

No. 1-14-1613

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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. 13 CR 10042
)	
QUENTIN SCOTT,)	Honorable
)	James B. Linn,
Defendant-Appellant.)	Judge Presiding.

JUSTICE HOWSE delivered the judgment of the court.
Presiding Justice McBride and Justice Ellis concurred in the judgment.

O R D E R

- ¶ 1 *Held:* Defendant's conviction for aggravated battery is vacated where it was based on the same physical act as his conviction for vehicular hijacking.
- ¶ 2 Following a bench trial, defendant Quentin Scott was convicted of vehicular hijacking and aggravated battery and sentenced to two concurrent terms of four years' imprisonment. On appeal, defendant contends that his conviction for aggravated battery violates the one-act, one-crime rule because it is based on the same physical act as his conviction for vehicular hijacking.

For the following reasons, we vacate defendant's aggravated battery conviction and otherwise affirm the judgment of the circuit court.

¶ 3 Defendant was charged by indictment with one count of attempted first-degree murder, one count of aggravated vehicular hijacking, two counts of aggravated kidnaping, and two counts of aggravated battery. The aggravated vehicular hijacking count alleged defendant:

"knowingly took a motor vehicle *** from the person or the immediate presence of Natasha Cross, by the use of force or by threatening the imminent use of force, and a person under sixteen years of age *** was a passenger in the vehicle at the time of the offense."

The two aggravated battery counts, in relevant part, alleged defendant "drove a motor vehicle into obstacles while dragging Natasha Cross."¹

¶ 4 Multiple witnesses testified at trial, but we set forth only the facts necessary to understand defendant's claim on appeal. Cross testified that she parked her car at a gas station store located at Chicago Avenue and Kedzie in Chicago at approximately 9:30 p.m. on April 24, 2013. She entered the store, leaving the keys in the ignition, the engine running, and her one-year old daughter, Tyrianna, buckled in a car seat. One minute later, Cross saw her car being driven away. She yelled, chased after the car, and grabbed onto the open driver's side window when the car stopped. Cross told the driver, whom she identified as defendant, to let Tyrianna out of the car. Defendant "pressed on the gas" and drove "straight though the alley," dragging Cross over speed bumps and hitting a garbage can. Cross sustained injuries to her arms, knees, and feet. After being dragged one and a half blocks, she let go of the car, ran to the gas station, and

¹ One of the aggravated battery counts additionally alleged the offense occurred "on or about a public way."

contacted police. Ten minutes later, officers drove her to the car. Defendant was not present but Tyrianna was still in the vehicle.

¶ 5 The trial court acquitted defendant of attempted first-degree murder, aggravated kidnaping, and aggravated vehicular hijacking, but found defendant guilty of both counts of aggravated battery and vehicular hijacking. The court denied defendant's motion for new trial. Subsequently, the court imposed two concurrent terms of four years' imprisonment and denied defendant's motion for reconsideration of sentence.

¶ 6 On appeal, defendant contends that his conviction for aggravated battery violates the one-act, one-crime rule because it is based on the same physical act as his conviction for vehicular hijacking. Defendant notes the indictment alleged that he committed aggravated battery by driving Cross's car "into obstacles while dragging [her]," and argues that the State used the same conduct to establish the elements of vehicular hijacking, *i.e.*, that defendant took Cross's car from her immediate presence by force. Consequently, defendant claims that both convictions resulted from a single act, and the aggravated battery conviction must be vacated.

¶ 7 In response, the State contends that defendant's convictions were based on separate acts in "close proximity" and, therefore, no violation of the one-act, one-crime rule occurred. According to the State, defendant committed vehicular hijacking by pressing on the gas pedal of Cross's car while she held onto the driver's side door, but committed aggravated battery by dragging her into a garbage can. The State maintains the indictment differentiated between the two acts, as the aggravated vehicular hijacking count alleged that defendant took the car "by the use of force," and the aggravated battery count alleged that defendant injured Cross by driving "into obstacles." As the force needed for the aggravated battery went "further" than the force

needed for the vehicular hijacking, the State asserts that defendant's conduct sustains both convictions.

¶ 8 Defendant, in reply, argues that the State seeks to "break one continuous act of driving into several hyper-technical, separate acts." Defendant claims this argument is improper on appeal, as the indictment did not specify what act of force provided the basis for the aggravated vehicular hijacking count and, at trial, the State did not "apportion" defendant's conduct between the vehicular hijacking and the aggravated battery.

¶ 9 Initially, we note that defendant did not raise his one-act, one-crime challenge in the trial court, and therefore, forfeiture applies. *People v. Harvey*, 211 Ill. 2d 368, 388-89 (2004). However, one-act, one-crime violations are subject to plain error review, and so we may review defendant's claim for error. *Id.* at 389.

