

No. 1-14-1736

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 C6 60993
)	
VICTOR PEREZ,)	Honorable
)	Anna Helen Demacopoulos,
Defendant-Appellant.)	Judge Presiding.

PRESIDING JUSTICE REYES delivered the judgment of the court.
Justices Gordon and Lampkin concurred in the judgment.

O R D E R

¶ 1 *Held:* Defendant's convictions for aggravated driving under the influence and driving while license revoked do not violate the one-act, one-crime rule of *People v. King*, 66 Ill. 2d 551, 566 (1977).

¶ 2 Following a jury trial, defendant Victor Perez was convicted of aggravated driving under the influence (DUI) and driving while license revoked (DWLR) and sentenced to concurrent terms of four and three years in prison, respectively. On appeal, defendant contends that his convictions violate the one-act, one-crime rule of *People v. King*, 66 Ill. 2d 551, 566 (1977), because they were based on the same physical act.

¶ 3 For the reasons that follow, we affirm.

¶ 4 At trial, Burnham police officer Timothy Bolin testified that while he was on patrol on August 13, 2011, at 3:49 a.m. he observed a vehicle traveling ahead of him on Burnham Avenue abruptly move over the double yellow lines so that half of the automobile was in the northbound lane and half of it remained in the southbound lane. After about half a block, the vehicle abruptly moved back into the southbound lane. It then continued to move erratically, weaving from side to side. Officer Bolin activated his emergency lights. When the vehicle stopped approximately two blocks later, Officer Bolin approached the driver's window. In court, he identified defendant as the driver and sole occupant of the vehicle.

¶ 5 Officer Bolin testified that he asked defendant for his driver's license, but defendant was only able to produce an Indiana state identification card. As Officer Bolin conversed with defendant, he was able to detect a "very strong odor of alcohol about his breath." Defendant's eyes were bloodshot and watery, and his speech was slurred. At Officer Bolin's request, defendant walked to the rear of his vehicle. As he did so, he staggered and was unbalanced. When he reached the back of the vehicle, he put his hands in his pockets and swayed. Officer Bolin asked defendant to perform standardized field sobriety tests, but defendant refused, stating that his lawyer would not let him take the tests. Defendant also stated that he had just left a bar and admitted that he had been drinking earlier.

¶ 6 Officer Bolin placed defendant in his police vehicle for transport to the police station. During the drive, Officer Bolin had to roll down his windows due to the overpowering smell of alcohol. At the station, defendant staggered as he walked into the lockup. There, Officer Bolin advised him that if he refused or failed to take a breathalyzer test, his driver's license would be

suspended. Defendant responded, "Oh, no, I am not blowing. It will make me look guilty."

Officer Bolin was unable to take defendant's booking photo and fingerprints right away because defendant fell asleep in the holding cell and Officer Bolin, despite several attempts, was unable to wake defendant. Officer Bolin opined that on the day in question, defendant's ability to drive was impaired. This opinion was based on his observations of defendant and on his personal and professional experience. Officer Bolin further testified that after running defendant's name and birth date through the Law Enforcement Agencies Data System (LEADS), he discovered that defendant's driver's license had been revoked.

¶ 7 The State entered into evidence a certified copy of defendant's driving abstract and then rested. Defendant did not testify or present any witnesses or other evidence.

¶ 8 Following deliberations, the jury returned guilty verdicts on Count 1, aggravated DUI based on prior DUI convictions; Count 2, aggravated DUI based on revoked or suspended driving privileges; and Count 3, DWLR. Defendant filed a posttrial motion, which the trial court denied. At sentencing, the trial court merged Count 2 into Count 1 and imposed concurrent sentences of four and three years in prison for aggravated DUI and DWLR, respectively.

¶ 9 On appeal, defendant contends that his convictions violate the one-act, one-crime rule of *People v. King*, 66 Ill. 2d 551, 566 (1977). Defendant argues that both his convictions arose from a single continuous act of driving and, therefore, should have merged. He acknowledges that his driving was attended by the "differing statuses" of intoxication and lacking a license, but maintains that the relevant physical act – driving – was a single act that was identical in both crimes. Defendant concludes that his conviction for DWLR should be vacated.

¶ 10 As an initial matter, we note that defendant failed to preserve his one-act, one-crime argument by objecting at trial and including the issue in a posttrial motion. See *People v. Enoch*, 122 Ill. 2d 176, 186 (1988). However, one-act, one-crime violations are recognized under the second prong of the plain error rule. *People v. Harvey*, 211 Ill. 2d 368, 389 (2004) ("an alleged one-act, one-crime violation and the potential for a surplus conviction and sentence affects the integrity of the judicial process, thus satisfying the second prong of the plain error rule"). Accordingly, we will address defendant's contention.

