

FIRST DIVISION
May 4, 2015

No. 1-13-0529

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
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County.
)	
v.)	No. 11 CR 15369
)	
IVAN GONZALEZ,)	Honorable
)	Noreen Valeria-Love,
Defendant-Appellant.)	Judge Presiding.

JUSTICE HARRIS delivered the judgment of the court.
Justices Cunningham and Connors concurred in the judgment.

ORDER

Held: The circuit court failed to properly apply the one-act, one-crime rule to its findings of guilt in this matter. We affirm the circuit court's judgment in part, vacate it in part, and remand the matter to allow the circuit court to impose a sentence on one defendant's convictions which had been improperly merged.

¶ 1 The circuit court found defendant, Ivan Gonzalez, guilty after a bench trial of three counts of home invasion, four counts of residential burglary, three counts of criminal trespass to a residence, two counts of stalking, one count of aggravated stalking, and one count of robbery.

Relevant to this appeal, the State's evidence at trial showed that defendant made an unauthorized entry into the complaining witness's residence on two occasions: July 7 and August 26, 2011. The circuit court found defendant guilty of one count of home invasion, two counts of residential burglary, and one count of criminal trespass to a residence based on defendant's July 7, 2011, entry into the residence. The circuit court subsequently sentenced defendant to six years' imprisonment for home invasion, four years' imprisonment for residential burglary, and one year imprisonment for criminal trespass to a residence. The circuit court found defendant guilty of two counts of home invasion, two counts of residential burglary, and two counts of criminal trespass to a residence based on defendant's August 26, 2011, entry into the residence. The circuit court subsequently sentenced defendant to four years' imprisonment for residential burglary and one year of imprisonment for criminal trespass to a residence. The circuit court did not enter a sentence on either of defendant's two convictions for home invasion stemming from his August 26, 2011, entry into the residence. Rather, it merged his two August 26, 2011, convictions for home invasion with his July 7, 2011, conviction for home invasion.

¶ 2 At issue is whether the circuit court properly applied the one-act, one-crime rule to its findings of guilt in this matter. We hold that the circuit court failed to properly apply the one-act, one-crime rule to its findings of guilt because it should have entered a sentence on the most serious offense for which defendant was convicted, home invasion, and vacated the less serious offenses of residential burglary and criminal trespass to a residence. The circuit court's failure to properly apply the one-act, one-crime rule resulted in several of defendant's convictions merging rather than being vacated and the circuit court failing to impose a sentence on one of defendant's two August 26, 2011, convictions for home invasion. Due to our conclusion in this

matter, we need not address defendant's claims raised in his briefs before this court because they rely, and are dependent on, his convictions that we now vacate.

¶ 3 JURISDICTION

¶ 4 The circuit court sentenced defendant on February 8, 2013. Defendant timely filed his notice of appeal on the same day. Accordingly, this court has jurisdiction pursuant to article VI, section 6, of the Illinois Constitution and Illinois Supreme Court Rules 603 and 606, governing appeals from a final judgment of conviction in a criminal case entered below. Ill. Const. 1970, art. VI, § 6; Ill. S. Ct. R. 603 (eff. Feb. 6, 2013); R. 606 (eff. Feb. 6, 2013).

¶ 5 BACKGROUND

¶ 6 Defendant was charged by a 15-count indictment in connection with incidents that occurred between July 7 and August 26, 2011. Relevant to this appeal, the indictment alleged that on July 7, 2011, defendant committed the following crimes: home invasion under count I; residential burglary under counts IV and V; and criminal trespass to a residence under count XIII. The indictment alleged that on August 26, 2011, defendant committed the following crimes: home invasion under counts II and III; residential burglary under counts VI and VII; and criminal trespass to a residence under counts XIV and XV.¹

¶ 7 At trial, Yolanda Granados testified she dated defendant for "[a] year, a year and a half" in 2008 or 2009, but that they remained in contact after their relationship ended. In April of 2010, defendant helped her move into a first-floor apartment at 17 King Arthur Court, in Northlake, Illinois, with her 11-year-old daughter, Shakty.

¹ The indictment also alleged that on August 18, 2011, defendant committed robbery under count VIII; and that between July 7 and August 26, 2011, defendant committed the following crimes: aggravated stalking under counts IX and X; and stalking under counts XI and XII.