¶ 10 Challenges to a conviction pursuant to the one-act, one-crime rule present a question of law which we review *de novo*. *People v. Almond*, 2015 IL 113817, ¶ 47. Under the one-act, one-crime rule, "a defendant may not be convicted of multiple offenses based on the same physical act." *Id.* However, a defendant may be convicted of multiple offenses arising from several interrelated acts (*id.*), if none of the offenses are lesser-included offenses (*People v. Miller*, 238 Ill. 2d 161, 165 (2010)). Notably, even when multiple acts could support multiple convictions, the charging instrument must demonstrate the State's intent to treat the defendant's conduct as multiple separate acts. *People v. Crespo*, 203 Ill. 2d 335, 344-45 (2001).

¶ 11 An "act" is defined as "any overt or outward manifestation which will support a different offense." *People v. King*, 66 Ill. 2d 551, 566 (1977). While *King* presents the "guiding principle" in defining an "act," our supreme court in *People v. Sienkiewicz*, 208 Ill. 2d 1, 8 (2003), "acknowledge[d] the utility" of the following factors in determining whether one act or multiple

acts occurred. These factors include "(1) whether the defendant's actions were interposed by an intervening event; (2) the time interval between the successive parts of the defendant's conduct; (3) the identity of the victim; (4) the similarity of the acts performed; (5) whether the conduct occurred in the same location; and (6) the prosecutorial intent, as shown by the wording of the charging instruments." *Id.* at 7-8; see also *People v. Dresher*, 364 Ill. App. 3d 847, 866 (2006) (applying *Sienkiewicz* to an alleged violation of the one-act, one-crime rule). Prosecutorial intent is significant "in determining whether the defendant's conduct constituted separate acts capable of supporting multiple convictions." *People v. Pulgar*, 323 Ill. App. 3d 1001, 1011 (2001).

¶ 12 Vehicular hijacking occurs when a person "knowingly takes a motor vehicle from the person or the immediate presence of another by the use of force or by threatening the imminent use of force." 720 ILCS 5/18-3(a) (West 2012). Relevant to the present appeal, aggravated battery occurs when a person commits a battery while using "a deadly weapon other than by discharge of a firearm." 720 ILCS 5/12-3.05(f)(1) (West 2012). Battery occurs when a person "knowingly without legal justification by any means (1) causes bodily harm to an individual or (2) makes physical contact of an insulting or provoking nature with an individual." 720 ILCS 5/12-3(a) (West 2012).

¶ 13 Turning to the present case, we find that defendant's conviction for aggravated battery violated the one-act, one-crime rule because it was predicated on the same physical act as his conviction for vehicular hijacking. Cross testified that she grabbed onto the open driver's side window of her car when defendant stopped the vehicle, at which point defendant drove "straight though" an alley, dragging Cross over speed bumps and hitting a garbage can. Looking to the first and second factors set forth in *Sienkiewicz*, no intervening event or time interval occurred in the course of defendant's conduct. *Sienkiewicz*, 208 Ill. 2d at 7. Moreover, under the fourth

Sienkiewicz factor, defendant's conduct "did not vary significantly" during the aggravated battery and vehicular hijacking. See *id.* at 9 (convictions for reckless driving and reckless homicide arose from the same act where "defendant's conduct [in driving excessively fast] did not vary significantly during the period of time prior to the collision with the other vehicle that caused the death of defendant's passenger"); see also *People v. Stutzman*, 2015 IL App (4th) 130889, ¶ 37 (finding that "the act of driving a car while intoxicated" is not "a separate and distinct act from turning a car at an excessive speed while intoxicated").

¶ 14 Additionally, even if defendant's conduct were viewed as consisting of separate physical acts, we could not say the indictment demonstrated the State's intent to treat defendant's conduct as multiple separate acts. The indictment alleged that defendant committed aggravated battery by driving the car "into obstacles while dragging" Cross, but the aggravated vehicular hijacking count stated only that defendant took the car "by the use of force or by threatening the imminent use of force." As the indictment did not distinguish between the force used to commit the vehicular hijacking and the force used to the commit the aggravated battery, the charging instrument does not establish that defendant's convictions were predicated on separate physical acts. *Crespo*, 203 Ill. 2d at 345; *Dresher*, 364 Ill. App. 3d at 866-67 (failure to apportion defendant's conduct among charges in indictment supported finding that convictions "were based on one physical course of conduct"). Consequently, defendant's conviction for aggravated battery must be vacated for violating the one-act, one-crime rule.

¶ 15 For the foregoing reasons, we vacate defendant's aggravated battery conviction and otherwise affirm the judgment of the circuit court.

¶ 16 Affirmed in part and vacated in part.