

No. 1-10-3236

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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. 09 CR 12891
)	
JEREMIAH PEREZ,)	Honorable
)	William G. Lacy,
Defendant-Appellant.)	Judge Presiding.

PRESIDING JUSTICE STEELE delivered the judgment of the court.
Justices Neville and Salone concurred in the judgment.

ORDER

- ¶ 1 *Held:* The one-act, one-crime rule was not violated when defendant was properly found guilty of crimes committed against two victims.
- ¶ 2 After a bench trial, defendant Jeremiah Perez was found guilty of two counts of aggravated vehicular hijacking and three counts of aggravated battery. He was sentenced to 10 years in prison for each of the aggravated vehicular hijacking convictions and to five years in prison for each of the aggravated batteries. All sentences were to be served concurrently. On appeal, defendant contends that his conviction for the aggravated battery of Arsenio Powers must

be vacated when there was no evidence that Powers was touched in any way during the incident. He further contends that one of his convictions for aggravated vehicular hijacking must be vacated pursuant to the one-act, one-crime rule when there was only a single "taking" of one car. We affirm in part and reverse in part.

¶ 3 At trial, Anthony Otis testified that around 1:20 a.m., on July 3, 2009, he and Arsenio Powers went to a McDonald's drive-through. Otis was driving and Powers was in the passenger seat. While they were waiting to order, a tan van pulled up behind them. Four or five men exited the van speaking "gang jargon." Two or three men then approached the driver's side of the car. Defendant pointed a pistol at Otis's face and tried to pull him out of the car. Another man broke one of the car's side windows. Defendant successfully opened the car door, pulled Otis out of the car, and hit him over the head with the gun. Defendant then got into Otis's car and left. At the same time, Otis, who had blood "pouring" from his head, ran away. Otis later spoke with police officers and subsequently identified defendant and another offender in a line-up.

¶ 4 During cross-examination, Otis admitted that he was struck over the head from behind as he was being "snatched" out of the car. He did not know what he was hit with or who hit him, although he believed that he was hit with a gun.

¶ 5 Arsenio Powers testified that as the car approached the drive-through speaker, he heard a loud noise from behind. He turned around and saw two women and a man in a van. He then saw men getting out of the van. Three men went to the driver's side of the car and four came to the passenger side. The men were screaming, and although Powers did not know exactly what they were saying, it was gang-related. When he noticed that the men were pulling on the passenger door handle, he opened the door, jumped out swinging, and "just got away."

¶ 6 Officer Victor Perez testified that after receiving a flash message about the incident, he and his partner decided to take a tour of locations where the vehicle could possibly have been

taken. At one point, he looked down an alley and saw two subjects rolling tires away from a vehicle up on blocks. He exited his vehicle and detained the two men. Perez also observed defendant exit the vehicle, look in his direction, and flee. Ultimately, defendant was taken into custody. Following a custodial search, Perez recovered keys from defendant. These keys were later determined to belong to the vehicle in the alley.

¶ 7 The court subsequently found defendant guilty of two counts of aggravated vehicular hijacking and three counts of aggravated battery. He was sentenced to 10 years in prison for each of the aggravated vehicular hijacking convictions and to five years in prison for each of the aggravated batteries. All sentences were to be served concurrently.

¶ 8 On appeal, defendant first contends, and the State agrees, that his conviction for the aggravated battery of Powers must be vacated when there was no evidence at trial that anyone actually touched Powers.

¶ 9 Here, Powers testified that when he saw the men pulling on the passenger side door handle, he opened the door, jumped out, and ran away. There was no testimony that he was touched during the incident. Therefore, as this court's review of the record reveals no evidence to sustain the charge, we conclude that the State presented insufficient evidence to convict defendant of the aggravated battery of Powers, and reverse defendant's conviction for the aggravated battery of Powers. See *People v. McCarter*, 2011 IL App (1st) 092864, ¶¶ 78-79.

¶ 10 Defendant next contends that he was improperly convicted of two counts of aggravated vehicular hijacking, in violation of the one-act, one-crime rule because both convictions were based on the taking of the same car.