¶ 8 On July 7, 2011, at approximately 10 p.m., Yolanda returned home with her daughter. Upon turning the lights of the apartment on, she first noticed that there "was a mess all over the floor" in the kitchen. She testified that "[a]ll the food that was in the fridge was on the kitchen floor." The closet door in the middle closet was also destroyed. In the living room, the wall and dining table had candle wax on them. She then saw defendant sitting on the couch. She asked him what he was doing in the apartment, to which he responded "' I got kicked out from my apartment, I hope you don't mind.' " Defendant brought his fish tank and other belongings into the apartment, including a tool box and clothing. Defendant told Yolanda he entered the apartment through the window, which she observed was broken. Upon seeing the broken window, she told defendant to leave, but defendant started yelling at her. Yolanda testified that defendant "tried to hit me, he was grabbing me from my arm." Yolanda further testified that defendant "slapped me right on my face." Yolanda told her daughter to call the police, but defendant ran after her and took her daughter's cell phone. Yolanda tried to call the police, but defendant took Yolanda's phone and threw it on the floor. Eventually the police arrived, but defendant had fled.

¶ 9 On July 10, 2011, Yolanda returned home to find that one of the bedroom lights had been turned on. When she walked into the kitchen, her daughter's cell phone, which defendant had taken on July 7, 2011, was there. Defendant's clothing and other belongings that he had left on July 7, 2011, were removed from the apartment. When asked "[w]as there anything else besides your clothing or his clothing gone," she answered "[m]ost of my clothes and my stuff was gone, my clothes and furniture, things like that." She later clarified the furniture was "small furniture."

¶ 10 On August 18, 2011, at approximately 8:30 p.m., Yolanda and her daughter returned home from the store. She testified "I opened the door *** and then I saw [defendant] coming from [the] back of a car, he just grabbed me." She clarified defendant "just came, and he was right next to me. He grabbed me from my hair and took my car and house keys away from me." Defendant started walking away before stopping and throwing Yolanda's car keys at her. Defendant told her " '[y]ou know what, I got this, my house keys, because I'm tired of going through the window.' " Yolanda did not get her house keys back that night. She subsequently obtained an emergency order of protection against defendant.

¶ 11 On August 26, 2011, Yolanda was in the bathroom when her daughter told her that defendant was at the apartment. She found defendant sitting on the couch in the living room with her purse going through the order of protection paperwork. Defendant became very upset and grabbed Yolanda's arm, talked to her closely, and yelled at her. Yolanda told defendant to leave, but he refused. She warned defendant that she was going to call the police, but defendant started to follow her. He then began hitting himself in the face with Yolanda's hair straightener. While doing so, he told her " '[t]his is what you want, this is what you want.' " Defendant then tried to hit Yolanda in the face with the hair straightener, but she blocked him with her hand. After hitting her hand, defendant threw the hair straightener on the floor. Yolanda managed to call the police. Defendant attempted to leave, and "started grabbing stuff from the floor," including the hair straightener, which he put in his back pocket. The police arrested defendant that day. Later that night, Yolanda went to the police station and retrieved her house key.

¶ 12 On cross-examination, Yolanda testified that on July 7, 2011, defendant accused her of having an affair. Yolanda denied that her daughter went to the beach with defendant around that time. She clarified that when defendant broke the window, "the window lock was broken,

and then if you touch the window, it was loose." The glass of the window was not broken. Defendant never had a key to her apartment. When defendant helped Yolanda move into the apartment, he stayed over for two or three days because he did not have a place to live. He slept on the couch while Yolanda slept with her daughter in the living room. Defendant would come over from time to time after that, but he never stayed over. Yolanda admitted that defendant's dog, Marco, used to stay with her for "at least probably two or three weeks."

¶ 13 Nevaehshakty Granados, known as Shakty, testified that at the time of trial she was 11 years old and in the sixth grade. She recalled that on July 7, 2011, she returned home with her mother, Yolanda, to find defendant in their apartment. The apartment was very dark. Shakty stated defendant "came at my mom and grabbed her by the hair *** and started hitting and yelling at her." She further testified that defendant grabbed, shook, and tried to slap her mother. After the struggle, her mother ran out the back door and defendant followed her. Shakty ran out the front door and called the police. Upon calling the police, she heard a person answer, but defendant came over and grabbed her phone before she had a chance to respond. Shakty testified that wax from a red candle covered the table, floor, and wall. The closet door had holes in it and wood was on the floor.

