

NOTICE

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2013 IL App (5th) 120122-U

NO. 5-12-0122

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

NOTICE

This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

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THE PEOPLE OF THE STATE OF ILLINOIS, )	Appeal from the
)	Circuit Court of
Plaintiff-Appellee, )	Edwards County.
)	
v. )	No. 11-CF-38
)	
SHADY LEROY BEATTY, )	Honorable
)	David K. Frankland,
Defendant-Appellant. )	Judge, presiding.

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JUSTICE STEWART delivered the judgment of the court.  
Presiding Justice Spomer and Justice Wexstten concurred in the judgment.

**ORDER**

- ¶ 1       *Held:* The defendant's conviction for aggravated domestic battery will not be vacated under the one-act, one-crime rule where the charging information listed all of the defendant's acts in each count, but where the consistent theme in the State's theory of the case was that there were separate acts.
- ¶ 2       The defendant, Shady Leroy Beatty, was charged by information with one count of aggravated domestic battery and three counts of first-degree murder for the beating and strangulation of his ex-wife. Following a bench trial, the defendant was convicted of aggravated domestic battery and all three counts of murder. The circuit court sentenced the defendant to the Illinois Department of Corrections for a term of 50 years for the offense of first-degree murder under section 9-1(a)(1) of the Criminal Code of 1961 (720 ILCS 5/9-1(a)(1) (West 2010)), to be served consecutively to a 7-year term for aggravated domestic battery under section 12-3.3(a) of the Criminal Code of 1961 (720 ILCS 5/12-3.3(a) (West 2010)). On appeal the defendant contends

that his conviction for aggravated domestic battery must be vacated because it arose from the same physical act as his conviction for first-degree murder. We affirm.

¶ 3

### BACKGROUND

¶ 4

The following is a summary of the pertinent evidence presented at the bench trial. At approximately 3:30 a.m. on July 14, 2011, the defendant went to the residence of his neighbor, Mary Compton, and told Mary and her husband that he had just killed his ex-wife, Cynthia Ann Beatty. Mary testified that she observed blood on the defendant's chest.

¶ 5

After arriving back home, the defendant dialed 9-1-1. The audio recording of the 9-1-1 call was admitted into evidence over defense counsel's objection. The audio recording revealed that the defendant informed the dispatcher that he thought he had killed his "ex-old lady." When asked what happened, the defendant stated, "She was fucking around on me." He also told the dispatcher, "I killed her; she's dead." When asked with what he had killed her, the defendant stated, "My hands." The defendant made a follow-up call to 9-1-1 to ask if the police were on their way.

¶ 6

When Illinois State Trooper Timothy Luker arrived at the crime scene, he observed the defendant standing next to a trailer. He noted that the defendant had blood on his hands, elbows, and feet. Trooper Luker observed that Cynthia had extensive bruising on her face along with some blood. He also noted red marks around her neck.

¶ 7

When emergency medical technician Jason Beal arrived at the scene, he verified that Cynthia was dead. Although Beal did not know her personally, he knew who Cynthia was and had seen her around town "many times with [the defendant]". However, he did not recognize her at the scene due to the condition of her face. Beal had arrived at the scene when it was dark, but when it became light he observed more

blood on the ground, around the body, and through the yard.

¶ 8 Illinois State Police crime scene investigator Pete Sopczak, who photographed the crime scene, testified that Cynthia's body was on the ground behind the trailer. Her hair was stained with a red, blood-like substance. There was hair in her hands. Investigator Sopczak observed what he described as "drag marks" across the driveway. The defendant was arrested and transported to the Edwards County sheriff's department.

¶ 9 At the sheriff's department the defendant waived his *Miranda* rights and spoke with officers about Cynthia's murder. In a videotaped interview with police, which was admitted into evidence over defense counsel's objections, the defendant stated that he and Cynthia were watching television when they started arguing about whether she had cheated on him during their marriage. When Cynthia went outside and got into the car, the defendant followed her. She backed the car into a truck in the driveway. At some point, the defendant got into the car, and he and Cynthia started physically fighting inside the car. He stated that the fighting continued after they got out of the car. The defendant stated that after Cynthia admitted cheating on him while they were married he "let her have it." The defendant stated, "I choked her" and "beat her face with my hands." The defendant said that he choked Cynthia "a bunch of times" in the car and on the ground. The defendant also said that he punched Cynthia's face with his fists, and he showed the cuts on his fists to the police. In describing the beating, the defendant stated, "I even took my foot and stomped her," and he then demonstrated for the officers how he stomped her with his right foot. The defendant stated that while he was hitting and choking Cynthia, he was calling her a "whore" and a "bitch." The defendant stated, "I should have just let her go, but I was so fucking mad, the fucking bitch." The defendant stated that he dragged Cynthia

toward the trailer. The defendant stated, "I went and checked on her and knew she was dead 'cause she wasn't breathing so I went to the neighbors' and told them, 'She's dead,' and then I called 9-1-1." The defendant told the officers that Cynthia "shouldn't have been fucking around on me."

