

accountability theory. In April 2011, the trial court sentenced defendant to concurrent terms of 10 years in prison for residential burglary and 15 years in prison for home invasion.

¶ 7 Defendant appeals.

¶ 8 II. ANALYSIS

¶ 9 Defendant asserts his conviction for residential burglary violates the one-act, one-crime rule and should be vacated because it was based on the same physical act as his conviction for home invasion. We disagree.

¶ 10 "Our supreme court has held a violation of the one-act, one-crime rule results in a surplus conviction and sentence and affects the integrity of the judicial process, and thus satisfies the second prong of the plain-error rule." *People v. Price*, 2011 IL App (4th) 100311, ¶ 25, 958 N.E.2d 341, 347 (citing *People v. Harvey*, 211 Ill. 2d 368, 389, 813 N.E.2d 181, 194 (2004)).

Thus, we will consider whether defendant's convictions for residential burglary and home invasion violate the one-act, one-crime rule despite defendant's failure to object or raise this issue in a posttrial motion.

¶ 11 Whether multiple convictions violate the one-act, one-crime rule is a question of law, which we review *de novo*. *People v. Johnson*, 237 Ill. 2d 81, 97, 927 N.E.2d 1179, 1189 (2010).

¶ 12 The one-act, one-crime rule prohibits multiple convictions and sentences for offenses based on precisely the same act. *Price*, 2011 IL App (4th) 100311, ¶ 25, 958 N.E.2d at 347. An "act" is defined as "any overt or outward manifestation which will support a different offense." *People v. King*, 66 Ill. 2d 551, 566, 363 N.E.2d 838, 844-45 (1977). When a defendant is convicted of two offenses based on the same single physical act, the conviction for the less

serious offense must be vacated. *Johnson*, 237 Ill. 2d at 97, 927 N.E.2d at 1189. However, a defendant may be convicted of two separate offenses even though a common act is part of both offenses or part of one offense and the only act of the other offense. *People v. Rodriguez*, 169 Ill. 2d 183, 188, 661 N.E.2d 305, 308 (1996); *People v. Tate*, 106 Ill. App. 3d 774, 778-79, 436 N.E.2d 272, 276 (1982). On review, if this court determines defendant committed multiple acts, we then determine whether residential burglary is an included offense of home invasion. *Price*, 2011 IL App (4th) 100311, ¶ 26, 958 N.E.2d at 348.

¶ 13 In this case, the State charged defendant with residential burglary, alleging defendant, or one for whom he was accountable, knowingly and without authority entered Summer Tallent's residence with the intent to commit a theft therein (720 ILCS 5/19-3(a) West 2008)). The State also charged defendant with home invasion, alleging defendant, or one for whom he was accountable, knowingly and without authority entered Tallent's residence knowing she was present and intentionally caused injury to her (720 ILCS 5/12-11(a)(2) (West 2008)). These charges stemmed from a November 2009 incident where defendant and two accomplices forced their way into Summer Tallent's home, stole her purse and other items, and struck her on the head with a tire iron as she attempted to get away.

¶ 14 Defendant asserts this court's recent decision in *Price* was in error because we failed to follow the precedent set in *People v. McLaurin*, 184 Ill. 2d 58, 703 N.E.2d 11 (1998). In *Price*, we recognized the *McLaurin* court vacated the defendant's residential burglary sentence, having found the offenses of home invasion and residential burglary were carved from the same physical act, *i.e.*, the defendant entering the dwelling of the victim. *Price*, 2011 IL App (4th) 100311, ¶ 27, 958 N.E.2d at 348. However, we noted the *McLaurin* court failed to address (1) its

earlier decision in *Rodriguez* (finding where multiple acts are present, their interrelationship does not preclude multiple convictions), or (2) the offense of home invasion required an additional element, *i.e.*, the physical act of intentionally causing injury to a person in the dwelling. *Id.* Further, the *McLaurin* Court's decision regarding home invasion and residential burglary was inconsistent with its earlier holding in the same case regarding the offenses of intentional murder and home invasion. *Id.*, 2011 IL App (4th) 100311, ¶ 28, 958 N.E.2d at 348 (recognizing home invasion and intentional murder were not carved out of the same physical act of setting the fire because home invasion required a separate physical act of unlawful entry into the victim's home). On that issue, the *McLaurin* court followed *King*, noting "multiple convictions and concurrent sentences are permitted where a defendant has committed several acts, despite the interrelationship of those acts." *McLaurin*, 184 Ill. 2d at 105, 703 N.E.2d at 33 (citing *King*, 66 Ill. 2d at 566, 363 N.E.2d at 844).

¶ 15 Here, defendant's convictions for home invasion and residential burglary shared the act of unlawful entry into Tallent's home. However, as in *Price*, we hold the offenses are not carved out of the same physical act because the home-invasion charge requires a second, overt act—the intentional injury to Tallent—not present in the residential-burglary offense, which is complete upon entry into the home. *Price*, 2011 IL App (4th) 100311, ¶ 30, 958 N.E.2d at 349; see also *People v. Lee*, 2012 IL App (1st) 101851, ¶ 54, 968 N.E.2d 1204, 1221-22 (holding residential burglary and home invasion require the State to prove different elements for each crime and, thus, do not violate the one-act, one-crime rule). Further, we note *McLaurin* did not expressly overrule the many cases before it that held residential burglary and home invasion were not carved from the same physical act. See *People v. Lobdell*, 121 Ill. App. 3d 248, 252, 459

N.E.2d 260, 263 (1983) (Third District holding, "Since entry into the victim's home was only part of the home invasion offense and the sole act of the residential burglary offense, the two offenses were not carved from the same physical act."); see also *People v. Jones*, 148 Ill. App. 3d 133, 145, 498 N.E.2d 772, 779-80 (1986) (First District following *Lobdell*); *People v. Govednik*, 150 Ill. App. 3d 717, 724, 502 N.E.2d 276, 280 (1986) (First District, same). We find defendant committed multiple acts; however, because defendant does not argue residential burglary is an included offense of home invasion, we need not engage in a second-step analysis.

¶ 16 Even if we found the two convictions were carved from the same physical act—which we do not—we note the testimony in this case provides a sufficient basis for both convictions. According to Tallent, after hearing a knock on her door, she walked out on the front steps and "two guys came running from the left side of [her] house and attacked [her] and threw [her] in the house." However, Tallent fought her attackers. She testified, "I kicked both of them out the door. I got the one that was holding me off of me, got them both kicked out the door along with everything that was in the—the little entryway, and after I got them out the door, the third guy come from the right side of my house and he ran by me and up the steps, and when I turned around and screamed [and started running after him] because my kid was upstairs, that's when I got hit in the head." Thus, the record supports a finding two unlawful entries into the home were completed: the offense of residential burglary was completed on the first entrance, and home invasion on the second entrance.

¶ 17 III. CONCLUSION

¶ 18 For the reasons stated, we find the convictions for residential burglary and home invasion were not predicated on the same physical act under the one-act, one-crime rule. Thus,

we affirm defendant's convictions and sentences for residential burglary and home invasion. As part of our judgment, we award the State its \$50 statutory assessment against defendant as costs of this appeal.

¶ 19 Affirmed.