

No. 1-12-2374

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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. 10 CR 14231(01)
)	
EDWARD BROWN,)	Honorable
)	James B. Linn,
Defendant-Appellant.)	Judge Presiding.

PRESIDING JUSTICE ROCHFORD delivered the judgment of the court.
Justice Reyes concurred in the judgment. Justice Hall dissented.

ORDER

¶ 1 *Held:* Defendant's unlawful-restraint and involuntary-manslaughter convictions are affirmed over defendant's one-act, one-crime argument where the evidence showed the convictions were based on separate, but interrelated acts, and unlawful restraint was not a lesser-included offense.

¶ 2 After a simultaneous bench trial, defendant, Edward Brown, and codefendant, Steven Fox, were convicted of involuntary manslaughter and unlawful restraint. The trial court subsequently sentenced defendant to five years' imprisonment for the involuntary manslaughter charge, and three years' imprisonment for the unlawful restraint charge, both sentences to run concurrently. On appeal, defendant argues his convictions were based on the same physical act and, therefore, his unlawful-restraint conviction should be vacated under the one-act, one-crime

doctrine. We affirm defendant's convictions, as they are based on separate, albeit interrelated, acts, and unlawful restraint is not a lesser-included offense of involuntary manslaughter.

¶ 3 Defendant and codefendant were charged with two counts of first-degree murder by indictments, which generally alleged that, on or about June 17, 2010, "they, without lawful justification, intentionally or knowingly beat and killed Larry Brown with their hands." Defendant and codefendant were charged with unlawful restraint of the victim in a separate indictment which generally alleged "they, knowingly without legal authority detained Larry Brown."

¶ 4 Defendant and codefendant initially proceeded with a joint-jury trial. However, a mistrial was declared when the jury could not reach verdicts. Defendant and codefendant then were tried at a simultaneous bench trial which resulted in defendant's convictions at issue here.

¶ 5 At the bench trial, Geneva Brown testified that she lived at 655 N. Spaulding Avenue in Chicago with her husband, Oggie Brown, and their adult son, Larry Brown. On June 17, 2010, at 3:30 a.m., Mr. and Mrs. Brown were home sleeping when they were awakened by loud noises and cursing outside. Mrs. Brown looked out of her bedroom window onto Huron Street and observed three men standing there. One of the men was her son, Larry, but she did not recognize the other two men. Mrs. Brown saw the two men, whom she did not recognize, striking Larry on the head with their fists. Mrs. Brown did not testify that Larry was restrained while defendant and codefendant were striking him. Mrs. Brown's husband went outside and told the men to stop. Mrs. Brown then went to the back porch and observed her husband speaking to the two men. Larry had fallen to the ground, and Mr. Brown and defendant carried Larry into the Brown's home. Mrs. Brown observed that Larry was in a lot of pain. Larry told her "Ed and his nephew broke his jaw." Larry was taken to Stroger Hospital, where he had surgery. Larry never

regained consciousness after the surgery and died on July 6, 2010. Mrs. Brown identified defendant in court as the person who helped carry Larry into her house and identified defendant and codefendant as the men she observed striking Larry.

¶ 6 Mr. Brown testified that he was awakened at 3:30 a.m. on June 17, 2010, by loud noises outside. When he went to the window, he observed Larry standing in the street with the two men identified in court as defendant and codefendant. Mr. Brown first observed Larry holding the right side of his face with his right hand. He also observed defendant holding Larry with his right hand while hitting him in the face one or two times with his left hand. Mr. Brown left his bedroom and went to the back porch. Mr. Brown observed codefendant hit Larry, knocking him backward against a van. Mr. Brown then went from the porch to the street and told defendant to stop hitting Larry. Defendant informed Mr. Brown that Larry had struck their 1995 Chevrolet Blazer (the Blazer) and was trying to get away. At this point, Larry fell to the ground, and defendant assisted Mr. Brown in getting Larry inside the house and into the kitchen. Mr. Brown then thanked defendant, and defendant left. Larry told Mr. Brown, "my jaw is broke," and later said, "Ed and his nephew broke my jaw." At Area 4 police station (Area 4), Mr. Brown identified defendant in a photo array as one of Larry's assailants, and later, at his house, he identified codefendant in a second photo array as the other assailant. Finally, Mr. Brown viewed a line-up at Area 4 and identified both defendant and codefendant as the two men who beat his son.