¶ 11 The one-act, one-crime doctrine requires a two-step analysis. First, it must be determined whether the defendant's conduct involved a single act or multiple acts. *People v. Nunez*, 236 Ill. 2d 488, 494 (2010). An act is any overt or outward manifestation that will support a different offense. *King*, 66 Ill. 2d at 566. Multiple convictions are improper if they are based on precisely the same physical act. *Nunez*, 236 Ill. 2d at 494. However, as long as there are multiple acts as defined in *King*, multiple convictions are permitted even if there is an interrelationship between the acts. *People v. DiPace*, 354 Ill. App. 3d 104, 115-16 (2004) (citing *People v. Rodriguez*, 169 Ill. 2d 183, 188-89 (1996)). As a second step, if a court concludes that multiple acts exist, then it must determine whether any of the offenses are a lesser-included offense. *Nunez*, 236 Ill. 2d at 494. In the instant case, defendant does not claim that any of his convictions are lesser included offenses. Accordingly, we limit our analysis to the first step of one-act, one-crime analysis.

¶ 12 Under the one-act, one-crime rule, multiple offenses may not be carved out from the same culpable conduct. *People v. Angarola*, 387 Ill. App. 3d 732, 737, (2009); *DiPace*, 354 Ill. App. 3d at 115. In the present case, defendant's offenses share the common element of driving. However, the act of driving, by itself, is not unlawful and does not constitute culpable conduct.

DiPace, 354 Ill. App. 3d at 116. Here, defendant's conviction for aggravated DUI required the act of driving while he was under the influence of alcohol. 625 ILCS 5/11-501(a)(2) (West 2010). In contrast, defendant's conviction for DWLR required the separate act of driving while his license was suspended or revoked. 625 ILCS 5/6-303(a) (West 2010). In these circumstances, we conclude that defendant's convictions were properly based on separate acts which did not involve overlapping culpable acts. See *DiPace*, 354 Ill. App. 3d at 117 (affirming the defendant's convictions for DUI and DWLR and finding no one-act, one-crime violation where, despite occurring simultaneously, the defendant's driving while intoxicated was one act and his driving while his license was revoked was another). Defendant was properly convicted of both aggravated DUI and DWLR.

¶ 13 Defendant, while recognizing that the *DiPace* decision directly addresses the issue in this case, asserts the reasoning of *DiPace* is flawed and should not be followed. A review of *DiPace*, however, reveals that the facts and issues addressed are identical to the case at bar. There, the defendant was convicted of DUI and DWLR. *Id.* at 107. On appeal, the defendant argued that his conviction of DWLR must be vacated because it merges with his conviction of DUI under the one-act, one-crime rule because both convictions were based on the same act of driving. *Id.* at 115.

¶ 14 The reviewing court held that the one-act, one-crime rule did not apply because each of the defendant's convictions was supported by a separate physical act. *Id.* at 116. The *DiPace* court recognized the long-standing case law in Illinois, which has upheld the proposition that the act of driving while intoxicated is independent and has no relationship to the simultaneous act of driving while one's license is revoked. *Id.* (citing *People v. Lavallier*, 187 Ill. 2d 464, 468-69

(1999); *People v. Quigley*, 183 Ill. 2d 1, 9-11 (1998); *People v. Navis*, 24 Ill. App. 3d 842, 846 (1974)). The *DiPace* court explained that, “While ‘driving’ may be a state of action, it is not an overt act that will support a criminal offense. The acts to be considered in applying the one-act, one-crime rule are [a] defendant’s *culpable* physical acts. There is nothing criminal in driving, *per se*; if defendant had simply been driving, then he would have committed no criminal act.” (Emphasis in original.) *Id.* Thus, although driving was involved in both the crimes of DUI and DWLR, “each of [the defendant’s] convictions was due to a separate offense based on separate conduct.” *Id.* Accordingly, we find *DiPace* to be directly on point and decline defendant’s invitation to depart from its precedent. See *Nunez*, 236 Ill. 2d at 494-95 (noting, but not addressing, the defendant’s argument that *DiPace* was wrongly decided).

¶ 14 For the reasons explained above, we affirm the judgment of the circuit court.

¶ 15 Affirmed.