

No. 1-10-0934

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SECOND DIVISION
January 25, 2010

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. 08 CR 6779
	)	
CORNELL ZANDERS,	)	Honorable
	)	Victoria A. Stewart,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE CONNORS delivered the judgment of the court.
Presiding Justice Cunningham and Justice Harris concurred in the judgment.

O R D E R

HELD: Multiple convictions based on defendant's possession of a firearm vacated as violative of the one-act, one-crime rule; separate convictions of unlawful use of a weapon by a felon for possessing both a firearm and ammunition affirmed.

Following a bench trial, defendant Cornell Zanders was found guilty of being an armed habitual criminal, two counts of

unlawful use of a weapon by a felon, ten counts of aggravated unlawful use of a weapon, and one count of possession of a firearm with a defaced serial number. At sentencing, the court merged these convictions and sentenced defendant to a single term of six years' imprisonment on the armed habitual criminal count.

Defendant contested that conviction on appeal, claiming that one of the underlying felonies alleged in that count was not a statutory enhancement. This court entered an agreed order for summary disposition reversing the armed habitual criminal conviction and remanding the cause for resentencing on the most serious of the remaining charges. *People v. Zanders*, No. 1-09-1027 (2009) (dispositional order).

On remand, the trial court sentenced defendant to concurrent terms of three years' imprisonment on the remaining 13 counts. In this appeal from that judgment, defendant contends that this court should merge all of his convictions into the most serious offense of unlawful use of weapons by a felon, and that his simultaneous possession of a firearm and ammunition, as part of a loaded handgun, should not be characterized as two separate acts.

Defendant concedes that he did not raise these issues in the court below, as required (*People v. Enoch*, 122 Ill. 2d 176, 186 (1988)), but claims that plain error review should be applied. In *People v. Harvey*, 211 Ill. 2d 368, 389 (2004), the supreme court recognized that an alleged one-act, one-crime violation and

the potential for a surplus conviction and sentence affects the integrity of the judicial process, thus satisfying the second prong of the plain error rule. Accordingly, we will address defendant's argument, and our review is *de novo*. *People v. Dresher*, 364 Ill. App. 3d 847, 863 (2006).

In *People v. King*, 66 Ill. 2d 551, 566 (1977), the supreme court held that a defendant may not be convicted of multiple offenses based on the same physical act. Under the two-part test set forth in *People v. Rodriguez*, 169 Ill. 2d 183, 186 (1996), we first determine whether defendant's conduct consisted of one act or separate acts; if there is one act, multiple convictions are improper. *Harvey*, 211 Ill. 2d at 389. If, however, we find multiple acts, we must determine whether any of the convictions are lesser-included offenses, in which case, multiple convictions are also improper under *King*. *Harvey*, 211 Ill. 2d at 389.

The relevant evidence shows that Chicago police officers responding to shots fired observed defendant drop two objects to the ground before fleeing into a school parking lot. After giving chase, the officers took defendant into custody then returned for the dropped objects. They recovered a cell phone and an uncased Glock handgun containing three live rounds, for which defendant did not have a valid firearm owner's identification card. At trial, the State entered into evidence, certified copies of defendant's two prior convictions for

possession of a firearm with a defaced serial number and felony aggravated unlawful use of a weapon.

The State concedes that the convictions for unlawful use of a weapon by a felon, aggravated unlawful use of a firearm by a felon, and possession of a firearm with a defaced serial number all stem from the same act: possessing a firearm. In addition, both parties agree that the conviction for unlawful use of a weapon by a felon should stand, as it carries the greatest maximum sentence (14 years) and is therefore the most serious offense. 720 ILCS 5/24-1.1(e) (West 2008); *People v. Artis*, 232 Ill. 2d 156, 170 (2009). We agree and thus vacate the 10 convictions for aggravated unlawful use of a firearm and the conviction for possession of a firearm with a defaced serial number. *Artis*, 232 Ill. 2d at 170.

Defendant also claims that we should vacate his conviction for unlawful possession of ammunition, which, he argues, stems from the same act as his unlawful possession of a firearm. The State responds that these are separate acts under *King*, where "act" is defined as any overt or outward manifestation which will support a different offense. *King*, 66 Ill. 2d at 566.

Section 24-1.1(a) of the Criminal Code (720 ILCS 5/24-1.1(a) (West 2008)) makes it unlawful for a person previously convicted of a felony to knowingly possess any firearm or any firearm ammunition. The supreme court addressed an earlier version of

this statute in *People v. Carter*, 213 Ill. 2d 295, 302 (2004), and found it ambiguous as to whether possession of both a firearm and firearm ammunition could result in multiple convictions. As a result, the supreme court construed the statute in favor of defendant and held that, where defendant possesses multiple firearms and ammunition, the statute only provides for one conviction. *Carter*, 213 Ill. 2d at 304. Following *Carter*, however, the statute was amended to include the following language: "The possession of each firearm or firearm ammunition in violation of this Section constitutes a single and separate violation." 720 ILCS 5/24-1.1(e) (amended by Pub. Act 94-284 (eff. Jul. 21, 2005)).

This provision, which was added to the unlawful use statute after *Carter*, clearly evinces the intent of the legislature to treat possession of a firearm and firearm ammunition as separate violations under the statute. 720 ILCS 5/24-1.1(e); *cf. People v. Manning*, 71 Ill. 2d 132, 137 (1978) (finding that the simultaneous possession of more than one type of controlled substance constituted a single offense in the absence of a statutory provision to the contrary). Accordingly, we find that although defendant was in simultaneous possession of the gun and the ammunition, each possession constituted a separate overt manifestation which supported a different offense (*King*, 66 Ill. 2d at 566) under the statute.

Defendant takes issue with this conclusion, arguing that the legislature did not intend multiple convictions to be entered in the case of a loaded gun. Given the history of the statute and the plain, unambiguous language of the amendment to it, we have no basis for limiting its application when the ammunition is part of a loaded gun. *Carter*, 213 Ill. 2d at 301. We thus find that the court did not err in entering judgment on two counts of unlawful use of a weapon by a felon for defendant's possession of a firearm and firearm ammunition.

We therefore vacate the judgments entered on the 10 convictions for aggravated unlawful use of a firearm and the conviction for possession of a firearm with a defaced serial number, affirm the judgment entered on the remaining convictions, and order the clerk of the circuit court to make the necessary corrections to the mittimus to reflect this decision. *People v. McCray*, 273 Ill. App. 3d 396, 403 (1995).

Affirmed in part; vacated in part; mittimus corrected.