

No. 1-12-2128

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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. 11 CR 14557
)	
HEGGIE CARR,)	Honorable
)	Nicholas R. Ford,
Defendant-Appellant.)	Judge Presiding.

PRESIDING JUSTICE CONNORS delivered the judgment of the court.
Justices Hoffman and Delort concurred in the judgment.

ORDER

¶ 1 *Held:* Where the trial court erred in convicting defendant of multiple counts of aggravated domestic battery and one count of aggravated battery pursuant to the one-act, one-crime doctrine, we vacate two of his three convictions for aggravated domestic battery and the single count of aggravated battery; where the evidence was sufficient to convict defendant of a single count of aggravated domestic battery and defense counsel provided him effective assistance, we affirm the judgment of the trial court convicting him of one count of aggravated domestic battery.

¶ 2 Following a bench trial, defendant Heggie Carr was found guilty of three counts of aggravated domestic battery and one count of aggravated battery and sentenced, as a Class X

offender, to 14 years' imprisonment on each count, to be served concurrently. On appeal, defendant contends that the evidence was insufficient to prove that he and the victim were involved in a romantic relationship. Alternatively, defendant contends that his trial counsel was ineffective where he elicited testimony from the victim establishing that they were involved in a domestic relationship. Defendant also maintains that pursuant to the one-act, one-crime doctrine, the trial court erred in convicting him of three separate aggravated domestic battery counts and one count of aggravated battery, for a single act.

¶ 3 Defendant was charged in an 18 count indictment that included the offenses of aggravated domestic battery and aggravated battery, stemming from an incident on July 21, 2011, where defendant beat the victim, Robin Hall, in a hotel room located at 6250 North Lincoln Avenue in Chicago.

¶ 4 At trial, Hall, who was previously convicted of possession of a controlled substance, testified to the nature of her relationship with defendant. The following colloquy occurred between the assistant State's Attorney and Hall:

"Q. How do you know [defendant]?

A. We've been together for the past five years.

Q. And when you say been together, were you involved in a dating relationship?

A. A little bit of everything.

Q. Now, can you describe what you mean by a little bit of everything?

A. We worked together, he was my man, my best friend, and everything.

Q. Was he your boyfriend at a period of time?

A. When we first started talking, yes.

Q. And when you say worked together, what type of working relationship did you have?

A. I'm an escort, so I was escorting.

Q. And what was his relationship to you in that work relationship?

A. He was my pimp.

Q. Okay. And then you said, well he was your pimp -- when you

would receive money, what would you do with that money?

A. I gave him my money."

¶ 5 On cross-examination, the following colloquy occurred between defense counsel and Hall regarding Hall's relationship with defendant:

"Q. And you had a five year relationship with [defendant], correct?

A. Yes.

Q. And during those five years he would come into hotel rooms that you had been at, correct?

A. Yes.

Q. You guys have lived at his house before, correct?

A. Our house, yes."

¶ 6 Hall further testified on direct examination that on July 21, 2011, she was staying in a hotel room on the second floor with Michael Dillon. On that day, she had a phone conversation with defendant that did not go well, and she ended it by hanging up on him. When Hall opened the door to leave, defendant entered the room without her permission. Defendant saw Dillon in the bathroom and then started to beat Hall. He hit Hall in the head with his fist, knocked her teeth out, fractured her cheek bone, and hit her with something metal. Hall escaped by jumping out of the hotel window. During her jump, someone grabbed her shirt and she landed on her hip and side, ultimately breaking her pelvic bone and wrist. Hall blacked out, and then saw defendant who asked her if she was dead and threw a phone at her. Hall was subsequently taken to the hospital where she was treated for her injuries.

¶ 7 On August 16, 2011, Hall signed an affidavit that was given to her by someone who represented defendant. The affidavit indicated that defendant never touched Hall. Hall testified, however, that the affidavit did not contain the truth, and that defendant told her what to write. Defendant also sent Hall a letter, stating that Hall "kn[e]w what to say" at trial, defendant missed her, and he was looking forward to returning home and celebrating their life together.

¶ 8 Michael Dillon, who was previously convicted of possession of a firearm by a convicted felon and aggravated fleeing of the police, testified similarly to Hall. He also testified that after entering the hotel room, defendant punched Hall in the face and body, and used a phone and luggage caddy to strike her. Dillon further stated that defendant attempted to grab Hall when she jumped out of the window.

