

No. 1-14-2272

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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 19123
)	
KA BAH HARDAWAY,)	Honorable
)	Clayton J. Crane,
Defendant-Appellant.)	Judge Presiding.

JUSTICE SIMON delivered the judgment of the court.
Presiding Justice Connors and Justice Mikva concurred in the judgment.

O R D E R

¶ 1 *Held:* Defendant's conviction for unlawful possession of a weapon by a felon affirmed over his contention that it violated the one-act, one-crime rule.

¶ 2 Following a bench trial, defendant Ka Bah Hardaway was convicted of aggravated domestic battery and two counts of unlawful possession of a weapon by a felon (UPWF) and sentenced to three concurrent nine-year sentences in the Illinois Department of Corrections (IDOC). On appeal, defendant contends that one of his UPWF convictions violates the one-act,

one-crime rule because the State failed to distinguish between the acts required for UPWF and aggravated domestic battery. For the following reasons, we affirm.

¶ 3 Defendant was charged with attempted first degree murder (count I), two counts of aggravated domestic battery (counts II and III), UPWF for possessing a sword¹ (count IV), UPWF for possessing brass knuckles (count V), three counts of aggravated battery (counts VI, VII, and VIII), and domestic battery (count IX). The charges arose out of an incident on September 9, 2013 where defendant stabbed his stepson, the victim Reginald Stevens, with a sword. Defendant contends that counts II and IV cannot stand because together they violate the one-act, one-crime rule.

¶ 4 At trial, the victim testified that on September 9, 2013, he was living with his mother, Lawanda Hardaway; defendant, Lawanda's husband; and defendant's two children. At approximately 9:45 p.m., the victim and his girlfriend, Tattiera Green, arrived at defendant's house. For several minutes, defendant refused to allow them inside the house because the victim was not wearing a shirt. Defendant told Green, "B***, you can't come in here because you don't speak."

¶ 5 When he allowed them inside, the victim and defendant argued. While the victim and Green went downstairs to the basement, something hit the wall and shattered glass fell down the stairs. The victim later discovered that the shattered object was a "trophy piece."

¶ 6 In the basement, Green screamed and when the victim turned around, defendant was standing behind him holding a sword. The victim recognized the sword from defendant's

¹ The parties and witnesses use "sword" and "knife" interchangeably to refer to the weapon. For purposes of clarity, we use "sword" to refer to the weapon, except where direct quotations refer to it as a "knife."

collection of weapons and later identified it in court. Defendant stored his collection in the basement. The weapons were all heavy, sharp, and real. The sword that defendant held was normally mounted on the wall. As defendant swung the sword, the victim shielded himself with his arm, and his left arm stopped the blow. He has a scar on his upper arm as a result.

¶ 7 After being struck by the sword, the victim and defendant "tussled" and the victim escaped to the laundry room in the basement and closed the door. Defendant, still in possession of the sword, forced his way into the laundry room and stabbed the victim again. They continued to tussle, and defendant stabbed the victim three times altogether. He displayed his scars for the court.

¶ 8 Eventually, the victim and Green ran upstairs and outside of the house. His mother, Lawanda, was walking toward the house. Defendant was on the porch and said, "I should have killed you. You lucky I missed. Don't come back to my house. I'm going to kill you next time."

¶ 9 Shortly thereafter, the victim received 72 staples for his three stab wounds. Because of the stabbing, the victim cannot feel the bottom part of his arm.

¶ 10 On cross-examination, the victim testified that his verbal altercation with defendant began when defendant made a comment to Green about not speaking. The victim denied striking defendant with the back of his hand and did not push defendant to the ground.

¶ 11 Lawanda Hardaway testified that defendant is her husband, and they lived together with his two children and her son, the victim, on September 9, 2013. Lawanda left the house that night and walked to the end of the block. When she returned home, she observed the victim running down the front porch stairs bleeding with Green behind him. The victim told her that defendant

stabbed him. She saw a lot of blood and a deep cut in the victim's arm. Defendant collects weapons in the basement of their house and displayed the weapons on stands.

¶ 12 On cross-examination, Lawanda acknowledged that defendant threw a towel across the street on the night of the incident. She further acknowledged that she was home when various objects were broken in the house from an earlier argument.

¶ 13 Tattiera Green testified that she was dating the victim. She corroborated the victim's testimony regarding defendant not allowing them in the house on September 9, 2013. Defendant told Green, " 'B' this is my house. You should speak when you come to my house." Green did not respond, and defendant finally allowed them inside. The victim told Green not to speak to defendant, and they went down to the basement.

¶ 14 When Green approached the basement stairs, an object flew past her nose and hit the wall. The object was a glass statuette figurine that had previously been in the doorway. Green ran downstairs to the victim and heard a "commotion." Seconds later, defendant appeared and walked toward the room where Green and the victim were standing. The victim and defendant "scuffled," and Green observed a shiny object in defendant's hands. She witnessed defendant raise the shiny object and hit the victim three or four times before the victim ran into the laundry room. Defendant forced his way into the laundry room, and Green heard them scuffling. Defendant raised the sword and the victim eventually fled the laundry room.