¶ 14 On August 26, 2011, Shakty thought she heard someone sit on the couch. She looked into the living room and saw defendant. Defendant was reading papers from her mother's purse. Defendant was mad, and began yelling at Yolanda and ripping up the papers. Defendant next grabbed a hair straightener, and began hitting himself with it. Defendant hit Yolanda with the hair straightener in the hand. Shakty testified that defendant then wanted to leave the apartment, but still had the hair straighter. Shakty and Yolanda held on to the cord of the hair straighter in an attempt to keep defendant in the house in anticipation of the police

arriving, but the cord ripped and defendant ran out the back door. Shakty testified that when they moved into the Northlake apartment, defendant did not stay with them. She remembered going to the beach with defendant and his family one time, but stated "it was a long time before."

¶ 15 Javier Gonzalez, defendant's older brother, testified that defendant lived with Yolanda in July of 2011. He testified that Yolanda "would tell [defendant] to leave periodically, and [defendant] would come back, and they had that type of relationship, so where sometimes he would just live with my mom if they got in a fight, and then they would make up, and then they would go back to living with each other several times." Rosa Montejo also testified that defendant lived at Yolanda's apartment prior to his arrest. She went into the apartment with defendant in "July, June of 2011." Defendant had a key for the apartment.

¶ 16 Thomas D'Anza testified that on August 13, 2011, he visited Yolanda's apartment and drank beer with defendant and Yolanda. Shakty was also there. He was also at the apartment on August 2, 2011, to pick up an air-conditioner.

¶ 17 Rosalinda Robles, defendant's mother, testified that defendant and Yolanda lived together in the summer of 2011. She would babysit Shakty. She testified that around July 6, 2011, she went to the beach with Shakty. On that date, defendant drove Yolanda's car and dropped Shakty off at the beach. Robles testified that when defendant and Yolanda would fight, Yolanda would throw defendant and his dog out of the house. Robles testified that Yolanda gave defendant a key in 2011. She helped defendant move out of Yolanda's apartment in August of 2011. On cross-examination, Robles testified that defendant was not living with Yolanda when he was arrested on August 26, 2011. Neither Shakty nor Yolanda was present when she helped defendant move his stuff out of Yolanda's apartment.

¶ 18 Jesus Sandoval, defendant's cousin, also testified that he went to the beach on July 6, 2011, with Yolanda's daughter, Shakty. He remembered the date because he took several photographs and the date was recorded digitally on the memory card.

¶ 19 Defendant testified he dated Yolanda for approximately four years. He moved into her apartment in April of 2010. Defendant also leased an apartment in Wood Dale, Illinois, but rarely stayed there because he stayed with Yolanda. He also rented a studio near his mother's house beginning in May of 2011, because he needed a place to stay when Yolanda threw him out of her apartment. Defendant testified he would drive Shakty to school every morning in Yolanda's car. Defendant enrolled Shakty in bible school for a three-week period in the summer of 2011. He also recalled taking Shakty to the beach after the July 4, 2011.

¶ 20 On July 7, 2011, defendant testified that he lived with Yolanda at her apartment and had his own key to the apartment. He was alone when he entered the apartment that day and denied that he broke a window. Defendant admitted to causing damage to the apartment that day. He explained that at a party earlier in the day, a man told him that he had been having an affair with Yolanda and that Yolanda had been giving the man money. The man also told defendant that he was the person who had been "calling at night at weird hours of the day." Upon his return to the apartment, defendant saw Yolanda's credit card statements which indicated she had stayed at a hotel. Defendant testified his "blood pressure went up" and he became angry. He admitted that he then made holes in the pantry door and "smacked" a candle that "smears on" a nearby table and chairs. He then went to the fridge, grabbed a beer and slammed the refrigerator door. The food hanging on the inside shelf fell. He testified that he did not know he would cause this damage before he entered the apartment. Yolanda returned home around 9:30 or 10 p.m. with her daughter. He testified that he yelled loudly at Yolanda but denied touching her. Yolanda

started fighting and hitting defendant. He left the apartment because he did not "want to cross the line with her." Despite this incident, defendant later returned to the apartment and lived with Yolanda again.

