

2012 IL App (2d) 110063-U
No. 2-11-0063
Order filed June 15, 2012

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).

IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

THE PEOPLE OF THE STATE)	Appeal from the Circuit Court
OF ILLINOIS,)	of Du Page County.
)	
Plaintiff-Appellee,)	
)	
v.)	No. 09-CF-1400
)	
RONALD O’ROURK,)	Honorable
)	Kathryn E. Creswell,
Defendant-Appellant.)	Judge, Presiding.

JUSTICE SCHOSTOK delivered the judgment of the court.
Justices Bowman and Hudson concurred in the judgment.

ORDER

Held: (1) Because there was only one murder victim, only defendant’s intentional-murder conviction could stand; we vacated his conviction of felony murder; (2) we vacated defendant’s duplicative court-automation, document-storage, circuit-clerk, and court-security fees, though we affirmed his per-conviction court-finance fees; (3) we affirmed defendant’s per-conviction drug-court/mental-health-court, Children’s Advocacy Center, and Violent Crime Victims Assistance Fund fines, though we reduced each of the latter to \$4 in light of the two former.

¶ 1 Defendant, Ronald O’Rourke, was convicted and sentenced on two counts of first-degree murder (720 ILCS 5/9-1(a)(1), (a)(3) (West 2008)), one count of home invasion (720 ILCS 5/12-11(a)(2) (West 2008)), and one count of residential burglary (720 ILCS 5/19-3 (West 2008)).

Defendant appeals, arguing that one of his first-degree murder convictions should be vacated under the one-act, one-crime doctrine and that the trial court erred in imposing certain fines and fees. For the reasons that follow, we affirm as modified in part and vacate in part.

¶ 2

BACKGROUND

¶ 3 Defendant was charged with six counts of first-degree murder in the stabbing death of Pamela Howat. Three counts (counts I, IV, and V) alleged that defendant intended to kill, intended to do great bodily harm, and knew that his actions would cause death when he stabbed Howat, in violation of section 9-1(a)(1) of the Criminal Code of 1961 (Code) (720 ILCS 5/9-1(a)(1) (West 2008)). Two counts (counts VI and VII) alleged that defendant knew that his actions would create a strong probability of death or great bodily harm, in violation of section 9-1(a)(2) of the Code (720 ILCS 5/9-1(a)(2) (West 2008)). The final first-degree murder count (count VIII) alleged that defendant caused the death of Howat while performing the forcible felony of residential burglary in violation of section 9-1(a)(3) of the Code (720 ILCS 5/9-1(a)(3) (West 2008)). Defendant was also charged with one count of home invasion (count II) and one count of residential burglary (count III).

¶ 4 A jury found defendant guilty of all the charges. The trial court merged counts IV, V, VI, and VII with count I. On both counts I and VIII, the trial court sentenced defendant to 100 years' imprisonment, the sentences to run concurrently. On count II, the trial court sentenced defendant to 20 years' imprisonment, and on count III, the trial court sentenced defendant to 15 years' imprisonment. The sentences imposed on counts II and III were to run concurrently with each other, but consecutively to the sentence imposed on count I.

¶ 5 For each of counts I, II, and III, the trial court imposed the following fines and fees: a \$15 court automation fee, \$15 document storage fee, \$125 circuit clerk fee, \$10 drug court/mental health

court fine, \$30 State's Attorney's fee, \$50 court fund fee, \$20 Violent Crime Victims Assistance Fund fine, \$25 court security fee, \$10 County Jail Medical Costs Fund fee, and \$30 Children's Advocacy Center fine. On count VIII, the trial court imposed the same fines and fees with the exception that it imposed a \$25 Violent Crime Victims Assistance Fund fine.

¶ 6 Following an unsuccessful motion to reconsider the sentence, defendant filed this timely appeal.

¶ 7 ANALYSIS

¶ 8 Defendant's first contention on appeal is that his conviction on count VIII must be vacated under the one-act, one-crime doctrine because the same act that forms the basis for count VIII also forms the basis for count I. The State agrees, as do we.

¶ 9 Although defendant did not raise this issue in his postsentencing motion, it may be reviewed under the second prong of the plain-error doctrine. *People v. Nunez*, 236 Ill. 2d 488, 493 (2010) ("forfeited 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").

¶ 10 Under the one-act, one-crime rule, multiple convictions based on precisely the same act are improper. *Nunez*, 236 Ill. 2d at 494. More specifically, where there is only one murder victim, only the most serious murder conviction may be upheld and the rest must be vacated. *People v. Guest*, 115 Ill. 2d 72, 103-04 (1986); *People v. Alvarez-Garcia*, 395 Ill. App. 3d 719, 734 (2009) ("It is axiomatic that 'where there is only one victim and multiple convictions are obtained for murder arising out of a single act, sentence should be imposed only on the most serious offense.'" (quoting *People v. Smith*, 233 Ill. 2d 1, 21 (2009))). Intentional murder is more serious than either knowing or felony murder. *Guest*, 115 Ill. 2d at 104. Here, Howat was the only victim and defendant's

murder convictions all stemmed from the same act of his stabbing her. Accordingly, the conviction entered on the less serious first-degree murder charge—count VIII (felony murder)—and its accompanying sentence must be vacated.