¶ 7 Dwayne Collier testified that he is the ex-husband of Larry's sister, Aretha Brown Smith. He grew up and went to school with Larry. Mr. Collier also knew defendant from the neighborhood. Mr. Collier learned what had happened to Larry after speaking with Felicia

Carlson—Larry's other sister—on July 2, 2010. Mr. Collier then gave that information to Detective Egan. Mr. Collier stated that codefendant's father is defendant's brother.

¶ 8 Dr. Ponni Arunkumar, an assistant Cook County medical examiner, testified to having performed an autopsy on Larry on July 10, 2010. The autopsy showed that Larry had sustained abrasions and scarring to the left side of his head, both mandibles and the left cheekbone were broken, and there was evidence of multiple medical procedures, including surgery to repair a fractured mandible. Dr. Arunkumar testified that Larry died from a blood clot in his pulmonary artery which was caused by blood clots which had migrated from his leg and pelvic areas. The blood clots in the leg and pelvic areas had formed while Larry was immobilized in the hospital due to the head trauma. Additionally, Larry had sustained a subdural hematoma on the right side of his brain, and a hemorrhage in the left occipital portion of his brain caused by blunt force trauma. Dr. Arunkumar opined that the cause of Larry's death was the blood clot in the pulmonary artery caused by "blunt force head trauma due to an assault."

¶ 9 The parties stipulated to the admission of the jury-trial transcripts of the testimony of Michael Schroeder and Detective Russell Egan.

¶ 10 Mr. Schroeder met with defendant on June 18, 2010. He examined the damage done to a 1995 Chevrolet Blazer, and gave defendant an estimate for repairs.

¶ 11 Detective Egan testified that he was assigned to investigate the June 17, 2010, beating. After speaking with Mr. Collier, Detective Egan prepared a photo array which included defendant's photograph. Mr. Brown came to Area 4, viewed the photo array, and positively identified defendant as one of the persons who beat Larry. After another conversation with Mr. Collier, Detective Egan prepared another photo array which included a photograph of codefendant. Mr. Brown positively identified him as the other person who beat Larry. After

defendant and codefendant were arrested, Mr. Brown identified them in a line-up at Area 4 as the men who beat Larry.

¶ 12 Defendant testified that he knew Larry for 25 years from the neighborhood, he knew Mr. and Mrs. Brown, and had been in their home many times. At about 3 a.m., on June 17, 2010, he and codefendant were in an alley behind Trumbull Street when they saw Larry driving a van through the alley, weaving from side to side and knocking over trash cans. Defendant spoke with Larry who appeared to be intoxicated. Defendant and codefendant began to walk to the front of the building when they heard a loud crash. When they ran back into the alley, Larry's van was pinned against the side of a Blazer which codefendant had borrowed from his girlfriend. Defendant and codefendant called out to Larry to stop, but Larry drove away. Defendant and codefendant then drove to the Brown's house and parked there. When Larry pulled up in his van, codefendant asked Larry why he struck the Blazer and did not stop, Larry replied, "I didn't hit your m*****r f*****g car." Larry then walked up to codefendant and threw a punch at him. When codefendant retaliated, defendant attempted to get between Larry and codefendant. Larry then took a swing at defendant and hit him on the top of his head. Defendant admitted to then hitting Larry once between the neck and the shoulder. Mr. Brown then came outside and told the three men to stop fighting. Codefendant told Mr. Brown that Larry struck the Blazer with his van. While codefendant and Mr. Brown were assessing the damage to the Blazer, Larry was walking away, but then fell down. Mr. Brown, defendant and codefendant walked over to the grass where Larry had fallen, and Mr. Brown helped Larry to sit up. Defendant agreed to help carry Larry into the Brown's house. Mr. Brown thanked defendant for the assistance and offered to pay for the damage to the Blazer. Defendant and codefendant then left the Brown's home.