¶ 11 Defendant concedes that he failed to raise this argument in a posttrial motion, and therefore, he has forfeited the issue for purposes of this appeal. See *People v. Pryor*, 372 Ill. App. 3d 422, 434 (2007) (determining "[i]t is well settled that a claim that multiple convictions

were improper can be waived by failing to raise the issue before the trial court"). He asks this court to review his contention for plain error.

¶ 12 Pursuant to the plain error doctrine, this court may address unpreserved errors "when either (1) the evidence is close, regardless of the seriousness of the error, or (2) the error is serious, regardless of the closeness of the evidence." *People v. Herron*, 215 Ill. 2d 167, 186-87 (2005). The first step in determining whether the plain error doctrine applies is to determine whether any error occurred (*People v. Patterson*, 217 Ill. 2d 407, 444 (2005)), as without reversible error there can be no plain error (*People v. Williams*, 193 Ill. 2d 306, 349 (2000)).

¶ 13 Here, defendant's claim must fail because the one-act, one-crime rule only applies to multiple convictions for acts against a single victim. *People v. Leach*, 2011 IL App (1st) 090339,

¶ 30. Multiple convictions are proper when there are multiple victims. *Leach*, 2011 IL App (1st) 090339, ¶ 30. In the case at bar, there were two victims of the carjacking, Otis and Powers, and consequently, defendant was charged with and convicted of two counts of aggravated vehicular hijacking.

¶ 14 Defendant, on the other hand, contends that because there was only the single act of taking one car, it is axiomatic that he can only be convicted of one count of aggravated vehicular hijacking. Defendant acknowledges that this court considered and rejected a similar argument in *People v. Pryor*, 372 Ill. App. 3d 422 (2007). However, defendant argues that *Pryor* was wrongly decided.

¶ 15 In *Pryor*, the defendant contended that his conviction for vehicular hijacking should be vacated because even though there were two victims, his convictions for aggravated vehicular hijacking and vehicular hijacking were based on one act: stealing one car.

¶ 16 This court disagreed, as "crimes committed against separate victims constitute[d] separate criminal acts" because when a single act injures multiple people, the consequences of that act

affect each victim differently. *Pryor*, 372 Ill. App. 3d at 434. There, each of the two victims was subjected to the taking of the car by force; therefore, because there were two separate victims, there were two separate acts and two separate convictions. *Pryor*, 372 Ill. App. 3d at 434-35. The court also rejected the defendant's contention that the aggravated vehicular hijacking statute provided for only one conviction per taking, as section 18-3 of the Criminal Code of 1961 (the Code) defined vehicular hijacking as a taking of a motor vehicle from " 'the person or immediate presence of another by the use of force or by threatening the imminent use of force.' " (Emphasis in original.) *Pryor*, 372 Ill. App. 3d at 435 (quoting 720 ILCS 5/18-3(a) (West 2002)). As the Code defined a "person" as an individual, and "another" as a person or persons as defined in the Code other than the offender (see 720 ILCS 5/2-15 (West 2002), 720 ILCS 5/2-3 (West 2002)), the plain language of the statute recognized multiple victims of the same taking, and consequently, permitted a separate conviction as to each victim. *Pryor*, 372 Ill. App. 3d at 435-37.

¶ 17 This court declines defendant's invitation to depart from *Pryor*. Therefore, we follow its holding, and determine that defendant was properly convicted of two counts of aggravated vehicular hijacking because there were two victims, Otis and Powers. See *Pryor*, 372 Ill. App. 3d at 434 ("crimes committed against separate victims constitute separate criminal acts"). Because the evidence shows that defendant did not commit multiple acts against a single victim, the one-act, one-crime rule does not apply to defendant's convictions for aggravated vehicular hijacking. See *Leach*, 2011 IL App (1st) 090339, ¶¶ 30, 34. As the one-act, one-crime rule was not violated, there was no error, and defendant's claim must fail. See *Williams*, 193 Ill. 2d at 349 (absent reversible error, there can be no plain error).

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¶ 18 Accordingly, this court reverses defendant's conviction for the aggravated battery of Powers (count 7). We affirm the judgment of the circuit court of Cook County in all other aspects.

¶ 19 Affirmed in part and reversed in part.