THIRD DIVISION
January 18, 2017

No. 1-14-2028

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. 13 CR 14193
	)	
LESHAWN COATS,	)	Honorable
	)	Vincent M. Gaughan,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE COBBS delivered the judgment of the court.
Justices Lavin and Pucinski concurred in the judgment.

O R D E R

¶ 1 *Held*: Defendant's convictions are affirmed where the evidence was sufficient to prove him guilty beyond a reasonable doubt and the one-act, one-crime doctrine did not prohibit multiple convictions.

¶ 2 Following a bench trial, defendant Leshawn Coats was convicted of armed habitual criminal (720 ILCS 5/24-1.7(a) (West 2012)), armed violence (720 ILCS 5/33A-2(a) (West 2012)), and two counts of possession of a controlled substance (heroin) with intent to deliver (720 ILCS 570/401(a)(1)(A), 401(c)(1) (West 2012)). He was sentenced to consecutive sentences of 7 years' imprisonment on the armed habitual criminal count and 15 years' imprisonment on the armed violence count. Defendant argues on appeal the evidence was insufficient to prove him guilty beyond a reasonable doubt and that the armed habitual criminal conviction should be vacated because it violates the one-act, one-crime doctrine. We affirm.

¶ 3 Defendant was charged by indictment with one count of armed habitual criminal, one count of armed violence predicated on commission of felony possession of a controlled substance with intent to deliver (between 15 and 100 grams of heroin), and three counts of possession of a controlled substance with intent to deliver (between 15 and 100 grams of heroin, between 1 to 15 grams of heroin, and between 1 to 15 grams of cocaine). The following evidence was adduced at trial.

¶ 4 Chicago police officer Edwin Utreras testified that, on June 27, 2013, around 8:25 a.m., he was working on a team executing a search warrant at 755 South Kilbourn in Chicago. He and his team knocked on the building's basement door and, when no one answered, forced entry into the basement apartment. Inside, after detaining four individuals, Utreras and his team approached a locked, rear room. After knocking, Utreras heard movement inside the room but no one answered the door. Utreras' partner, Officer Sznura, forced entry into the room. Utreras observed a woman, subsequently identified as Kadesha Joyce, on the bed. He also saw a man, identified in court as defendant, who was holding a hand gun in his left hand and two bags in his right hand and placing them on the window ledge. Utreras was 10 to 15 feet from the ledge and noticed one plastic bag was black and the other was tan.

¶ 5 Officer Sznura detained defendant and Utreras recovered from the window ledge a 45-caliber Llamma hand gun loaded with nine live rounds of ammunition as well as both bags. Inside the tan bag was a clear bag containing 53 Ziplock bags of suspect crack cocaine and one "knotted bag" containing suspect crack cocaine. Inside the black bag was a clear plastic bag containing 92 Ziplock bags of suspect heroin. Utreras also retrieved a clear Ziplock bag containing nine Ziplock bags of suspect heroin and a green Ziplock bag containing suspect cannabis from inside a small refrigerator in the bedroom. In a pair of men's pants located in the bedroom, Utreras found a set of keys that opened the bedroom door, a state ID with defendant's name and picture, and $421 in United States Currency. The state ID listed a different address than that being searched. Another of Utreras' partners, Officer Zinchuk, recovered $180 from a pair of tan boots found in the bedroom. The officers also found ammunition and narcotics packaging materials, including both small and sandwich-sized Ziplock bags, in the bedroom.

¶ 6 Defendant was placed into custody and read his *Miranda* rights by Officer Sznura. After he was read his rights, defendant stated "you got me." He further stated he lived at the address with his girlfriend because his house at 21st and Millard had burned down.

¶ 7 Officer Troutman photographed the recovered items and inventoried them at the police station. Utreras identified photographs depicting the bedroom, the recovered 45-caliber firearm, the black and tan bags, and the bags recovered from the refrigerator. He further identified the set of keys and the state ID with defendant's name and picture found in the men's pants.

¶ 8 The parties stipulated that defendant had an aggravated robbery conviction in case number 02 CR 25742 under the name Danny Harris and a robbery conviction in case number 94 CR 05155 under the name Arthur Hortan.

¶ 9 The parties further stipulated that Maureen Bommarito, a forensic chemist at the Illinois State Police Crime Lab, would testify that six of the nine bags of suspect heroin found in the refrigerator were tested and had a positive result of 1.2 grams of heroin, "out of a total weight of

1.2 grams." She would further testify that 12 of the 54 bags of suspect crack cocaine that defendant was holding were tested and had a positive result of 1.1 grams of cocaine, out of a total weight of 4.6 grams. She analyzed 73 of the 92 bags of suspect heroine defendant was holding, which tested positive for 15.2 grams of heroin, out of a total of 19.2 grams.