¶ 13 On cross examination, defendant testified that he did not actually see Larry strike the Blazer with his van. Defendant did not report the accident to the police because it was not his vehicle. Defendant and codefendant went to Larry's home to talk to him about the accident. Defendant saw Larry and codefendant throw punches, but did not see any of those punches connect. Defendant again testified that when Larry swung at him, he swung back, and hit Larry once in the neck.

¶ 14 The trial court convicted both defendant and codefendant of involuntary manslaughter—a lesser-included offense of the murder charges—and unlawful restraint. The trial court concluded defendant and codefendant went to Larry's home to confront him about the damage to the Blazer. The court, in finding defendant and codefendant guilty of involuntary manslaughter, stated:

"[T]he proper crime would be involuntary manslaughter because Larry Brown would not be dead but for Edward Brown and Steven Fox doing what they did. I believe their mental state if you look at all of the context is such to hit him as they hit him repeatedly outside together doing everything they did to contribute to his death. They did so recklessly to a point that it contributed to his death."

In finding defendant and codefendant guilty of unlawful restraint, the court noted they "had to keep [Larry] there to carry out the beating until they stopped."

¶ 15 On appeal, defendant contends his unlawful-restraint conviction should be vacated because it violates the one-act, one-crime doctrine. Defendant acknowledges he never raised this argument in the trial court. However, we will review defendant's arguments as to this issue as "a violation of the one-act, one-crime doctrine affects the integrity of the judicial process, thus

satisfying the second prong of the plain-error analysis." *People v. Span*, 2011 IL App (1st) 083037, ¶ 81.

¶ 16 Defendant contends the testimony of Mr. Brown at trial, which described his act of holding Larry with one hand while striking him with the other hand, did not support both his involuntary-manslaughter conviction, and his separate unlawful-restraint conviction, as those actions were not independent of each other. Defendant, however, concedes unlawful restraint is not a lesser-included offense of involuntary manslaughter. The State responds that the trial court properly found that there were separate acts. We find the convictions do not offend the one-act, one-crime doctrine.

¶ 17 In *People v. King*, 66 Ill. 2d 551 (1977), our supreme court set forth what has come to be known as the one-act, one-crime doctrine. *Id.* at 566. As originally formulated, that doctrine concerned the potential for prejudice in the imposition of multiple convictions, and specifically provided:

"Prejudice results to the defendant only in those instances where more than one offense is carved from the same physical act. 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. Multiple convictions and concurrent sentences should be permitted in all other cases where a defendant has committed several acts, despite the interrelationship of those acts. 'Act,' when used in this sense, is intended to mean any overt or outward manifestation which will support a different offense. We hold, therefore, that when more than one offense arises from a series of incidental or closely related acts and the offenses are not, by definition, lesser included offenses, convictions with concurrent sentences can be entered." *Id.*

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As our supreme court has more recently noted:

"Decisions following *King* have explained that the one-act, one-crime doctrine involves a two-step analysis. [Citation.] First, the court must determine whether the defendant's conduct involved multiple acts or a single act. Multiple convictions are improper if they are based on precisely the same physical act. Second, if the conduct involved multiple acts, the court must determine whether any of the offenses are lesser-included offenses. If an offense is a lesser-included offense, multiple convictions are improper." *People v. Miller*, 238 Ill. 2d 161, 165 (2010).

Thus, even where "the convictions were based on interrelated acts rather than the same act, we proceed to the second prong [and ask]: are any of the offenses lesser-included offenses?" *People v. Peacock*, 359 Ill. App. 3d 326, 333 (2005). Where a defendant is charged with multiple offenses and the question is whether one of those charged offenses is a lesser-included offense of another charged offense, courts must apply the "abstract elements" approach. *Miller*, 238 Ill. 2d at 174-75. Under that approach, "a comparison is made of the statutory elements of the two offenses. 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. [Citations.] Although this approach is the most clearly stated and the easiest to apply [citation], it is the strictest approach in the sense that it is formulaic and rigid, and considers 'solely theoretical or practical impossibility.' In other words, it must be impossible to commit the greater offense without necessarily committing the lesser offense. [Citations.]" *Id.* at 166; see also *People v. Novak*, 163 Ill. 2d 93, 106 (1994), abrogated on other grounds by *People v. Kolton*, 219 Ill. 2d 353 (2006). One-act, one-crime challenges are reviewed *de novo*. *People v. Sanford*, 2011 IL App (2d) 090420, ¶ 33.