¶ 21 Defendant testified that on August 16, 2011, Yolanda became angry with him when he told her that he was also living with another woman, who he described as his roommate, in Wood Dale. Yolanda was drinking at the time.

¶ 22 Defendant testified that on August 18, 2011, he would not let Yolanda have her car keys because she was too drunk to drive. He eventually gave Yolanda the keys because she punched her daughter. Later that night, defendant told Yolanda he was moving out of the apartment. Yolanda told him to move out before she returned home from work the next day. Defendant refused to return his keys to Yolanda because he needed the keys to get his stuff out the next day. According to defendant, Yolanda told him to come in through the window because it still had not been fixed yet. Defendant and his mother moved his stuff out the next day.

¶ 23 On August 25, 2011, defendant went to Yolanda's apartment. It was late and he still had keys. Yolanda told him how much she missed him and they "ended up being intimate." The next morning, Yolanda took a shower and defendant went to the car to grab some personal items. He had locked the door, so he opened the door with his set of keys. He eventually saw the police reports in Yolanda's purse. Yolanda became upset and started pushing defendant and reminded him that he cheated on her in the past. He denied touching her or throwing anything at her. She hit him with the curling iron. When she went to hit him a second time, he blocked her and "yanked" the curling iron from her and tossed it to the floor. He left the apartment, but was arrested 15 minutes later.

¶ 24 The circuit court found defendant's testimony incredible and Yolanda's and Shakty's testimony credible. Regarding defendant's entry into Yolanda's apartment on July 7, 2011, the circuit court found defendant guilty of home invasion under count I, residential burglary under counts IV and V, and criminal trespass to a residence under count XIII. The circuit court sentenced defendant to concurrent sentences of six years' imprisonment under count I for home invasion and one year of imprisonment for criminal trespass to a residence under count XIII. After merging counts IV and V for criminal trespass to a residence, the circuit court sentenced defendant another concurrent sentence of four years' imprisonment under count IV. Regarding defendant's entry into Yolanda's apartment on August 26, 2011, the circuit court found defendant guilty of two counts of home invasion under counts II and III, two counts of residential burglary under counts VI and VII, and two counts of criminal trespass to a residence under counts XIV and XV.² The circuit court did not impose a sentence on counts II and III. Rather, it merged those convictions with defendant's July 7, 2011, home invasion conviction as stated in count I of the indictment. The circuit court then merged VI and VII for residential burglary, and counts XIV and XV for criminal trespass to a residence, and sentenced defendant to concurrent sentences of four years' imprisonment for residential burglary and one year of imprisonment for criminal trespass to a residence.³

¶ 25 On February 8, 2013, defendant appealed.

² The circuit court also found defendant guilty of robbery under count VIII, aggravated stalking under count IX, and stalking under counts XI and XII. The circuit court found defendant not guilty of aggravated stalking under count X of the indictment.

³ The circuit court additionally sentenced defendant to the following concurrent sentences: three years' imprisonment for robbery under count VIII; and two years' imprisonment for aggravated stalking under count IX.

¶ 26

ANALYSIS

¶ 27 In his opening brief, defendant argued: (1) that the State failed to present sufficient evidence proving he committed residential burglary; (2) that, due to inconsistent guilty findings, he is entitled to a new trial on all of the residential burglary counts against him, his two August 26, 2011, home invasion counts against him, and all of the criminal trespass to a residence counts against him; (3) and that, under the one-act, one-crime rule, his aggravated stalking and August 26, 2011, criminal trespass to a residence convictions should be vacated. Defendant generally referred to all of his findings of guilt, not just those where the circuit court entered a sentence, in making his argument. Additionally, defendant did not challenge his August 18, 2011, conviction for robbery.