¶ 10 Defense witness Kadesha Joyce testified that, on June 27, 2013, she lived at 755 South Kilbourn with her grandmother, father, sister, and two brothers. She was in her bedroom with defendant, her boyfriend, when police kicked in the door to the bedroom. Seven or eight police officers entered, handcuffed defendant and Joyce, and brought them to the living room. Joyce testified that 20 to 25 minutes after the police entered her bedroom, she heard them say "it's in the gangway." She stated that her bedroom has two windows, one of which opens to the sidewalk outside. When the police entered the bedroom, defendant was sleeping next to her, he was not holding a gun or narcotics at the window. After hearing the police say "it's in the gangway," Joyce got into an argument with a police officer. She was arrested and taken to jail.

¶ 11 The trial court found defendant guilty of armed habitual criminal, armed violence, and both counts possession of a controlled substance (heroin) with intent to deliver. It found him not guilty of possession of a controlled substance (cocaine) with intent to deliver.

¶ 12 The trial court denied defendant's written motion for a new trial or for judgment of acquittal and proceeded to sentencing. It sentenced defendant to 7 years' imprisonment on the armed habitual criminal conviction and 15 years' imprisonment on the armed violence conviction, to be served consecutively. The court merged possession of a controlled substance with intent to deliver (between 15 and 100 grams of heroin) count into the armed violence count. It stated "no judgment" would be entered on the other possession of a controlled substance with intent to deliver (between 1 and 15 grams of heroin) count. Defendant filed a timely notice of appeal.

¶ 13 On appeal, defendant argues the evidence was insufficient to find him guilty of possession of a controlled substance with intent to deliver (between 15 and 100 grams of heroin), the predicate offense for the armed violence conviction. Specifically, he argues because the State failed to prove his intent to deliver the heroin, we should reduce his conviction to simple possession and remand for resentencing on the armed violence conviction, to be served concurrently with his sentence for armed habitual criminal. He further argues his conviction for armed habitual criminal must be vacated because it violates the one-act, one-crime doctrine.

¶ 14 When challenging the sufficiency of the evidence, the standard of review is whether after viewing the evidence in the light most favorable to the State, any rational trier of fact could have found the essential elements of the offense proven beyond a reasonable doubt. *People v. Brown*, 2013 IL 114196, ¶ 48. "A reviewing court will not substitute its judgment for that of the trier of fact on issues involving the weight of evidence or the credibility of witnesses." *People v. Siguenza-Brito,* 235 Ill. 2d 213, 224-25 (2009). In a bench trial, the trial judge, as trier of fact, has the responsibility to determine the credibility of witnesses, weigh the evidence and any inferences derived therefrom, and resolve any conflicts in the evidence. *People v. Slim*, 127 Ill. 2d 302, 307 (1989). A conviction will not be reversed unless "the evidence is so improbable, unsatisfactory, or inconclusive that it creates a reasonable doubt of the defendant's guilt." *In re Q.P.*, 2015 IL 118569, ¶ 24.

¶ 15 To sustain the conviction of possession of a controlled substance with intent to deliver, the State had to prove: (1) defendant knew of the narcotics, (2) the narcotics were in defendant's immediate possession or control, and (3) defendant intended to deliver the narcotics. 720 ILCS 570/401 (West 2012); *People v. Robinson*, 167 Ill. 2d 397, 407 (1995). Defendant argues the State failed to prove the third element: that he intended to deliver the heroin.

¶ 16 "Because direct evidence of intent to deliver is rare, such intent must usually be proven by circumstantial evidence." *Robinson*, 167 Ill. 2d at 408. Our supreme court has noted several factors that may be considered in finding intent, including: whether the quantity of controlled substance in a defendant's possession is too large for personal use, the possession of weapons, the manner in which the substance is packaged, the possession of large amounts of cash, the high purity of the drug recovered, the possession of drug paraphernalia, and the possession of police scanners, beepers, or cellular telephones. *Id.* However, these factors are not exhaustive (*People v. Bush*, 214 Ill. 2d 318, 327 (2005)) and there is no "hard and fast" rule to be applied given the different types of controlled substances and "the infinite number of factual scenarios." *Robinson*, 167 Ill. 2d at 414.

¶ 17 Defendant argues the State failed to prove his intent to deliver the heroin as the 15-20 grams of heroin recovered was consistent with personal use. The quantity of a controlled substance alone can be sufficient to prove intent where the amount cannot be viewed solely for personal use. *Id.* at 410-11. But, "[a]s the quantity of controlled substance in the defendant's possession decreases, the need for additional circumstantial evidence of intent to deliver to support a conviction increases." *Id.* at 413. Defendant argues there is insufficient additional circumstantial evidence here. We disagree.