¶ 9 During the State's closing argument, it asserted that defendant inflicted "all of those injuries" on Hall. Following closing arguments, the trial court found defendant guilty of three counts of aggravated domestic battery and one count of aggravated battery. In doing so, the court held that the State proved beyond a reasonable doubt that there was a domestic relationship that existed between defendant and Hall, *i.e.*, defendant was Hall's boyfriend, and no professional relationship existed between the two at the time of the attack.

¶ 10 On appeal, defendant first contests the sufficiency of the evidence. He specifically asserts that the State failed to prove that a domestic relationship existed between Hall and defendant. Instead, defendant maintains that the two had a business relationship.

¶ 11 When a defendant challenges the sufficiency of the evidence to sustain his conviction the proper standard of review is whether, after viewing the evidence in the light most favorable to the State, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *People v. Cunningham*, 212 Ill. 2d 274, 278-79 (2004). This standard recognizes the responsibility of the trier of fact to resolve conflicts in the testimony, to weigh the evidence and to draw reasonable inferences therefrom. *People v. Campbell*, 146 Ill. 2d 363, 375 (1992). A criminal conviction will be reversed only if the evidence is so unsatisfactory as to raise a reasonable doubt of guilt. *Id.*

¶ 12 The element of the offense of aggravated domestic battery at issue here is whether

defendant and the victim were "family or household members" as defined in subsection (3) of section 112A-3 of the Code of Criminal Procedure of 1963 (Code) (725 ILCS 5/112A-3(3) (West 2010)). 720 ILCS 5/12-3.2(a), 3.3(a) (West 2010). The pertinent portion of section 112A-3 of the Code specifies:

"Family or household members' include *** persons who share or formerly shared a common dwelling, *** [and] persons who have or have had a dating or engagement relationship ***. For purposes of this paragraph, neither a casual acquaintanceship nor ordinary fraternization between 2 individuals in business or social contexts shall be deemed to constitute a dating relationship." 725 ILCS 5/112A-3(3) (West 2010).

¶ 13 Here, the State contends, and we agree, that the evidence supports that defendant and the victim had a dating relationship. According to Hall, she was together with defendant for five years, their relationship consisted of "a little bit of everything," and defendant was her boyfriend for a period of time. She specified that defendant was her "man," "best friend," and "everything." Furthermore, in a letter written to Hall, defendant stated that he missed her and was looking forward to returning home and celebrating their life together. Based on the evidence, we see no reason to upset the trial court's determination that defendant and Hall were involved in a dating relationship. See *People v. Irvine*, 379 Ill. App. 3d 116, 125 (2008) (holding that the parties' relationship qualified as a serious courtship where they spent six weeks in a dating and sexual relationship).

¶ 14 In reaching this conclusion, we disagree with defendant's assertion that he and the victim never had a serious courtship with a significant romantic focus. In making this argument, defendant relies on *People v. Howard*, 2012 IL App (3d) 100925, *People v. Young*, 362 Ill. App. 3d 843 (2005), and *Alison C. v. Westcott*, 343 Ill. App. 3d 648 (2003). In *Howard*, *Young*, and *Alison C.*, the reviewing courts found that the evidence was insufficient to show that both parties

had a serious courtship, *i.e.*, an established relationship with a romantic focus. See *Howard*, at ¶ 10 (finding that the State did not establish that the parties were engaged in a dating relationship where they testified that they were not dating, and the defendant and victim were not exclusive); *Young*, 362 Ill. App. 3d at 845 (the complaining witness denied the existence of a dating relationship with the defendant); *Alison C.*, 343 Ill. App. 3d at 653 (the parties were not engaged in a dating relationship where their relationship was brief and not exclusive). Here, on the other hand, Hall and defendant knew each other for five years, Hall believed her relationship with defendant was romantic, they had lived together, and defendant's letter to Hall further established that their relationship had a romantic focus.

¶ 15 Alternatively, defendant contends that he is entitled to a new trial because trial counsel was ineffective where he elicited evidence establishing that the parties were "family or household members." Defendant specifically points to the testimony counsel elicited from Hall showing that he and Hall formerly lived together. Defendant maintains that Hall's testimony regarding their prior living arrangement provided the court with an alternative method for proving the existence of a domestic relationship.

