rule because each

conviction had a separate victim. The aggravated vehicular hijacking was against Jaffrey, who was under 16 years of age, while vehicular hijacking was against Ali. Further, the possession of a stolen motor vehicle involved a separate act that occurred two days after Lexus was taken from Ali.

¶ 39 The supreme court has held that "when the State charges a defendant with multiple offenses that arise 'from a series of incidental or closely related acts and the offenses are not, by definition, lesser included offenses' multiple convictions and sentences can be entered." *People v. Miller*, 238 Ill. 2d 161, 163 (2010) (quoting *People v. King*, 66 Ill. 2d 551, 566 (1977)). The court has defined "act" as "any overt or outward manifestation that will support a different offense." *King*, 66 Ill. 2d at 566.

¶ 40 Defendant contends that multiple convictions cannot stand when there is only a single taking of property, despite the presence of multiple victims. Defendant focuses his argument on the forcible taking of property, a vehicle, and relies significantly on the categorization of aggravated vehicular hijacking and vehicular hijacking in the "Offenses Directed Against Property" section of the Criminal Code of 1961 (Criminal Code). See 720 ILCS 5/18-3, 18-4 (West 2010).

¶ 41 Section 18-3 of the Criminal Code defines vehicular hijacking as "[a] person commits vehicular hijacking when he or she takes a motor vehicle from the person or the immediate presence of another by the use of force or by threatening the imminent use of force." 720 ILCS 5/18-3(a) (West 2010). Section 18-4 defines aggravated vehicular hijacking as the commission of a vehicular hijacking under section 18-3 and "a person under 16 years of age is a passenger in the motor vehicle at the time of the offense." 720 ILCS 5/18-4(a)(2) (West 2010).

¶ 42 However, "[i]n Illinois it is well settled that separate victims require separate convictions and sentences." *People v. Shum*, 117 Ill. 2d 317, 363 (1987). "Where a single act injures multiple victims, the consequences affect, separately, each person injured. Thus, there is a corresponding number of distinct offenses for which a defendant may be convicted." *People v. Pryor*, 372 Ill. App. 3d 422, 434 (2007).

¶ 43 As in this case, the defendant in *Pryor* was convicted of aggravated vehicular hijacking and vehicular hijacking based on two victims. On appeal, the defendant argued that the convictions violated the one-act, one-crime rule because "his convictions for aggravated vehicular hijacking and vehicular hijacking were based on one act: stealing one car." *Id.* at 434. The reviewing court disagreed, finding that "[e]ach victim was subjected to the taking of the car by force. Since there are two separate victims, there are two separate acts and, therefore, because the convictions do not arise from lesser included offenses, separate convictions and concurrent sentences are proper." *Id.* at 435.

¶ 44 Like defendant in the instant case, the *Pryor* defendant also relied on the Criminal Code for support, which was rejected by the reviewing court.

"Defendant argues that the vehicular hijacking statute 'focuses on the taking of a particular type of property, a motor vehicle, rather than the person from whom the property is taken,' and that 'it is the act of taking under the specified circumstances that constitutes the offense.' Defendant's argument might have merit only if the vehicular hijacking statute were phrased as being committed against 'one or more persons,' such as in the home

invasion statute." *Id.* at 435-36 (citing 720 ILCS 5/12-11(a) (West 2002)).

¶ 45 "The plain language of the vehicular hijacking statute is phrased as being committed against an individual." *Id.* at 436. The *Pryor* court rejected the defendant's argument that vehicular hijacking is a property crime, focused on the taking of a vehicle, rather than the injury to the victim. The court looked to the legislative debate on the statute to establish the legislative intent.

"During the legislative debates on what would become Public Act 88-351, the sponsor of the bill, Senator Hawkinson, explained as follows: 'Unfortunately, in our society from time to time a new—new genre of crimes comes along. We're all too familiar with the tragedies around the country of—of car hijacking where someone armed or unarmed attacks a car, and either snatches the driver out; sometimes the driver, as we read yesterday about one story, is dragged, because they're caught in the rush, and—and caught a seat belt or something and dragged and seriously injured or killed; sometimes these carjackings occur where a young child is the passenger in the car and is taken for ride after a mother or father is—is yanked from the car.' 88th Ill. Gen. Assem., Senate Proceedings, April 15, 1993, at 281 (statements of Senator Hawkinson). This explanation of the reason, necessity, or purpose of the vehicular hijacking statute has more to do with the injury to the victim than the taking of property. Where a single act injures

multiple victims, the consequences affect, separately, each person injured." *Id.* at 437.