¶ 18 Viewing the evidence in the light most favorable to the State, the circumstantial evidence sufficiently shows defendant's intent to deliver heroin. First, the court may consider the way in which a controlled substance was packaged and, in certain circumstances, the packaging alone may be sufficient to demonstrate intent to deliver. *Id.* at 414. Here, defendant was arrested in possession of 92 small bags of heroin contained in one bag and an additional 9 bags of heroin found inside a refrigerator. Given the sheer number of individual bags, it is entirely reasonable to infer that the heroin was intended for delivery rather than for personal use. See *People v. Clark*, 406 Ill. App. 3d 622, 631 (noting that 24 individual packets of heroin found on the defendant was "an amount and packaging technique highly indicative of one's intent to deliver rather than to personally consume").

¶ 19 Further, Officer Utreras testified that he recovered additional "narcotics packaging material," including small and sandwich-sized bags. While defendant challenges this as "cursory and unenlightening," the trial court could reasonably infer that the bags' presence was further indicia of defendant's intent to deliver. *Robinson*, 167 Ill. 2d at 414.

¶ 20 Officer Utreras also testified that he found a loaded 45-caliber gun and additional ammunition in the bedroom. Further, $421 was recovered from a pair of men's pants and $180 from a pair of boots found in the same room as the drugs. Our supreme court has directed that the presence of a firearm and large amounts of cash are specific factors indicative of intent to deliver. *Id.* at 408. Although defendant argues the amount of money was not an unreasonable amount to carry and that his possession of a gun could have been for other reasons such as his need to defend himself, given the totality of circumstances, the trial court could have found these factors were circumstantial evidence of intent to deliver.

¶ 21 Finally, defendant argues that no scale was recovered and the State failed to show how a "drug dealer would be able to accurately package minuscule amounts of drugs in these ziplock bags without a scale." The absence of a scale would go to the weight of the evidence, which is for the trier of fact, here the trial court, to determine. *People v. Siguenza-Brito*, 235 Ill. 2d 213, 224 (2009). Further, the heroin was already packaged into 92 Ziplock bags and, there was, therefore, no need for defendant to possess a scale. See *People v. White*, 221 Ill. 2d 1, 20 (2006) ("we note that since the cocaine was already packaged for sale, there was no need for defendant to carry cutting agents or a scale"), *abrogated on other grounds, People v. Luedemann*, 221 Ill. 2d 530 (2006).

¶ 22 The sufficiency of the evidence to prove intent to deliver "must be determined on a case-by-case basis." *Robinson*, 167 Ill. 2d at 412-13. Here, where defendant was found in possession of 92 small bags of heroin contained in one bag, an additional 9 bags of heroin inside a refrigerator, a loaded gun with additional ammunition, $601 in cash, and narcotics packaging materials, the evidence supports the court's finding that the State proved defendant's intent to deliver the heroin beyond a reasonable doubt. Accordingly, defendant's conviction for armed violence predicated on his conviction for possession of a controlled substance with intent to deliver (between 15 and 100 grams of heroin) is affirmed.

¶ 23 Defendant next contends that his conviction for armed habitual criminal should be vacated because, in violation of the one-act, one-crime doctrine, it is predicated on the same physical act as his armed violence conviction, namely possessing a hand gun. Although defendant did not raise this claim in the trial court, "forfeited one-act, one-crime arguments are properly reviewed under the second prong of the plain-error rule because they implicate the integrity of the judicial process." *People v. Nunez*, 236 Ill. 2d 488, 493 (2010).

¶ 24 Under the one-act, one-crime doctrine, "a defendant may not be convicted of multiple offenses that are based upon precisely the same physical act." *People v. Johnson,* 237 Ill. 2d 81, 97 (2010); accord *Nunez,* 236 Ill. 2d at 494. An act refers to " 'any outward or overt manifestation which will support a different offense.' " *Nunez,* 236 Ill. 2d at 494 (quoting *People v. King,* 66 Ill. 2d 551, 566 (1977)). The court first determines whether the defendant's conduct consisted of a single physical act or separate acts. *People v. Rodriguez,* 169 Ill. 2d 183, 186 (1996). If one physical act was undertaken, then multiple convictions are improper. *Id.* Second, if the defendant committed multiple acts, the court determines whether any of the convictions are for lesser-included offenses. *Id.* Multiple convictions for lesser-included offenses are also impermissible. *Id.* However, a defendant may be found guilty of two offenses when the same act is an element of both charges. *Id.* at 188-89. We review *de novo* the application of the one-act, one-crime doctrine. *Johnson,* 237 Ill. 2d at 97.

