FIRST DIVISION
June 23, 2014

No. 1-11-2448

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. 09 CR 7414
	)	
THOMAS WILLIAMS,	)	Honorable
	)	Luciano Panici,
Defendant-Appellant.	)	Judge Presiding.

PRESIDING JUSTICE CONNORS delivered the judgment of the court.
Justices Hoffman and Cunningham concurred in the judgment.

ORDER

Held: A rational trier of fact could conclude beyond a reasonable doubt that defendant was armed during the offenses when the witness, who was familiar with guns, felt a "cold, circle, metal, and hard" object pressed to her side even though she did not see a weapon; the 15-year firearm enhancements for aggravated vehicular hijacking, armed robbery and aggravated kidnaping do not violate the proportionate penalties clause of the Illinois Constitution; defendant's two convictions for aggravated vehicular hijacking do not violate the one-act, one-crime doctrine; and defendant's mittimus is corrected.

¶ 1 This appeal arises from a judgment entered by the circuit court of Cook County finding Thomas Williams guilty of two counts of aggravated vehicular hijacking, two counts of armed robbery, and two counts of aggravated kidnaping. After a bench trial, the court sentenced

defendant to 25-year terms for two counts of aggravated vehicular hijacking, concurrent 25-year terms for two counts of armed robbery, and consecutive 22-year terms for two counts of aggravated kidnaping. On appeal, defendant argues: 1) the evidence was insufficient to prove beyond a reasonable doubt that he was armed with a firearm during the offenses; 2) the 15-year firearm enhancements for armed robbery, aggravated vehicular hijacking, and aggravated kidnaping are improper under the proportionate penalties clause of the Illinois Constitution; 3) the two convictions for aggravated vehicular hijacking violate the one-act, one-crime doctrine where there was a single taking of a vehicle; 4) he is entitled to 274 additional days of credit for time spent in presentence custody. For the reasons that follow, we affirm the convictions and correct the mittimus.

¶ 2 The relevant testimony from Bianca Dorsey, Lashawnda Dye, and defendant reveals the following. Shortly after midnight on March 14, 2009, Dorsey drove Dye, Patricia Fields, and Tonisha Gardner in Dorsey's mother's minivan to a nightclub called Mr. Rickey's. All four women were in line to get into the nightclub when defendant approached them. He told them that he could help them get into the club, but the women repeatedly declined his offer. Defendant cursed at one of the women and then walked away from the group. After a short while, Fields and Gardner were allowed into the club but Dye was turned away because she was underage. Dorsey decided to go back to the car with Dye and, as they were walking, defendant approached them and again offered to help them get into the club. Again, the women declined. When the women reached the minivan and got inside—Dorsey on the driver's side and Dye on the passenger's side—defendant stuck his head in between the door and Dorsey, preventing her from closing the driver's door.

¶ 3 Next, defendant pressed a "cold, circle, metal, and hard" object against Dorsey's left side which she felt directly on her skin. She testified that she knew that the object was a gun, that she was familiar with guns and that she had carried a gun in the past. Dye testified that she saw defendant's right hand at Dorsey's left side but that she did not see what was in his hand. When Dorsey felt the object at her side, her heart "shrunk down to [her] stomach" and she pleaded with defendant, "Please, please, just stop." He retorted, "No, you know what this is, be quiet." Dorsey further testified that she offered defendant money and her mother's car. Both Dorsey and Dye testified that they gave him money. While standing between the driver's door and Dorsey, defendant told Dorsey to move to the back seat of the van. Dorsey told him she needed to exit the car to get to the back, thinking that if she were able to exit the car, she could get the attention of people walking by so that both she and Dye could get away and defendant would not be able to hurt them. Defendant refused her request and ordered Dorsey to crawl over the front seat and into the back of the car. Dorsey testified that the gun was pressed against her side as she climbed over the front seat.