¶ 10 In its second amended information, the State charged the defendant with three counts of first-degree murder and one count of aggravated domestic battery. The defendant was convicted and sentenced on the charges alleged in counts I and IV. Count I of the second amended information alleged:

"That on or about the 14th day of July, 2011 in Edwards County, Illinois, the defendant, Shady L. Beatty, committed the offense of FIRST DEGREE MURDER in violation of Section 9-1(a)(1) of Act 5 of Chapter 720 of the Illinois Compiled Statutes, in that said defendant, without lawful justification and with the intent to do great bodily harm to Cynthia Beatty, acted with exceptionally brutal and heinous behavior indicative of wanton cruelty, in that he beat Cynthia Beatty about her head and face with his hands and feet and strangled Cynthia Beatty with his hands, thereby causing the death of Cynthia Beatty."

¶ 11 Count IV of the second amended information alleged:

"That on or about the 14th day of July, 2011, in Edwards County, Illinois, the defendant, Shady L. Beatty, committed the offense of AGGRAVATED DOMESTIC BATTERY in violation of Section 12-3.3(a) of Act 5 of Chapter 720 of the Illinois Compiled Statutes, in that said defendant in committing a domestic battery in violation of Section 12-3.2(a)(1) of Act 5 of Chapter 720 of Illinois Compiled Statutes, intentionally caused great bodily harm to Cynthia Beatty, a family member of the defendant, in that said Defendant beat Cynthia Beatty about her head and face with his hands and feet and strangled Cynthia Beatty with his hands, and thereby

caused the death of Cynthia Beatty."

¶ 12 On July 15, 2011, Dr. James Michael Jacobi, pathologist and board-certified forensic pathologist, performed an autopsy on Cynthia. Although at trial Dr. Jacobi noted that Cynthia had bleeding on the brain indicative of a beating or trauma, he testified, "The cause of death was manual strangulation with a strangulation or choking by the use of the hands." In describing the evidence he considered in concluding that the cause of Cynthia's death was manual strangulation, Dr. Jacobi testified as follows:

"There was bruising inside of the scalp, some bleeding inside the brain with a broken nose, but the main or the most important for my purpose was the approximately 50 marks on the neck which—anywhere from a quarter inch to say half inch long which over the neck certainly is a very worrisome sign. I felt these correlating with fingernail marks. Examination of the deep tissues indicated a hemorrhage around the voice box or larynx that is known medically, and that's my conclusion of strangulation. "

¶ 13 On direct examination the State asked Dr. Jacobi how he knew that Cynthia's death did not occur from the beating she received from the defendant. Dr. Jacobi replied: "[T]he beating would likely result—would almost certainly result in a concussion. Certainly would expect the person to be dazed or unconscious, but these injuries, I would not expect to be fatal."

¶ 14 In its closing the State argued, "It is un-controverted the attack that [the defendant] did on her, and that, that attack killed her—the strangling killed her." The State further argued that Cynthia "was beaten until she couldn't get away, and couldn't defend herself, and then she was viciously strangled to death."

¶ 15 The circuit court found the defendant guilty of aggravated domestic battery and

on all three counts of first-degree murder. The circuit court sentenced the defendant to 50 years on count I first-degree murder and 7 years on count IV aggravated domestic battery, the sentences to run consecutively. The defendant filed a timely appeal.

¶ 16

## DISCUSSION

¶ 17

At the outset we note that the defendant acknowledges that he forfeited his one-act, one-crime argument when he failed to raise the issue at trial or in posttrial motions; nevertheless the defendant requests this court to review the issue under the plain-error doctrine. "[F]orfeited one-act, one-crime arguments are properly reviewed under the second prong of the plain-error rule because they implicate the integrity of the judicial process." *People v. Nunez*, 236 Ill. 2d 488, 493 (2010). Therefore we turn to the merits of the defendant's argument.

¶ 18

On appeal the defendant argues that his conviction for aggravated domestic battery must be vacated under the one-act, one-crime rule because it was based on the same physical act of killing Cynthia Beatty for which the defendant was convicted of first-degree murder. We disagree.

¶ 19

The seminal case regarding what has become known as the one-act, one-crime rule is *People v. King*, 66 Ill. 2d 551 (1977). "Prejudice results to the defendant only in those instances where more than one offense is carved from the same physical act." *Id.* at 566. "Prejudice, with regard to multiple acts, exists only when the defendant is convicted of more than one offense, some of which are, by definition, lesser included offenses." *Id.* In *King* the supreme court defined an "act" as "any overt or outward manifestation that will support a different offense." *Id.* "Analysis under the one-act, one-crime doctrine involves two steps: determining (1) whether the defendant's conduct involved a single act (in which case multiple convictions are

improper) or multiple acts, and, (2) if multiple acts, whether any of the offenses were lesser included offenses (in which case multiple convictions are improper)." *People v. Stanford*, 2011 IL App (2d) 090420, ¶ 33. "Whether a defendant has been improperly convicted of multiple offenses based upon the same act and whether a charge encompasses another as a lesser-included offense are questions of law that this court reviews *de novo*." *Nunez*, 236 Ill. 2d at 493.