¶ 16 In order to establish ineffective assistance of counsel, defendant must allege facts which demonstrate that counsel's representation fell below an objective standard of reasonableness and that he was prejudiced by the deficient performance. *People v. Enis*, 194 Ill. 2d 361, 376 (2000), citing *Strickland v. Washington*, 466 U.S. 668, 687 (1984). The failure to satisfy either prong of the *Strickland* test precludes a finding of ineffective assistance of counsel. *People v. Enis*, 194 Ill. 2d 361, 377 (2000), citing *Strickland*, 466 U.S. at 697. "If it is easier, a court may proceed directly to the second prong of *Strickland* and dismiss an ineffective assistance claim on the ground that it lacks sufficient prejudice, without first determining whether counsel's performance

was deficient." *People v. Valladares*, 2013 IL App (1st) 112010, ¶ 70. Prejudice is demonstrated where the defendant shows a reasonable probability that, absent counsel's alleged error, the trial's outcome would have been different. *People v. Evans*, 209 Ill. 2d 194, 220 (2004).

¶ 17 Here, Hall's admission during cross-examination that she and defendant lived together was not so prejudicial to defendant's case that it changed the outcome of the trial. Rather, as discussed above, other evidence presented against defendant overwhelmingly established that he was involved in a dating relationship with Hall. Moreover, in finding that a dating relationship existed between defendant and Hall, the trial court did not even mention this aspect of Hall's testimony. Therefore, there is no reasonable probability that the result at trial would have differed had the evidence of defendant and Hall's living arrangement been excluded, and, in turn, defendant's claim fails to satisfy *Strickland's* prejudice requirement.

¶ 18 In so finding, we note that *People v. Bailey*, 374 Ill. App. 3d 608 (2007), relied on by defendant, is distinguishable from the case at bar. In *Bailey*, the defendant was convicted of possession of a controlled substance with intent to deliver based on defense counsel's elicitation of testimony from a witness that was critical in establishing defendant's guilt. In particular, defense counsel elicited testimony that was the only evidence linking the defendant to a man who had been standing on a nearby street corner yelling "rocks" at passing cars. *Id.* at 614-15. The *Bailey* court found this testimony so damaging as to render defendant's trial unfair, especially where the court relied on it in finding him guilty. *Id.* at 615. Here, however, there was substantial evidence showing that a romantic relationship existed between defendant and Hall even without the testimony elicited from Hall by defense counsel, and there is nothing in the record indicating that the trial court relied on Hall's testimony that she and defendant lived together in rendering its decision.

¶ 19 Defendant finally contends that pursuant to the one-act, one-crime doctrine, the trial court erred in convicting him of three separate aggravated domestic battery charges, in addition to one lesser charge of aggravated battery, for the commission of a single physical act. The State concedes that defendant's conviction for aggravated battery should be vacated as a lesser-included offense of aggravated domestic battery, but maintains that his three convictions for aggravated domestic battery should stand because each conviction is supported by distinct acts.

¶ 20 Although defendant concedes that he waived this issue by failing to object to this error at trial, we review one-act, one-crime issues pursuant to the second prong of the plain error doctrine because the potential for an unwarranted conviction and sentence threatens the integrity of the judicial process. *People v. Carter*, 213 Ill. 2d 295, 299 (2004).

¶ 21 We review *de novo* whether a defendant's convictions violate the one-act, one-crime doctrine. *People v. Csaszar*, 375 Ill. App. 3d 929, 943 (2007). The one-act, one-crime doctrine involves a two-step analysis. *People v. Miller*, 238 Ill. 2d 161, 165 (2010). First, the court must determine whether the defendant's conduct constituted a single act or multiple acts. *Id.* The one-act, one-crime doctrine prohibits multiple convictions when they are carved from precisely the same physical act. *Id.* If the court determines that the defendant's conduct involved multiple acts, the court must then determine whether any of the offenses are lesser-included offenses. *Id.* If any of the offenses are lesser-included offenses, multiple convictions are improper. *Id.*

¶ 22 First, we must decide whether the defendant's conduct consisted of a single physical act or separate acts. *People v. Harvey*, 211 Ill. 2d 368, 389 (2004). Defendant argues that two of his three convictions for aggravated domestic battery and the additional conviction of aggravated battery must be vacated because both the indictment and the State's efforts at trial failed to prove multiple physical acts in order to warrant multiple convictions. Defendant analogizes the facts of

the instant case with those in *People v. Crespo*, 203 Ill. 2d 335 (2001).