¶ 4 Then, defendant got into the driver's seat and drove the two women to an apartment building several minutes from the nightclub. During the drive, Dorsey told defendant she could get him more money, but as she was making a phone call for the extra money, he took her phone. Dorsey and Dye also told defendant that they had kids and to let them go. Defendant said everything would be okay. He then stopped the car in a parking lot close to the apartment building and told Dye to come upstairs with him. Dye told him she would feel more comfortable if Dorsey, who was still in the back seat, came with her. After a few minutes, defendant went into the apartment building by himself, taking Dorsey's car keys, cell phone, and wallet with him. He told the two women to wait in the car. The women watched as he ascended an outside

staircase of the apartment building and then, on Dye's instruction, the women ran from the parking lot leaving their high heels in the car. After stopping a passing car, they were driven back to Mr. Rickey's where they spoke to police about the incident. Approximately one hour later, the police saw Dorsey's minivan swerving and followed it until it crashed into a house. Officers arrested defendant as he ran from the car. No weapons were found on his person or in the minivan nor were any entered into evidence at trial.

¶ 5 In his defense, defendant testified that he offered to help Dorsey, Dye, and their two friends get into Mr. Rickey's in exchange for $20, but they declined his offer. Later, when he walked two of the women back to their minivan, they voluntarily gave him some money and the car keys so he could drive them to another club. Defendant further testified that he drove them to his friend's house, did not ask either of them inside, and when he returned to the car, both of the women were gone. He maintained that he never had a gun that night.

¶ 6 The court found defendant guilty on all counts and denied his motion for a new trial. He was sentenced on August 17, 2011 and now appeals.

¶ 7 II. ANALYSIS

¶ 8 A. Sufficiency of the Evidence

¶ 9 Defendant argues that Dorsey's testimony did not satisfy the State's burden to show beyond a reasonable doubt that defendant committed the offenses with a firearm because she did not see the object, only felt something cold, circular, metal and hard, and the object was not introduced into evidence at trial. Defendant contends that as the single witness, Dorsey "did not offer evidence from which the court could reasonably infer that the item was a firearm, as opposed to any other hard, metal-like object." In this case of competing inferences, we affirm.

¶ 10 When considering a challenge to the sufficiency of the evidence the standard of review 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. *Jackson v. Virginia*, 443 U.S. 307, 319 (1979); *People v. Collins*, 106 Ill. 2d 237 (1985). Circumstantial evidence is sufficient to sustain a criminal conviction. *People v. Hall*, 194 Ill. 2d 305 (2000). Furthermore, determinations of the credibility of witnesses, the weight to be given to their testimony, and the reasonable inferences to be drawn from the evidence lie within the province of the trier of fact. *People v. Curtis*, 296 Ill. App. 3d 991, 999 (1998) citing *People v. Oaks*, 169 Ill. 2d 409, 457 (1996). On review, we do not retry defendant and we accept all reasonable inferences from the record in favor of the State. *People v. Beauchamp*, 241 Ill. 2d 1, 8 (2011); *People v. Sutherland*, 223 Ill. 2d 187, 242 (2006). A reviewing court will not substitute its judgment for that of the trier of fact on questions involving the weight of the evidence or the credibility of witnesses unless the evidence is so palpably contrary to the judgment or so unreasonable, improbable, or unsatisfactory as to create a reasonable doubt of defendant's guilt. *People v. Rowell*, 229 Ill. 2d 82, 98 (2008); *People v. Ramos*, 339 Ill. App. 3d 891, 901 (2003). Finally, the trier of fact need not be satisfied beyond a reasonable doubt as to each link in the chain of circumstances; it is sufficient if all of the evidence taken together satisfies the trier of fact beyond a reasonable doubt of defendant's guilt. *Hall*, 194 Ill. 2d at 330.