¶ 20 Specifically, the defendant contends that the State did not apportion his acts in the charges in order to justify multiple convictions where the State described the same acts in the charging information in each count. In support of his argument, the defendant relies on *People v. Crespo*, 203 Ill. 2d 335 (2001). The defendant maintains that because the State did not charge the offenses as multiple acts, pursuant to *Crespo*, his conviction for aggravated domestic battery cannot stand.

¶ 21 In *Crespo* the defendant inflicted three separate stab wounds "in rapid succession" to one of his victims and was convicted of, among other things, aggravated battery and armed violence. *Id.* at 338-39. The defendant argued that his conviction for aggravated battery must be vacated because it arose from the same physical act as his conviction for armed violence. *Id.* Although the *Crespo* court acknowledged that each of the victim's three separate stab wounds could have supported a separate offense, the court examined the charging indictment as well as the State's theory presented at trial to ascertain whether the defendant received multiple convictions for the same conduct under different theories of criminal culpability. *Id.* at 342-44. The court found that the indictment charging the defendant with aggravated battery and armed violence did not differentiate among the various stab wounds. *Id.* at 342-43. Furthermore, the court noted that the State's theory at trial portrayed the defendant's conduct as a single attack instead of three separate acts.

*Id.* Although on appeal the State argued that the court should uphold separate convictions for each stab wound, the court held that it would be "profoundly unfair" to allow the State to change its theory on appeal. *Id.* at 343.

¶ 22 The defendant in the case at bar directs this court's attention to the State's failure to apportion his acts in the charging instrument. Unlike *Crespo* where the State failed to apportion the three separate stab wounds given "in rapid succession," this case involves two distinct acts: the beating and the strangulation. Additionally, *Crespo* requires that we consider how the State presented its case at trial. Although the State inartfully listed all of the defendant's acts in each charge, the consistent theme in the State's theory of the case was that there were two separate acts on the part of the defendant. The State specifically introduced evidence at trial that the beating would not have caused Cynthia's death. Dr. Jacobi, who performed the autopsy, noted that Cynthia had bleeding on the brain indicative of a beating, but he testified that the cause of death was "manual strangulation." Moreover, the State specifically asked Dr. Jacobi how he knew that Cynthia's death did not occur from the beating she received from the defendant, and Dr. Jacobi testified that he would not have expected the injuries from the beating to be fatal. In summarizing the trial evidence in its closing argument, the State maintained that it was the strangulation that killed Cynthia and not the beating. The State highlighted this distinction when it argued that Cynthia "was beaten until she couldn't get away, and couldn't defend herself, and then she was viciously strangled to death." The evidence presented by the State established that the beating did not result in Cynthia's death; rather, the strangulation resulted in her death. These were two separate acts for which the defendant was charged and convicted. Because we conclude that the defendant's convictions were based on multiple acts, we now turn to the question of whether



aggravated domestic battery is a lesser-included offense of first-degree murder.

¶ 23 The abstract elements approach should be used to determine when one offense is a lesser-included offense of another. *People v. Miller*, 238 Ill. 2d 161, 163 (2010). "Under the abstract elements approach, a comparison is made of the statutory elements of the two offenses." *Id.* at 166. "If all of the elements of one offense are included within a second offense and the first offense contains no element not included in the second offense, the first offense is deemed a lesser-included offense of the second." *Id.*

¶ 24 The statutory definition of first-degree murder, of which the defendant was convicted, provides: "A person who kills an individual without lawful justification commits first degree murder if, in performing the acts which cause the death[:] \*\*\* he either intends to kill or do great bodily harm to that individual or another, or knows that such acts will cause death to that individual or another." 720 ILCS 5/9-1(a)(1) (West 2010).

¶ 25 The statutory definition of aggravated domestic battery, of which the defendant was convicted, provides: "A person who, in committing a domestic battery, knowingly causes great bodily harm, or permanent disability or disfigurement commits aggravated domestic battery." 720 ILCS 5/12-3.3(a) (West 2010). A domestic battery is committed if an individual "knowingly without legal justification by any means \*\*\* [c]auses bodily harm to any family or household member." 720 ILCS 5/12-3.2(a)(1) (West 2010).

¶ 26 Following the abstract elements test, aggravated domestic battery is not a lesser-included offense of first-degree murder because it requires proof that the victim be a family or household member, whereas first-degree murder does not. Because not all of the elements of aggravated domestic battery are included in the offense of

murder, we conclude that both of the defendant's convictions can stand. Accordingly, the defendant's conviction for aggravated domestic battery did not violate the one-act, one-crime rule.

¶ 27

#### CONCLUSION

¶ 28

For the foregoing reasons, we affirm the defendant's conviction and sentence.

¶ 29

Affirmed.