¶ 25 Defendant argues that the Second District's decision in *People v. Williams,* 302 Ill. App. 3d 975 (1999), should control. In *Williams,* the defendant was convicted of unlawful use of a weapon by a felon and armed violence predicated on possession of a controlled substance, stemming from his arrest while in possession of a gun and cocaine. *Williams,* 302 Ill. App. 3d at 976-77. The defendant argued on appeal that his sentence for unlawful use of a weapon by a felon impermissibly violated the one-act, one-crime doctrine where both convictions arose from the same physical act. *Id.* at 977-78. In reversing the conviction for unlawful use of a weapon by a felon, the court held:

> "[T]he common act is a felon possessing a gun and drugs simultaneously. There is no separate act. In one instance the gun is combined with possession of a controlled

substance to constitute armed violence, and in the other it is combined with the act of a convicted felon status to create a separate offense. We hold that the one-act, one-crime rule does apply to these convictions." *Id.* at 978.

¶ 26 The State responds that the Fourth District's holding in *People v. White,* 311 Ill. App. 3d 374 (2000), which rejected *Williams,* should be followed. In *White,* the defendant was similarly convicted of unlawful use of a weapon by a felon and armed violence predicted on possession of a controlled substance based on his arrest while in possession of a gun and cocaine. *Id.* at 379. On appeal, the defendant argued his convictions for unlawful use of a weapon by a felon and armed violence were based on the same physical act. *Id.* at 384. The court disagreed, noting that "two separate acts do not become one solely by virtue of being proximate in time." *Id.* at 385. It found that *Williams* incorrectly held that possession of the drugs and the gun was a shared, common act prohibiting multiple convictions. *Id.* The court observed:

"Though defendant may have possessed the weapon and the drugs close in time, or even simultaneously, we conclude nevertheless that each possession was a separate act. Although both offenses shared the common act of possession of a weapon, armed violence required the additional act of possession of the drugs, and unlawful possession of a weapon by a felon required the additional element of status as a felon. Accordingly, the two offenses did not result from precisely the same physical act." *Id.* at 386.

¶ 27 We find the reasoning in *White* persuasive and hold that defendant's convictions for armed habitual criminal and armed violence were based upon separate acts. Although defendant's convictions shared the common act of possession of a gun, the armed habitual criminal conviction required the additional element of defendant's status as an offender with two prior felony convictions and armed violence required the additional act of possession of heroin with intent to deliver. Following *White,* we find each hand gun possession was a separate act and the convictions, therefore, did not result from "precisely the same physical act." *Id.*; see also *People v. Pena*, 317 Ill. App. 3d 312, 323 (2000) (following *White*) (defendant's possession of a weapon was a common act of unlawful use of a weapon by a felon and home invasion offenses; however, as each offense required an additional act (status of being a felon and knowingly entering into an occupied dwelling, respectively), "defendant's conduct in committing the two offenses did not consist of a single act").

¶ 28 To complete our analysis of whether the one-act, one crime rule was violated, we must decide whether either offense is an included offense of the other. *White,* 311 Ill. App. 3d at 386; see *Rodriguez,* 169 Ill. 2d at 186. Our supreme court has adopted the charging instrument approach in determining whether offenses are included offenses. *Pena*, 317 Ill. App. 3d at 323. Following this approach, an offense is qualified as an included offense if it is described by the charging instrument and at minimum, sets out the main outline of the included offense. *Id*.

¶ 29 In the instant case, the indictment charging the offense of armed violence stated that the defendant,

> "while armed with a dangerous weapon, to wit: handgun, committed a felony defined by Illinois law, to wit: possession of controlled substance with intent to deliver, in that he, unlawfully and knowingly possessed with the intent to deliver otherwise than as authorized in the Illinois Controlled Substances Act of said state of Illinois then in force and effect, less than 100 gram(s) of a substance containing heroin."

Whereas, the indictment charging defendant with the offense of armed habitual criminal stated that the defendant, "knowingly or intentionally possessed a firearm, to wit: .45 caliber semi-automatic handgun, after having been convicted of aggravated robbery and robbery."
The charging instrument for the offense of armed violence does not set out an outline for having a prior conviction, as required by the charge of armed habitual criminal. Although the defendant's convictions shared the common act of possession of a gun, the charge of armed violence required the additional act of simultaneously committing a felony and the charge of armed habitual criminal required a prior conviction. Based on the charging instruments, neither charge sets out the main outline for the other offense nor can the charge of armed habitual criminal or armed violence be considered an included offense of the other. Accordingly, we find defendant's convictions for armed habitual criminal and armed violence do not violate the one-act, one-crime doctrine.

¶ 30 For the reasons set forth above, we affirm the judgment of the circuit court of Cook County.

¶ 31 Affirmed.