¶ 11 A person commits armed robbery when he commits the act of robbery while carrying or being armed with a firearm. 720 ILCS 5/18-2(a)(2) (West 2008). The Criminal Code of 1961 (720 ILCS 5/2-7.5 (West 2008)) provides that the term "firearm" has the meaning ascribed to it in section 1.1 of the Firearm Owners Identification Card Act (430 ILCS 65/1.1 (West 2008)), which describes a "firearm" as any device "designed to expel a projectile or projectiles by the

action of an explosion," but excludes paint ball guns, BB guns, devices used for signaling or safety and other enumerated items. The same language concerning the presence of a firearm is included in the statute governing aggravated vehicular hijacking (720 ILCS 5/18-4(a)(4) (West 2008)) and similar language is incorporated in the statute governing aggravated kidnaping: namely, that defendant commits the offense of aggravated kidnaping "while armed with a firearm." 720 ILCS 5/10-2(6) (West 2008). All three statutes contain a 15-year enhancement if defendant commits the offense in violation of the respective firearm provisions. See 720 ILCS 5/18-2(b) (West 2008); 720 ILCS 5/18-4(b) (West 2008); 720 ILCS 5/10-2(b) (West 2008).

¶ 12 Taken together and considering the evidence in the light most favorable to the state, a rational trier of fact could conclude that defendant committed the offenses while armed with a firearm. When defendant's face was only eight inches from hers, she unequivocally testified that she felt a "cold, circle, metal and hard" object being pressed against her skin which she believed to be a gun. Further, Dorsey testified she was familiar with guns and had carried a gun in the past. Although Dye did not see the object from the passenger's side, she saw defendant's right hand at Dorsey's left side throughout the encounter. That testimony was given certain weight, a task entirely within the province of the trier of fact. *People v. Curtis*, 296 Ill. App. 3d 991, 999 (1998) citing *People v. Oaks*, 169 Ill. 2d 409, 457 (1996). Defendant's own words and actions further support the conclusion that he was armed during the offenses. His threat "No, you know what this is, be quiet" raises an inference that he was referring to a weapon when he said "you know what this is". Given the context in which those words were uttered, that inference is all the more reasonable: defendant repeatedly asked for money, the women declined his offers, defendant cursed at one of the women after which he walked away, later he followed two of the women to their car, and prevented the car door from closing. Defendant also refused to allow

Dorsey to exit the vehicle, and when she climbed over the front seat, she felt the same metal object at her side. In our estimation, defendant's refusal raised an inference that he wanted to prevent Dorsey from escaping *and* wanted to avoid any notice of him, anything he had on his person, and the situation generally. His actions and words raise an inference that defendant was armed. When there are competing inferences and the trier of fact accepted one inference—that defendant was armed—we will not disturb that inference on appeal. *People v. Luckett*, 273 Ill. App. 3d 1023, 1027 (1995); *People v. Free*, 94 Ill. 2d 378, 401 (1983).

¶ 13 The evidence in this case largely mirrors the evidence in *People v. Harrison*, 359 Ill. 295 (1935). In that case, the complaining witness was pursued by two men, including the defendant, and then thrown to the ground and robbed. One witness testified that he did not see the object at issue but that he felt a "cold, metallic object" on his neck. The description of the gun was sufficient to find beyond a reasonable doubt that the defendant used a gun during the robbery. *Id.* at 299-300; see also *People v. Pryor*, 327 Ill. App. 3d 422 (2007)(citing *People v. Harrison* for the proposition that the existence of a dangerous weapon can be established by circumstantial evidence). Similarly, Dorsey testified about what she felt, an object that was "cold, circle, metal, and hard." We have the additional evidence of her familiarity with guns, the threat "you know what this is", and defendant's own conduct. Taken together and construing the evidence in the light most favorable to the prosecution, we hold that a rational trier of fact could conclude that defendant was armed.

¶ 14 B. One-act, One-crime

¶ 15 Next, defendant challenges his two convictions for aggravated vehicular hijacking pursuant to the one-act, one-crime doctrine as there was only one act of taking a vehicle. That doctrine states that prejudice results to a defendant when more than one offense is carved from

