2014 IL App (2d) 130112-U
No. 2-13-0112
Order filed December 3, 2014

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court of Kane County.
Plaintiff-Appellee,	)	
v.	)	No. 10-CF-2122
PEDRO TERRAZAS,	)	Honorable James C. Hallock,
Defendant-Appellant.	)	Judge, Presiding.

JUSTICE McLAREN delivered the judgment of the court.
Justices Burke and Jorgensen concurred in the judgment.

ORDER

¶ 1 *Held*: (1) Defendant's multiple convictions of various sex offenses did not violate the one-act, one-crime rule, as the indictment and the instructions were sufficient to notify defendant and the jury that he was being charged with multiple acts and not alternative theories of liability for single acts; (2) we modified the written judgment to reflect the trial court's oral pronouncement that certain sentences would be served concurrently.

¶ 2 Following a jury trial, defendant, Pedro Terrazas, was convicted of two counts of predatory criminal sexual assault of a child (720 ILCS 5/12-14.1(a)(1) (West 2010)), five counts of criminal sexual assault (720 ILCS 5/12-13(a)(2) (West 2010)), and five counts of aggravated criminal sexual abuse (720 ILCS 5/12-16(b) (West 2010)). He appeals, contending that (1)

several of his convictions violate one-act, one-crime principles and (2) the multiple sentencing orders do not convey properly the trial court's oral pronouncement that five of defendant's sentences are to be served concurrently. We affirm as modified.

¶ 3 Defendant was charged in an 18-count indictment with various offenses committed against M.D., the daughter of defendant's girlfriend. Counts I and II alleged that defendant committed predatory criminal sexual assault between June 17, 2002, and June 17, 2007, by placing his penis in M.D.'s sex organ. The State dismissed counts III and IV before trial.

¶ 4 Counts V through XI all alleged that defendant committed criminal sexual assault between June 17, 2007, and August 22, 2010. Counts V and VI alleged that defendant put his penis in M.D.'s sex organ. Counts VII and VIII alleged that defendant put his penis in M.D.'s anus. Count IX alleged that defendant put his penis in M.D.'s mouth. Count X alleged that defendant put his mouth on M.D.'s sex organ. Count XI alleged that defendant placed his penis in M.D.'s sex organ by the use of force.

¶ 5 Counts XII through XVIII all alleged that defendant committed aggravated criminal sexual abuse between June 17, 2002, and August 22, 2010. Counts XII and XIII alleged that defendant placed his hand on M.D.'s breast for his own sexual gratification. Counts XIV, XV, and XVI alleged that defendant placed his hand on M.D.'s sex organ for his own sexual gratification. Count XVII alleged that defendant forced M.D. to touch his penis. Count XVIII alleged that defendant put his mouth on M.D.'s sex organ.

¶ 6 At trial, M.D. testified that defendant began dating her mother, Maria Orquiz, and moved in with her and her mother when M.D. was four years old. M.D. was frequently alone with defendant because her mother worked the night shift and her brother would often play outside with friends. During these times, defendant would get close to M.D. and touch her breasts

outside of her clothes. Sometimes, he came into her bedroom in the middle of the night to touch her breasts, waking her up. She estimated that this happened two to three times per week.

¶ 7 When M.D. was nine, defendant began to touch her vagina, first over her clothes, then under her clothes. He told her that it was "okay." He did this two to three times per week. Defendant never stopped doing it until M.D. left home at age 16.

¶ 8 M.D. testified that, when she was 11, defendant took her into his bedroom, had her stand with her upper body on his bed, and had vaginal sex with her from behind. Defendant had sex with M.D. in his bedroom two to three times per week. Around M.D.'s twelfth birthday, the family built her a bedroom in the basement. Defendant then had sex with her in that room.

¶ 9 When M.D. was about 15, defendant started having anal sex with her. He told her that this was a "good way to do it" because she could not get pregnant. M.D. recalled a specific incident in 2010 when defendant had anal sex with her on a sleeping bag in the living room.

¶ 10 On August 18, 2010, M.D., her mother, and her brother went to a party at the home of Norma Orquiz, M.D.'s aunt. When they returned, defendant was angry about something. M.D. argued with defendant and eventually left the house and walked back to Norma's house. Maria arrived shortly thereafter, and M.D. told Maria and Norma about the abuse. Maria left the house while Norma called the police.