¶ 28 The State offered several concessions in its response based on the one-act, one-crime rule. Its concessions, however, addressed only those counts which the circuit court entered a sentence on, and did not refer to the findings of guilt which were merged by the circuit court. The State also mistakenly argued that the circuit court entered judgment against defendant for one count of home invasion for his actions on August 26, 2011. The record, however, shows that the circuit court entered a sentence on count I for home invasion based on defendant's actions on July 7, 2011. According to the State, based on its concessions, defendant's mittimus should show one count of home invasion for August 26, 2011, and one count of residential burglary for July 7, 2011. In light of its concessions, the State argued that it presented sufficient evidence to find defendant guilty of residential burglary on July 7, 2011, and that the one-act, one-crime rule did not preclude defendant's conviction for aggravated stalking. The State also disputed defendant's contention that the circuit court made legally inconsistent findings of guilt.

¶ 29 In reply, defendant agreed with the State that his aggravated stalking conviction should be affirmed by this court but maintained that the State failed to prove him guilty of residential burglary and that the circuit court's guilty findings for home invasion, criminal trespass to a residence, and residential burglary were legally inconsistent.

¶ 30 After reviewing the record and the parties' briefs, we are of the opinion that the circuit court failed to properly apply the one-act, one-crime rule to its findings of guilt in this matter. In doing so, the circuit court also failed to enter a sentence on one of defendant's convictions.

¶ 31 The one-act, one-crime rule prevents a criminal defendant from being convicted of multiple offenses based on the same physical act. *People v. Almond*, 2015 IL 113817, ¶47. "Thus, if a defendant is convicted of two offenses based upon the same single physical act, the conviction for the less serious offense must be vacated." *People v. Johnson*, 237 Ill. 2d 81, 97 (2010). In situations where "multiple convictions of greater and lesser offenses are obtained for offenses arising from a single act, a sentence should be imposed on the most serious offense and the convictions on the less serious offenses should be vacated." *People v. Garcia*, 179 Ill. 2d 55, 71 (1997). Under the rule, "an 'act' is defined as any overt or outward manifestation that will support a separate conviction." *Almond*, 2015 IL 113817, ¶47. We look to the relevant statute, and its punishment, to determine which offense is more serious. *Johnson*, 237 Ill. 2d at 97. The one-act, one-crime rule presents a legal question subject to *de novo* review. *Almond*, 2015 IL 113817, ¶47.

¶ 32 It is well-established that the home invasion statute will only support a single conviction where the charge is based on a single entry into a residence. *People v. Cole*, 172 Ill. 2d 85, 101-02 (1996); *People v. Braboy*, 393 Ill. App. 3d 100, 113 (2009). In situations where a conviction for residential burglary and a conviction for home invasion are carved from the same

physical act of the defendant entering the dwelling place of another, the residential burglary conviction and sentence must be vacated according to the one-act, one-crime rule. *People v. Johnson*, 347 Ill. App. 3d 570, 577 (2004). Similarly, where a conviction for residential burglary and criminal trespass to a residence are carved from the same physical act of the defendant entering the dwelling place of another, the criminal trespass to a residence conviction and sentence must be vacated. *People v. Burney*, 2011 IL App (4th) 100343, ¶86. It follows that where a criminal defendant is charged with home invasion, residential burglary, and criminal trespass to a residence based on the single unauthorized entry into a residence; the circuit court can only enter a conviction and sentence on a single home invasion charge. *Johnson*, 347 Ill. App. 3d at 577; *Burney*, 2011 IL App (4th) 100343, ¶86. The remaining convictions of residential burglary and criminal trespass to a residence must be vacated pursuant to the one-act, one-crime rule. *Id.*

¶ 33 In this matter, the circuit court found defendant guilty for multiple crimes based on his entry into Yolanda's apartment on July 7, 2011, and August 26, 2011. We will address each date, in turn, below.

¶ 34 July 7, 2011

¶ 35 The record shows defendant made a single unauthorized entry into Yolanda's apartment on July 7, 2011, but was charged, and ultimately found guilty of, the following offenses: home invasion under count I, residential burglary under counts IV and V, and criminal trespass to a residence under count XIII. The circuit court subsequently sentenced defendant to six years' imprisonment for home invasion under count I and one year of imprisonment for criminal trespass to a residence under count XIII. The circuit court merged defendant's residential

burglary convictions, counts IV and V, and sentenced defendant to four years' imprisonment under count IV.