¶ 18 As to the first step of the one-act, one-crime analysis, we must determine the number of acts at issue here. If we were to conclude that the conduct underlying defendant's convictions for both involuntary manslaughter and unlawful restraint comprised a single physical act, defendant could not properly be convicted of the two offenses for that single act. *Miller*, 238 Ill. 2d at 165 ("Multiple convictions are improper if they are based on precisely the same physical act."). However, if we conclude there were multiple, although interrelated acts, we would not need to consider the second prong of this case because of defendant's concession that unlawful restraint is not a lesser-included offense of involuntary manslaughter.

¶ 19 For purposes of the first-step analysis, an "act" has been defined as any overt or outward manifestation that will support a different offense. *Id.*; *King*, 66 Ill. 2d at 566. Our supreme court in *People v. Rodriguez*, 169 Ill. 2d 183 (1996), "explained a defendant could be convicted of two offenses when a common act is part of both offenses. ' "As long as there are multiple acts as defined in *King*, their interrelationship does not preclude multiple convictions ***." ' (Emphasis omitted.)" *People v. Price*, 2011 IL App (4th) 100311, ¶ 26 (quoting *Rodriguez*, 169 Ill.2d at 189).

¶ 20 In order to conduct the first-step analysis of the one-act, one-crime doctrine, we must understand the nature of the offenses for which defendant was convicted.

¶ 21 "A person who unintentionally kills an individual without lawful justification commits involuntary manslaughter if his acts whether lawful or unlawful which cause the death are such as are likely to cause death or great bodily harm to some individual, and he performs them recklessly[.]" 720 ILCS 5/9-3(a) (West 2009). Involuntary manslaughter is a Class 3 felony. 730 ILCS 5/9-3(d)(1) (West 2010).

¶ 22 A person commits unlawful restraint, a Class 4 felony, when he or she knowingly without legal authority detains another. 720 ILCS 5/10-3(a)(b) (West 2010). The gist of unlawful restraint is the detention of a person by some conduct which prevents that person from moving from one location to another (*People v. Brians*, 315 Ill. App. 3d 162, 174 (2000)), "[t]he detention must be willful [and] against the victim's consent" (*People v. Leonhardt*, 173 Ill. App. 3d 314, 322 (1988)), and the individual's freedom of movement must be impaired. *People v. Warner*, 98 Ill. App. 3d 433, 436 (1981). Even though the offense of unlawful restraint is often committed in conjunction with other offenses, it is punishable as a separate crime if the restraint is independent of the other offenses and arose out of a separate act. *People v. Alvarado*, 235 Ill. App. 3d 116, 117 (1992).

¶ 23 Also important to our analysis is that defendant's convictions were based on a theory of accountability. "The law of accountability incorporates the 'common design rule,' which provides that, where two or more persons engage in a common criminal design, any acts in furtherance thereof committed by one party are considered to be the acts of all parties to the common design and all are equally responsible for the consequences of such further acts." *People v. Thompson*, 313 Ill. App. 3d 510, 516 (2000) (citing *People v. Smith*, 278 Ill. App. 3d 343, 355-56 (1996)). The evidence need only prove that the defendant had the specific intent to promote or facilitate a crime, which need not be the actual crime for which he was charged. *People v. Miscichowski*, 143 Ill.App.3d 646, 655 (1986) (citing *People v. Terry*, 99 Ill.2d 508, 514, 460 (1984)). Therefore, defendant's convictions may be based not only on his acts but, also, the acts of his codefendant.

¶ 24 In this case, the evidence showed that during an angry confrontation, Larry was beaten by both defendant and codefendant and suffered several blows from defendant and codefendant

during the incident. The evidence also showed that, at times during the beating, Larry was restrained by defendant. As a result of the beating, Larry suffered multiple injuries, including fractures to his skull, abrasions, and a hematoma and hemorrhage to his brain. The beating led to his eventual death. Defendant does not challenge the sufficiency of the evidence to support both convictions of unlawful restraint and involuntary manslaughter, and does not raise an issue of reasonable doubt as to his convictions.