¶ 11 Marco Gomez was one of the officers who responded to the call. He found M.D. sitting quietly next to Norma. Norma told him that M.D. said she did not want to go back home. When asked why, Norma said that M.D. had told her that her "stepfather" had been having sex with her since she was six years old.

¶ 12 After an initial search of her house, the officers conversed with Maria on the front porch. Defendant interrupted the conversation and said that Maria did not have to suffer anymore,

because defendant did have sex with M.D. The officers sat down with defendant at the kitchen table, where he told them that, about a year before, M.D. came out of the shower and asked if he wanted to "see more." He said that he did, and they started having sex regularly. He estimated that he had sex with M.D. nearly every day for a year. He touched her breasts and vagina with his hands, and they both performed oral sex with each other.

¶ 13 The jury was given verdict forms that differentiated between offenses involving different charged conduct, but not different counts involving the same charged conduct. Thus, the jury received three identical verdict forms for "aggravated criminal sexual abuse (hand/sex organ)," "aggravated criminal sexual abuse (hand/breast)," and "predatory criminal sexual assault (penis/anus)."

¶ 14 The jury acquitted defendant of counts IX, X, XVII, and XVIII, but found him guilty of all other counts. In all, defendant was convicted of two counts of predatory criminal sexual assault, five counts of criminal sexual assault, and five counts of aggravated criminal sexual abuse.

¶ 15 Following a sentencing hearing, the court sentenced defendant to 10 years' imprisonment for each count of predatory criminal sexual assault, 5 years for each count of criminal sexual assault, and 5 years for each count of aggravated criminal sexual abuse. The court orally ordered that the terms for predatory criminal sexual assault and criminal sexual assault would be served consecutively to each other. The terms for aggravated criminal sexual abuse would be served concurrently with each other, but consecutively to the other sentences. The court issued a separate sentencing order for each count and a separate order for each category of offense. According to the Department of Corrections website, the department has interpreted the court's

order as requiring defendant to serve an aggregate of 50 years and 9 months in prison. Defendant timely appeals.

¶ 16 Defendant first contends that his multiple convictions for identical conduct violate one-act, one-crime principles. Specifically, he argues that counts I and II both allege that, between June 17, 2002, and June 17, 2007, defendant committed predatory criminal sexual assault by placing his penis in M.D.'s sex organ. Counts V and VI both allege that, between June 17, 2007, and August 22, 2010, defendant committed criminal sexual assault by placing his penis in M.D.'s sex organ. Counts VII and VIII both allege that, between June 17, 2007, and August 22, 2010, defendant committed criminal sexual assault by placing his penis in M.D.'s anus. Counts XII and XIII both allege that, between June 17, 2002, and August 22, 2010, defendant committed aggravated criminal sexual abuse by placing his hand on M.D.'s breast for his sexual gratification. Counts XIV, XV, and XVI all allege that, between June 17, 2002, and August 22, 2010, defendant committed aggravated criminal sexual abuse by placing his hand on M.D.'s sex organ for his own gratification.

¶ 17 A defendant may not be convicted of multiple offenses arising out of a single physical act. *People v. Harvey*, 211 Ill. 2d 368, 389 (2004). An act is "any overt or outward manifestation which will support a different offense." *People v. King*, 66 Ill. 2d 551, 566 (1977). We review *de novo* whether multiple convictions are based on the same act. *In re Samantha V.*, 234 Ill. 2d 359, 369 (2009).

¶ 18 Here, defendant concedes that the evidence, including M.D.'s testimony and his own admissions, sufficiently proved that he committed multiple acts. Nevertheless, he contends that neither the indictment nor the jury instructions informed the jury how to apportion those acts among the various counts charged. Specifically, he argues that counts I and II, counts V and VI,

counts VII and VIII, counts XII and XIII, and counts XIV, XV, and XVI charge identical conduct. Moreover, he asserts, the verdict forms for these counts were identical, and the State made no attempt during the trial to apportion his various acts among these counts.

¶ 19 In *Crespo*, the defendant murdered his girlfriend during an argument and stabbed her daughter, Arlene, three times. The State charged the defendant with, *inter alia*, first-degree murder, armed violence, aggravated battery based on causing great bodily harm, and aggravated battery based on using a deadly weapon. A jury found the defendant guilty of those offenses. The trial court merged the aggravated-battery convictions but imposed concurrent sentences for armed violence and great-bodily-harm aggravated battery. Defendant appealed.