¶ 36 Under the one-act, one-crime rule, only defendant's conviction for home invasion under count I should remain because defendant's convictions for his actions on July 7, 2011, stem from one illegal entry into Yolanda's apartment. A criminal defendant cannot be convicted of home invasion, residential burglary, and criminal trespass to a residence based on a single illegal entry into a residence. *Johnson*, 347 Ill. App. 3d at 577; *Burney*, 2011 IL App (4th) 100343, ¶86. Under the one-act, one-crime rule, a sentence should be imposed on the most serious offense, *i.e.*, home invasion in this matter, while the less serious convictions, *i.e.*, residential burglary and criminal trespass to a residence, should be vacated. *Id.* Furthermore, the circuit court in this matter found counts IV and V, both residential burglary convictions, to have merged. Our supreme court, however, has clearly stated that less serious convictions must be vacated. *Garcia*, 179 Ill. 2d at 71; *Johnson*, 237 Ill. 2d at 97. Therefore, we vacate defendant's convictions for counts IV and V even though the circuit court only entered a sentence on count IV.

¶ 37 Accordingly, we hold that the one-act, one-crime rule only allows for a single conviction for home invasion to remain in connection with defendant's unauthorized entry into Yolanda's apartment on July 7, 2011. We affirm defendant's conviction and sentence for home invasion under count I of his indictment. We vacate defendant's convictions for residential burglary, as stated in counts IV and V of his indictment; and criminal trespass to a residence, as stated in count XIII of his indictment.

¶ 38

August 26, 2011

¶ 39 The record shows that on August 26, 2011, defendant made a single unauthorized entry into Yolanda's apartment, and was charged with the following offenses: home invasion under counts II and III, residential burglary under counts VI and VII, and criminal trespass to a residence under counts XIV and XV. The circuit court merged defendant's home invasion convictions under counts II and III with his July 7, 2011, home invasion conviction under count I, despite counts II and III stemming from defendant's entry into Yolanda's residence on August 26, 2011. The record does not disclose why the circuit court merged counts II and III into count I. The circuit court, however, improperly merged counts II and III into count I because they occurred on different dates. The circuit court should have entered a sentence on either count II or count III, but not both, while vacating the remaining home invasion conviction for August 26, 2011. *See Braboy*, 393 Ill. App. at 113 ("A defendant may be convicted of only one count of home invasion where the defendant made but one entry into one dwelling[.]") The circuit court's improper merging of defendant's home invasion convictions resulted in the circuit court not sentencing defendant for home invasion on August 26, 2011.

¶ 40 Although, the circuit court could not sentence defendant on both counts II and III for home invasion, it did have to sentence him on one of his home invasion convictions stemming from his August 26, 2011, entry into Yolanda's residence. *People v. Segara*, 126 Ill. 2d 70, 78 (1989) ("[S]entencing is a necessary component of a judgment of conviction.") Where the circuit court fails to impose a sentence due to the improper merging of convictions, the proper remedy is to remand the matter to the circuit court for the imposition of a sentence. *People v. Scott*, 69 Ill. 2d 85, 88 (1977); *People v. Dixon*, 91 Ill. 2d 346, 352-54 (1982); *People v. Robinson*, 267 Ill. App. 3d 900, 907 (1994). Our supreme court has acknowledged that the final

judgment in a criminal matter is a sentence and that appellate jurisdiction is typically not conferred absent a final judgment, but has held that its own Rule 615 allows this court to remand a case for the imposition of a sentence. *Dixon*, 91 Ill. 2d at 352-54; Ill. S. Ct. R. 615. This is because "Rule 615 specifically authorizes the reviewing court to modify the judgment or order from which the appeal is taken." *Scott*, 69 Ill. 2d at 88. Our supreme court has held that Rule 615 applies even where the circuit court failed to impose a sentence on an unappealed conviction if the conviction depended upon or related to an appealed conviction. *Dixon*, 91 Ill. 2d at 352-54. Applied to this matter, defendant asked this court to grant him a new trial on his August 26, 2011, home invasion, residential burglary, and criminal trespass to a residence convictions in his opening brief. Therefore, under Rule 615, we have the authority to remand the matter because defendant has appealed those convictions before this court.