¶ 25 Mr. and Mrs. Brown testified to the actions of defendant and codefendant during the incident. Mrs. Brown testified both defendant and codefendant repeatedly struck Larry on his head with their fists. Mrs. Brown did not testify that defendant was holding Larry at that time. Mr. Brown testified that when he first looked out his window, he saw "Larry standing there holding his jaw." Mr. Brown also testified he saw defendant holding Larry with his right hand and striking Larry with his left hand. Mr. Brown testified codefendant separately struck Larry, knocking Larry backward against a van. Defendant admitted hitting Larry once in the neck after Larry swung at him.

¶ 26 Although the trial court based the unlawful-restraint conviction on its belief that defendant and codefendant "had to keep [Larry] there to carry out the beating until they stopped," this observation does not mean there was only "one act" supporting defendant's two convictions. Multiple convictions may share a common act and not run afoul of the one-act, one-crime doctrine. *Price*, 2011 IL App (4th) 100311, ¶ 26 (citing *Rodriguez*, 169 Ill.2d at 183).

¶ 27 Defendant's act of holding Larry with one hand, while at the same time acting to punch Larry with the other hand, constituted separate but interrelated acts. Defendant is accountable for his own acts and for the independent acts of codefendant. The evidence showed codefendant punched Larry when there was no evidence Larry was being restrained. Additionally, the

testimony of Mrs. Brown was that both defendant and codefendant punched Larry, but not that Larry was being restrained by defendant at that time. Defendant's admission of striking Larry did not include an admission that he was holding Larry at the time he threw that punch.

¶ 28 In summary, defendant's unlawful restraint conviction was supported by defendant's act of holding Larry against his will and preventing Larry's movement. Defendant's involuntary-manslaughter conviction was supported by the acts of defendant and codefendant which consisted of punching Larry. These punches were, at times, administered when Larry was restrained by defendant. The convictions shared only one act—the act of defendant holding Larry, for which defendant was accountable—but the involuntary manslaughter conviction included the additional acts of defendant and codefendant which caused Larry's death—their acts of repeatedly beating Larry. Thus, defendants convictions do not violate the first prong of the one-act, one-crime doctrine because the convictions were based on separate, although interrelated, acts.

¶ 29 As discussed, defendant has conceded unlawful restraint is not a lesser-included offense of manslaughter under the second prong of the one-act, one-crime doctrine. We agree. Under the abstract-elements test, it is both theoretically and practically possible to commit involuntary manslaughter without unlawfully detaining the victim. Defendant's convictions do not violate the one-act, one-crime doctrine.

¶ 30 Affirmed.

¶ 31 JUSTICE HALL dissenting:

¶ 32 I respectfully disagree with the majority's finding that multiple acts supported defendant's conviction for unlawful restraint as well as involuntary manslaughter.

¶ 33 Our courts have recognized that nearly every offense involves a degree of restraint. *People v. Kuykendall*, 108 Ill. App. 3d 708, 710 (1982). Unlawful restraint is punishable as a separate offense "if the restraint is independent of other offenses and arose out of separate acts." *People v. Alvarado*, 235 Ill. App. 3d 116, 117 (1992). Defendant grabbed Larry in order to punch him. Therefore, restraining Larry was not separate from the act of punching him.

¶ 34 The majority states that defendant's convictions were based on the theory that he was accountable for the actions of codefendant. In finding defendant and codefendant guilty of unlawful restraint, the trial court stated that "they had to keep him there to carry out the beating until they stopped." The majority maintains that the trial court did not mean there was "only 'one act' supporting the defendant's conviction." Contrary to the majority's view, the trial court's finding is an accurate description of the encounter between Larry and defendant and codefendant. It confirms that only one act occurred.

¶ 35 The evidence in this case established that Larry was restrained in order for defendant and codefendant to beat him. There was no separate act of restraint which would support a conviction for unlawful restraint, as well as involuntary manslaughter.

¶ 36 For the above reasons, I would vacate defendant's conviction and sentence for unlawful restraint. Therefore, I respectfully dissent from the majority opinion in this case.