the same physical act. *People v. King*, 66 Ill. 2d 551, 566 (1977). While defendant did not raise a challenge to the one-act, one-crime doctrine in his post-trial motions, he asserts that this issue is reviewable under the plain-error rule. The plain-error rule allows a reviewing court to consider a trial error which has been defaulted because it was not properly preserved. *People v. Harvey*, 211 Ill. 2d 368 (2004). Defendant urges review under the second prong of the plain-error rule contending that a one-act, one-crime violation is a "clear and obvious error and that error affects the fairness of the defendant's trial or the integrity and reputation of the judicial process." We must first determine whether any error occurred before discussing any plain error. *People v. Sims*, 192 Ill. 2d 592, 621-23 (1989). In order to determine whether a one-act, one-crime violation occurred, we apply a two-step analysis: (1) we first determine whether defendant's conduct was a single physical act or consisted of separate acts, and (2) if we determine that defendant committed separate acts, we then consider whether the multiple convictions are lesser included offenses. *People v. Pearson*, 331 Ill. App. 3d 312, 321-22 (2002). Consistent with our recent holding in *People v. Pryor*, 327 Ill. App. 3d 422, 434 (2007), we find that a single physical act that separately affects two individuals may result in multiple offenses if those offenses fall under a statute which is directed at individuals. For this reason, we affirm defendant's two convictions for aggravated vehicular hijacking.

¶ 16 In *Pryor* we found that defendant's convictions for aggravated vehicular hijacking as well as vehicular hijacking did not violate the one-act, one-crime rule because the crimes committed against each of the two victims constituted separate criminal acts even though there was only one taking of a vehicle. *Pryor*, 327 Ill. App. 3d at 437. In that case, Tamika and Marquis Bonner were driving in Tamika's car when they got lost and stopped at a gas station to call for directions. Tamika testified that when they were both out of the car attempting to call for directions,

defendant approached Marquis and Tamika immediately ran off. Marquis testified that while he and Tamika were attempting to call for directions at the gas station, defendant approached them, pulled a silver object from his waistband and pressed it against Marquis' stomach. He further testified that defendant threatened to shoot Marquis, demanded that he get in the car, and when Marquis refused, defendant pulled Marquis' shirt over his head. *Id.* at 425.

¶ 17 In addressing defendant's argument in that case, namely that the aggravated vehicular hijacking statute only allowed for one conviction regardless of the number of victims, we turned to the language in the home invasion and vehicular hijacking statutes. 720 ILCS 5/12-11(a) (West 2002); 720 ILCS 5/18-3(a) (West 2002); *Id.* at 434-36. We explained that the phrase "one or more persons" in the home invasion statute indicated the legislature's focus was on the *entry* aspect of the offense, rather than the number of victims and therefore, only one offense could be carved from one entry of home invasion. 720 ILCS 5/12-11(a) (West 2002); *Id*. We went on to distinguish the language "from the person or immediate presence of another" in the aggravated vehicular hijacking statute and concluded that the legislature's focus was that the offense of vehicular hijacking was committed *against an individual* and therefore, multiple offenses could be carved from a single act of vehicular hijacking. 720 ILCS 5/18-3(a) (West 2002); *Id.* In so concluding, we noted that similar language in the robbery statute allowed a separate count for each victim. *Id.* at 436 citing *People v. Butler*, 64 Ill. 2d 485, 489 (1976) (affirming defendant's two convictions for robbery when defendant only took money from one victim and defendant's companion took money from a different victim reasoning that the threat posed by both defendant and his companion was not confined to the victim from whom the property was taken). Having found that the one-act, one-crime rule did not apply, we found no error and there was no need to review the issue under the plain error doctrine. *Id.* at 437.

¶ 18 We revisited our reasoning in *Pryor* in *People v. Hardin*, 2012 IL App (1st) 100682. That case addressed the propriety of two convictions for aggravated discharge of a firearm when defendant shot at one vehicle which was occupied by two police officers. Again, we turned to the statutory language "in the direction of a vehicle he or she knows to be occupied by a peace officer" of the aggravated discharge of a firearm statute. 720 ILCS 5/24-1.2(a)(4) (West 2008). Distinguishing *Pryor*, we stated that the statutory language governing aggravated discharge of a firearm at issue in *Hardin* was directed at a vehicle whereas the vehicular hijacking statute in *Pryor* was directed at individuals. Compare 720 ILCS 5/24-1.2(a)(4) (West 2008), with 720 ILCS 5/18(a)(3) (West 2008). Only in the latter case, we said, would two convictions for a single physical act be proper. *Id.* at ¶¶ 31-32. Relying on the language in the vehicular hijacking statute, and the reasoning in *Pryor* and *Hardin*, we conclude that two convictions for aggravated vehicular hijacking do not violate the one-act, one-crime doctrine.