¶ 41 Accordingly, we remand this matter for the circuit court to impose a sentence on one of defendant's convictions for home invasion stemming from his August 26, 2011, entry into Yolanda's apartment, *i.e.*, either count II, or count III, but not both. We cannot say which count the circuit court should enter a sentence on because we do not know which of the two is more serious. *See Garcia*, 179 Ill. 2d at 71 (remanding to the circuit court for a determination of which count of aggravated criminal sexual assault should be retained). Therefore, the circuit court should have imposed a sentence on one, but not both, of defendant's August 26, 2011, convictions for home invasion. In light of defendant's conviction and sentence on either count II or count III, the circuit court is directed to then vacate the other, unsentenced home invasion conviction pursuant to the one-act, one-crime rule.

¶ 42 Additionally, the record shows that the circuit court found defendant guilty of the following lesser offenses based on his single entry into Yolanda's apartment on August 26, 2011:

residential burglary under counts VI and VII; and criminal trespass to a residence under counts XIV and XV. The circuit court subsequently merged counts VI and VII for residential burglary and sentenced defendant to two years' imprisonment under count VI. The circuit court merged counts XIV and XV for criminal trespass to a residence and sentenced defendant to one year of imprisonment under count XIV. A criminal defendant cannot be convicted of home invasion, residential burglary, and criminal trespass to a residence based on a single illegal entry into a residence. *Johnson*, 347 Ill. App. 3d at 577; *Burney*, 2011 IL App (4th) 100343, ¶86. Under the one-act, one-crime rule, a sentence should be imposed on the most serious offense, home invasion, while the less serious convictions of residential burglary and criminal trespass to a residence should be vacated. *Id.* Accordingly, we vacate defendant's convictions under counts VI and VII for residential burglary and counts XIV and XV, for criminal trespass to a residence, under the one-act, one-crime rule.

¶ 43

Defendant's Brief

¶ 44 Defendant raised three claims of error in his opening brief. He challenged the sufficiency of the evidence against him for his residential burglary convictions for both July 7, 2011, and August 26, 2011, as stated in counts IV through VII of his indictment. Defendant next argued that the circuit court entered inconsistent findings of guilt and asserted that he is entitled to a new trial on his July 7, 2011, counts of residential burglary, *i.e.*, counts IV and V; his August 26, 2011, counts of home invasion, *i.e.*, counts II and III; and his August 26, 2011, counts of criminal trespass to a residence, *i.e.*, counts XIV and XV. Defendant's final argument is that his aggravated stalking conviction violated the one-act, one-crime rule. Defendant, however, conceded that his aggravated stalking conviction is not precluded by the one-act,

one-crime rule in his reply brief. Additionally, defendant raised no claim of error addressing his conviction for robbery based on count VIII of his indictment.

¶ 45 We need not address defendant's claims of error because they rely, and are dependent on, defendant's convictions that we have vacated under the one-act, one-crime rule. Defendant's residential burglary and criminal trespass to a residence convictions are vacated. Upon remand, the circuit court will impose a sentence on either count II or count III of his indictment for home invasion while vacating the remaining conviction. Without the lesser convictions, *i.e.*, residential burglary and criminal trespass to a residence, defendant cannot make his sufficiency of the evidence argument or his argument that the circuit court rendered inconsistent guilty verdicts. Defendant's only challenge to his home invasion convictions is that they are inconsistent with his residential burglary and criminal trespass to a residence convictions. Those lesser offenses, however, are now vacated. He has not in any way raised any other challenge to the remaining home invasion convictions. Furthermore, he has conceded that his aggravated stalking conviction is proper and he has not challenged his robbery conviction and sentence. Therefore, because defendant's arguments are dependent on the existence of convictions we have now vacated, we need not address defendant's contentions.

¶ 46 Accordingly, in conclusion, we affirm defendant's conviction and sentence for home invasion under count I, robbery under count VIII, and aggravated stalking under count IX. We vacate defendant's convictions for residential burglary under counts IV through VII, and criminal trespass to a residence under counts XIII through XV, pursuant to the one-act, one-crime rule. We remand the matter to the circuit court for an imposition of a sentence on either count II or count III for home invasion. We direct the circuit court to vacate the remaining home invasion conviction after imposing its sentence on either count II or count III.

¶ 47

CONCLUSION

¶ 48 The judgment of the circuit court of Cook County is affirmed in part and vacated in part.

The cause is remanded with directions.

¶ 49 Affirmed in part and vacated in part; cause remanded with directions.