¶ 20 The appellate court affirmed all the convictions, but the supreme court vacated the aggravated-battery conviction. The court held that, although the evidence showed that the defendant stabbed Arlene three separate times, which *could* have supported three separate convictions, both the indictment and the State's closing argument evinced an intent to charge the stabbing as a single incident. The four different counts merely charged the same conduct under four alternative theories. *Crespo*, 203 Ill. 2d at 342. The court further held that, in order for multiple convictions to stand, the indictment must treat a defendant's conduct as multiple acts. *Id.* at 345; see also *People v. Stull*, 2014 IL App (4th) 120704, ¶ 48. A contrary result would raise constitutional concerns because a defendant has a fundamental right to be informed of the nature of the charges against him in order to prepare his defense. *Crespo*, 203 Ill. 2d at 345. Allowing the State to wait until appeal to decide whether to charge a series of closely related acts as multiple offenses violates this principle. *Id.*

¶ 21 In *People v. Bishop*, 218 Ill. 2d 232, 244-46 (2006), the court reiterated that the State's treatment at trial of the various charges was relevant in deciding whether the State intended to

charge the defendant with multiple acts. The court noted that *Crespo*'s primary concern was the State's treatment of several closely related acts as one act in the indictment and at trial, then changing course on appeal and contending that the acts were separate. *Id.* at 245-46.

¶ 22 Thus, *Crespo* did look to the State's treatment of the issues at trial, but only after finding that the indictments charged the same conduct under alternative theories. Here, there is no question that at trial the State formulated each set of counts as undifferentiated offenses. However, unlike in *Crespo*, it did not charge the same conduct under alternative theories. For example, considering counts I and II, if count II did not charge a second instance of the same offense, then it was merely redundant of the first count. Thus, when the jury was instructed and given verdict forms on both counts, the message to the jury was that defendant was being charged with two different acts. This is particularly true given the overwhelming evidence at trial that defendant committed multiple acts. The only other conclusion is that the jury found defendant guilty of the exact same act twice.

¶ 23 Under the unusual circumstances here, it was made reasonably clear to the jury that defendant was being charged with multiple instances of the same conduct. While the State certainly could have been more clear in its treatment of the various counts both in the indictment and during the trial, the most reasonable conclusion is that the jury understood that defendant was being charged with multiple instances of the same conduct. Moreover, defendant does not claim to have been surprised or prejudiced by the State's proceeding in this manner.

¶ 24 Defendant alternatively contends that the written sentencing orders do not clearly reflect the court's oral pronouncement that defendant's sentences for five counts of aggravated criminal sexual abuse be served concurrently with each other. Defendant asks that we remand the cause for the court to issue new sentencing orders.

¶ 25 The judge's oral pronouncement, rather that the written order, is the judgment of the court, and where the oral pronouncement and the written judgment conflict, the former controls. *People v. Jones*, 376 Ill. App. 3d 372, 395 (2007). Here, the court plainly stated at sentencing that the sentences for aggravated criminal sexual abuse (counts XII thorough XVI) were to be served consecutively to the other counts but concurrently to each other. The court then issued 15 separate sentencing orders, one for each class of offense and one for each individual count. While all of the orders for the sexual-abuse counts state that the sentences are to be served consecutively to those for the other counts, only the order for count XII states that the sentences are concurrent with each other. Defendant asserts that this has led the Department of Corrections to calculate defendant's release date as if the sexual-abuse sentences were all consecutive.

¶ 26 The State does not dispute defendant's contention on the merits, but argues that remand is unnecessary because we can simply amend the orders ourselves. See Ill. S. Ct. R. 615(b) (eff. Jan. 1, 1967); *People v. D'Angelo*, 223 Ill. App. 3d 754, 784 (1992) (reviewing court can modify written order to make it conform with court's oral pronouncement). We agree. Thus, pursuant to Rule 615(b), we modify the sentencing orders for counts XII through XVI to provide that the sentences for those counts are to be served concurrently with each other.

¶ 27 The judgment of the circuit court of Kane County is affirmed as modified.

¶ 28 Affirmed as modified.