

No. 1-15-3467

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. 12 MC4 5293
)	
RICKEY WARE,)	Honorable
)	Gregory R. Ginex,
Defendant-Appellant.)	Judge Presiding.

PRESIDING JUSTICE GORDON delivered the judgment of the court.
Justices Lampkin and Reyes concurred in the judgment.

ORDER

- ¶ 1 *Held:* Where defendant was found guilty of two counts of the same offense, one of his convictions must be vacated under the one-act, one-crime doctrine since both charges were carved out of the same physical act.
- ¶ 2 Following a jury trial, defendant Rickey Ware was found guilty of two counts of resisting a peace officer and sentenced to concurrent terms of two years' conditional discharge. The trial court further ordered that defendant serve the first 30 days of his sentence in the Cook County Department of Corrections.

¶ 3 On appeal, defendant contends, and the State agrees, that one of his convictions must be vacated under the one-act, one-crime doctrine because both charges are carved out of the same physical act of defendant's refusal to be fingerprinted at the police station. Pursuant to the one-act, one-crime rule, a defendant cannot be convicted of multiple offenses that are based upon the same single physical act, and where he is, the conviction for the less serious offense must be vacated. *People v. Johnson*, 237 Ill. 2d 81, 97 (2010).

¶ 4 Here, defendant was charged with two counts of resisting a peace officer under section 31-1 of the Criminal Code (720 ILCS 5/31-1 (West 2012)). Count II alleged that defendant "knowingly resisted the performance of Ofc. VELAZQUEZ *** in that he refused [to] be fingerprinted by creating a fist, in both hands and attempted to free his hands from Ofc. VELAZQUEZ, while making his body stiff and immobile." Count III alleged that defendant "knowingly resisted the performance of Ofc. LAZCANO *** in that he refused [to] be fingerprinted by creating a fist, in both hands and attempted to free his hands from Ofc. Lazcano and Ofc. Velazquez, while making his body stiff and immobile." Thus, both counts were based on the same single physical act of defendant's refusal to be fingerprinted, and we concur with the parties that one of the counts must be vacated.

¶ 5 The State asks this court to retain count III because it names both of the officers. Defendant has not filed a reply brief and has raised no objection to the State's request. The two counts in this case are identical, with the only difference being the officers' names. Neither count is more serious than the other. Therefore, in light of defendant's apparent acquiescence with the State's request, we vacate count II and retain count III.

¶ 6 Pursuant to our authority (Ill. S. Ct. R. 615(b)(1) (eff. Aug. 27, 1999); *People v. McCray*, 273 Ill. App. 3d 396, 403 (1995)), we direct the clerk of the circuit court to vacate count II from

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defendant's mittimus. This order is entered in accordance with Illinois Supreme Court Rule 23(c)(2) (eff. July 1, 2011).

¶ 7 Affirmed in part; vacated in part; mittimus amended.