¶ 23 In *Crespo*, the defendant was convicted of the first degree murder of one victim and, with regard to the stabbing of a second victim, he was convicted of armed violence and aggravated battery. *Id.* at 337. On appeal to the Illinois Supreme Court, the defendant argued that his conviction for aggravated battery should be vacated because it stemmed from the same physical act as the armed violence charge. *Id.* Although defendant stabbed the second victim three times, each stabbing being a separate and distinct act, the State did not charge the defendant for the three stabbings in the indictment. Instead, the three stabbings were charged as different counts under different theories of criminal culpability. *Id.* at 342. Additionally, the State's theory at trial, as outlined in its closing argument, established that the State intended to portray the defendant's conduct as a single attack. *Id.* at 343-44.

¶ 24 Our supreme court held that where a defendant commits multiple criminal acts but the indictment only charges the defendant with a single course of conduct, the trial court cannot convict the defendant of separate criminal acts. The court emphasized that the State could have charged the crime as multiple acts and could have argued the case to the jury that way but chose not to do so. *Id.* at 344.

¶ 25 Here, defendant was convicted of three counts of aggravated domestic battery (Counts 8, 9, and 10), and one count of aggravated battery (Count 13). Count 8 charged that defendant "intentionally or knowingly caused great bodily harm to Robin Brown [sic], to wit: struck Robin Brown [sic]." Count 9 charged that defendant "intentionally or knowingly caused permanent disability to Robin Brown [sic], to wit: struck Robin Brown [sic]." Count 10 charged that defendant "intentionally or knowingly caused permanent disfigurement to Robin Brown [sic], to wit: struck Robin Brown [sic]." Additionally, the State charged defendant with aggravated

battery in Count 13 "in that he, in committing a battery, other than by the discharge of a firearm, knowingly caused great bodily harm to Robin Brown [*sic*], to wit: struck Robin Brown [*sic*]."

¶ 26 Based on the above charges, we agree with defendant that the indictment failed to treat the conduct of defendant as multiple acts. Instead, the State charged defendant with the same crime (aggravated domestic battery) under different theories of criminal culpability. Moreover, the State, at trial, never framed its argument to distinguish separate battery charges. Contra *People v. Span*, 2011 IL App (1st) 083037, ¶ 87 (holding that separate convictions were proper where the State sought to apportion the defendant's acts among the separate charges in the trial court). Instead, the State alluded to a series of related actions, all of which arose out of the incident that occurred on July 21, 2011. The State never connected separate actions to the separate convictions and cannot do so now on appeal. See *People v. Young*, 362 Ill. App. 3d 843, 852-54 (2005) (two convictions of domestic battery violated the one-act, one-crime rule), citing *Crespo*, 203 Ill. 2d at 342-45. Accordingly, multiple convictions for aggravated domestic battery and the additional aggravated battery conviction are unwarranted.

¶ 27 Therefore, we need not reach the question of lesser-included offenses (*Crespo*, 203 Ill. 2d at 345; *In re Rodney S.*, 402 Ill. App. 3d 272, 282 (2010)), which is now governed by the abstract elements analysis (see *Miller*, 238 Ill. 2d at 175). However, we note that, as correctly conceded by the State, the aggravated battery conviction constitutes a lesser-included offense of aggravated domestic battery and thus could not stand under that premise also.

¶ 28 For all the foregoing reasons, we vacate the conviction for aggravated battery. We also must vacate two convictions for aggravated domestic battery and affirm one conviction for aggravated domestic battery. In the instant case, each aggravated domestic battery count is a Class 2 felony (720 ILCS 5/12-3.3(b) (West 2010)), and the trial court clearly found each count

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stood on equal footing when it imposed the same prison term (14 years) on each count and provided that the terms would be served concurrently. Accordingly, we order defendant's mittimus to be amended to reflect a conviction for aggravated domestic battery on Count 10 only.

¶ 29 Affirmed in part, vacated in part, mittimus amended.