¶ 19 C. Enhancements

¶ 20 We next consider defendant's contention that the firearm enhancements violate the proportionate penalties clause of the Illinois Constitution.

¶ 21 In *People v. Blair*, 2013 IL 114122, the Illinois Supreme Court addressed the constitutionality of the 15-year firearm enhancement in the armed robbery statute. Prior to *Blair*, the 15-year enhancement of the armed robbery statute had been found unconstitutional in violation of the proportionate penalties clause of the Illinois Constitution because the sentence for armed robbery was more severe than the sentence for the identical offense of armed violence based on robbery. *People v. Hauschild*, 226 Ill. 2d 63 (2007). Subsequent to *Hauschild*, the legislature passed Public Act 95-688 § 4 (eff. Oct. 23, 2007), which amended the statute governing armed violence so that it no longer punished conduct identical to that of the armed

robbery statute. In other words, Public Act 95-688 removed robbery as a predicate offense of armed violence. As a result, Illinois courts addressed whether the Act effectively revived the 15-year sentencing enhancement of the armed robbery statute previously held unconstitutional *or* if that sentencing enhancement should be treated as if it never existed. After a split among the appellate districts, the supreme court held that Public Act 95-688 revived the 15-year enhancement in the armed robbery statute in *Blair*. Pursuant to *Blair*, defendant's 15-year enhancement for armed robbery does not violate the Illinois Constitution.

¶ 22 The court's reasoning in *Blair* applies by logical extension to defendant's challenge to his sentencing enhancements for aggravated vehicular hijacking and aggravated kidnaping. Just as *Hauschild* found the 15-year enhancement for armed robbery unconstitutional, the same enhancements for aggravated vehicular hijacking and aggravated kidnaping were found to impose disproportionate penalties when compared to the sentences for armed violence predicated on aggravated vehicular hijacking and armed violence predicated on aggravated kidnaping respectively. See *People v. Baker*, 341 Ill. App 3d 1083, 1084 (4th Dist. 2003); *People v. Andrews*, 364 Ill. App. 3d 253, 275 (2006); *People v. Herron*, 2012 IL App (1st) 090663 ¶¶ 25-26. As mentioned above, the legislature subsequently passed Public Act 95-688. That Act not only amended the armed violence statute by eliminating the predicate offense of robbery, but also eliminated the predicate offenses of aggravated vehicular hijacking and aggravated kidnaping. *Blair* recognized that Public Act 95-688 had cured the disproportionality with respect to armed robbery, but the court's reasoning extends to aggravated vehicular hijacking and aggravated kidnaping. In his reply brief, defendant even acknowledges the effect of the decision in *Blair*. In accordance with the reasoning in *Blair*, we conclude that the trial court properly

imposed the 15-year firearm enhancements to defendant's armed robbery, aggravated vehicular hijacking and aggravated kidnaping convictions.

¶ 23 D. Proper Credit

¶ 24 Lastly, defendant contends and the State concedes, that he is entitled to an additional 274 days of presentence custody credit. Pursuant to Supreme Court Rule 615(b), a reviewing court has the authority to correct an offender's mittimus without remanding the cause to the circuit court. Ill. S.Ct. R. 615(b) (eff. Aug. 27, 1999). The record reflects that defendant was arrested on March 14, 2009 and that he remained in custody until he was sentenced on August 17, 2011. The trial court gave defendant credit for 612 days in custody. The correct credit is 886 days. Accordingly, we order that defendant's mittimus be corrected to accurately reflect 886 days of presentence custody credit.

¶ 25 Affirmed; mittimus corrected.