¶ 46 Defendant acknowledges the decision in *Pryor*, but asserts that it was wrongly decided. We disagree and find *Pryor* to be a well reasoned decision and adopt its analysis in this case. Contrary to defendant's reliance on the statutory categorization of the vehicular hijacking statutes, the Illinois Supreme Court has held that the "legislature's label is strong evidence, but it cannot overcome the actual attributes of the charge at issue." *People v. Jones*, 223 Ill. 2d 569, 599 (2006). As the court in *Pryor* discussed, the legislative intent from the debate showed that the intent focused on the victims, not the taking of property. Here, defendant committed vehicular hijacking when he took the motor vehicle from the presence of Ali and he committed aggravated vehicular hijacking when he took the motor vehicle from the presence of Jaffrey, who was under 16 years of age and in the passenger seat of the vehicle. Defendant's one taking of a motor vehicle harmed two victims and, under *Pryor*, defendant was properly convicted of both charges.

¶ 47 Defendant also asserts that his conviction for possession of a stolen motor vehicle violates the one-act, one-crime rule because it is based on the same act as vehicular hijacking, the taking of a motor vehicle. We disagree.

¶ 48 "The one-act, one-crime doctrine provides that a defendant may not be convicted of multiple crimes if they are based on precisely the same physical act." *People v. Hardin*, 2012 IL App (1st) 100682, ¶ 24 (citing *Miller*, 238 Ill. 2d at 165). The one-act, one-crime doctrine involves a two step analysis.

"First, the court must determine whether the defendant's conduct involved multiple acts or a single act. Multiple convictions are

improper if they are based on precisely the same physical act.

Second, if the conduct involved multiple acts, the court must determine whether any of the offenses are lesser-included offenses.

If an offense is a lesser-included offense, multiple convictions are improper." *Miller*, 238 Ill. 2d at 165.

¶ 49 Here, defendant argues that the possession of a stolen motor vehicle conviction arose out of the same act as vehicular hijacking. He does not contend that possession of a stolen motor vehicle is a lesser-included offense of vehicular hijacking. However, the act at issue for possession of the motor vehicle was not the taking, but the possession. The possession of a stolen motor vehicle was based on his conduct of possessing the stolen vehicle on November 13, 2010, at 31st and Stewart, not the taking that occurred on November 11, 2010, at 2611 West Fitch Avenue. We point out that the distance between these locations is approximately 15 miles. See *People v. Deleon*, 227 Ill. 2d 322, 326 n.1 (2008) (noting that courts "may take judicial notice of the distances between two locations").

¶ 50 We find defendant's reliance on *People v. Owens*, 205 Ill. App. 3d 43, 46 (1990), overruled on other grounds *People v. Thomas*, 171 Ill. 2d 207, 225 (1996), to be misplaced. In that case, the reviewing court held that the defendant's convictions for criminal trespass and possession of a stolen motor vehicle violated the one-act, one-crime rule. The court reasoned that "the State's theory at trial was that the defendant committed criminal trespass when he entered the Buick in the parking lot. On the unlawful possession charge, the State's theory was that he committed the offense when he then drove the car from the parking lot. However, we find that getting in the car and driving it were part of one continuous act." *Id.* at 46.

¶ 51 The facts in *Owens* are distinguishable from those present in the instant case.

Defendant's possession of the Lexus two days after it was stolen was a separate and distinct act, not one continuous act as in *Owens*. Because the possession of a stolen motor vehicle conviction was based on a separate act from his vehicular hijacking conviction, the one-act, one-crime rule was not violated and defendant was properly convicted of both offenses.

¶ 52 Finally, defendant contends that he is entitled to an additional 8 days of presentence credit for time spent in custody, for a total of 865 days of presentence credit. At sentencing, the trial court awarded defendant 857 days of presentence credit. The State concedes that defendant is entitled to credit for 865 days.

¶ 53 Under Supreme Court Rule 615(b)(1), this court has the authority to order a correction of the mittimus. Ill. S. Ct. R. 615(b)(1) (eff. Aug. 27, 1999). Accordingly, we order the mittimus to be corrected to reflect 865 days of presentence credit for time spent in custody.

¶ 54 Based on the foregoing reasons, we affirm defendant's conviction and sentence and the mittimus is corrected as ordered.

¶ 55 Affirmed; mittimus corrected.