¶ 11 Defendant next argues that all of the fines and fees imposed on count VIII should be vacated on the basis that the conviction on count VIII should be vacated. He also argues that all of the fines and fees on counts II and III with the exception of those imposed for the State’s Attorney and County Jail Medical Costs Fund, should be vacated as duplicative of the fines and fees imposed on count I.

¶ 12 As the conviction on count VIII must be vacated under the one-act, one-crime doctrine, so must all of the fines and fees imposed as a result of that conviction. See *People v. Meyerowitz*, 61 Ill. 2d 200, 213-14 (1975) (ordering the refund of fines paid on convictions that were ultimately vacated).

¶ 13 Defendant’s claim regarding the fines and fees imposed on counts II and III is governed by our recent decision of *People v. Martino*, 2012 IL App (2d) 101244, in which the defendant also challenged numerous fines and fees as duplicative.

¶ 14 In *Martino*, we held that only one court automation fee, document storage fee, circuit clerk fee, and court security fee may be imposed in a case, even if multiple convictions are obtained in that case. *Martino*, 2012 IL App (2d) 101244, ¶¶ 30, 34, 38. Accordingly, the court automation, document storage, circuit clerk, and court security fees imposed on counts II and III should be vacated.

¶ 15 A court fund fee and drug court/mental health court fine, however, may be assessed for each conviction. *Martino*, 2012 IL App (2d) 101244, ¶¶ 44, 50. Thus, it was proper for the trial court to impose a court fund fee and drug court/mental health court fine on each of counts I, II, and III.

¶ 16 Defendant also challenges the \$30 Children’s Advocacy Center fines imposed on counts II and III. This fine was not addressed in *Martino*. Section 5-1101(f-5) of the Counties Code (55 ILCS 5/5-1101(f-5) (West 2008)) provides that a county of this state may adopt a mandatory fee of between \$5 and \$30 on a judgment of guilty for the operation and administration of a Children’s Advocacy Center. Pursuant to section 5-1101(f-5), the Du Page County board adopted a resolution providing for the collection of \$30 “per count to be paid by any defendant on a judgment of guilty or a grant of supervision in a criminal case.” Du Page County Board Resolution FI-0124-07 (eff. Jan. 1, 2008). It is clear from the plain language of the resolution that the trial court was entitled to impose a \$30 Children’s Advocacy Center fine on each count for which there was a judgment of guilty. See *People v. Marshall*, 242 Ill. 2d 285, 292 (2011) (effect must be given to the plain language of a statute); see also *Martino*, 2012 IL App (2d) 101244, ¶¶ 49-50 (concluding that the plain language of a Du Page County board resolution provided for the imposition of the drug court/mental health court fine on each “count” on which there was “a judgment of guilty”). Accordingly, the trial court did not err in imposing a Children’s Advocacy Center fine on each of counts I, II, and III.

¶ 17 Finally, defendant challenges the imposition of the Violent Crime Victims Assistance Fund fines on counts II and III. Where other fines are imposed, the statute authorizes the imposition of “an additional penalty of \$4 for each \$40, or fraction thereof, of fine imposed.” 725 ILCS 240/10(b) (West 2008). Pursuant to *Martino*, the trial court may assess this fine upon each conviction, but the

proper amount to be assessed must be determined for each count. *Martino*, 2012 IL App (2d) 101244, ¶ 54. Defendant was assessed two other fines on each count: a \$10 drug court/mental health court fine and a \$30 Children's Advocacy Center fine. As defendant was properly assessed \$40 in other fines on each count, the proper Violent Crime Victims Assistance Fund fine is \$4 for each of counts I, II, and III, not the \$20 imposed by the trial court on each count.

¶ 18 In sum, all of the fines and fees imposed on count VIII must be vacated, as that conviction must be vacated. In addition, the court automation, document storage, circuit clerk, and court security fees must be vacated on counts II and III. The court fund fees, drug court/mental health court fines, and Children's Advocacy Center fines imposed on counts I, II, and III are affirmed. The imposition of the Violent Crime Victims Assistance Fund fines imposed on counts I, II, and III are also affirmed, but are reduced to \$4 on each count.

¶ 19 **CONCLUSION**

¶ 20 For the reasons stated, defendant's conviction on count VIII is vacated, as is its accompanying fines and fees. In addition, the court automation, document storage, circuit clerk, and court security fees imposed on counts II and III are vacated. The court fund fees, drug court/mental health court fines, and Children's Advocacy Center fines imposed on counts I, II, and III are affirmed. The Violent Crime Victims Assistance Fund fines imposed on counts I, II, and III are also affirmed, but are reduced to \$4 on each count.

¶ 21 Affirmed as modified in part and vacated in part.