¶ 15 When Green and the victim ran out of the house, she heard defendant say, "You lucky I missed." Defendant stepped off of the porch and went as far as the sidewalk. He was still holding the sword in his hand.

¶ 16 On cross-examination, Green testified that on the night of the incident, defendant told the victim that the other girls the victim brings home are friendly and speak. Green denied that the victim knocked defendant to the ground and that defendant walked her outside. She further denied that defendant threw a towel from the porch.

¶ 17 The court admitted into evidence the sword defendant used as well as various photographs depicting the house from the night of the incident. The parties stipulated to the admission of a certified copy of defendant's conviction for burglary (Case No. 86 CR 0457801) and a certified copy of defendant's conviction for misdemeanor domestic battery (Case No. 07601174701). The parties further stipulated that if called, Officer Abelardo Rodriguez of the Chicago Police Department would testify that on September 9, 2013, he photographed the inside of defendant's home and recovered a dragon sword or a knife.

¶ 18 Additionally, the parties stipulated that Officer Chevalier of Chicago Police Department would testify that he was involved in defendant's arrest on September 9, 2013. The parties also stipulated that Dr. Nicole Mourillon would testify that she is a doctor with Trinity Hospital and treated the victim. He received 41 staples in his arm.

¶ 19 Defendant testified that on September 9, 2013, he would not allow the victim in the house until he put on a shirt. Defendant mentioned various girls that the victim brought home. He told Green, "Miss, you need to start speaking 'cause you don't speak. ***When I came to your house that one time, I spoke," but Green did not respond. The victim took a step toward defendant and said defendant was disrespecting him.

¶ 20 When the victim and Green entered the house, the victim said something that made defendant angry. Defendant threw a bottle of tea and heard glass shatter but was unaware of what caused it. Defendant later observed that the shattered glass came from a Chinese figurine that sat in a cubbyhole by the stairs. He was not attempting to hit the victim or Green when he threw the bottle of tea.

¶ 21 Defendant entered the basement to do laundry, and the victim told defendant that he was tired of him. Defendant followed the victim and Green and again mentioned other girls that the victim brings home. He was not holding anything. When he mentioned other girls, the victim turned around and punched him in the mouth, "busting" his lip. Defendant later testified that the victim backhanded him.

¶ 22 The victim slammed defendant into the ground. They started "tussling" and fell to the ground. When defendant stood up, he grabbed a sword from a rack. He picked up the sword without thinking because he landed on it and the victim was walking towards him. As the victim came toward defendant, he said that defendant stabbed him. When defendant looked down, he was holding the sword. Defendant later testified that the sword "bounced off" the victim and fell to the floor. He denied immediately picking up the sword in the basement and approaching the victim.

¶ 23 The victim ran to the laundry room. Defendant attempted to check on the victim, but the victim would not let him in the room. Defendant pushed the door open and saw that the floor was red. As the victim tried to leave, he slipped in his own blood. Eventually, the victim fled. The sword remained on the basement floor.

¶ 24 When defendant was on the porch, he heard the victim say, "I'm going to kill you and your children." He then got towels for the victim, and denied threatening the victim at any time.

¶ 25 On cross-examination, defendant testified that he collects knives and displays them in the basement. His knives are authentic and sharp. On the night of the incident, the victim told Green, "You ain't got to say nothing to that n***. Keep on walking. This is my house and my mom's house," which angered defendant. He did not realize that he was holding a sword until the victim stated that defendant stabbed him. He stated that the victim was cut only once, but the sword was long enough to inflict two cuts. Defendant told detectives that the victim slapped him in the face and they started wrestling and knocking over knives.

¶ 26 On redirect, defendant stated that he told detectives that the victim was cut by the sword that he held. However, he did not intentionally stab the victim.

¶ 27 Detective Steven Scott testified that during an interview defendant stated that he did not know how the victim's stab wound occurred.

¶ 28 During closing arguments, with respect to the aggravated domestic battery counts, the State argued,

"When you wield a knife at somebody, when you pull a knife that you admit will maul you when you point this at someone, you know that it could cause great bodily harm or permanent disfigurement.

You heard from Reggie who told you about his injuries, scars, disfigurement. His arm is obviously disfigured as a result of this cut, and he also has nerve damage

where he can't feel in two of his fingers down to his elbow. That is permanent disfigurement, and that is great bodily harm."

With respect to the UPWF counts, the State argued,

"The defendant is a convicted felon. It has been stipulated to that the defendant does have a *** prior felony conviction. He possessed a sword and that he possessed brass knuckles or a knuckle weapon. The defendant himself admitted *** a knife with a brass-knuckled handle was his.

* * *

This is clearly *** a dangerous knife. We know it's a dangerous knife. How? Because the defendant told us and because the defendant demonstrated that it was a dangerous knife on September 9, 2013 when he used it to cut [the victim], not once, not twice, but three times. So we know this is a dangerous knife. We know that this is a dagger and a sword. We know that it speaks for itself and the brutal nature. It's definitely a dangerous weapon. Judge, we've met both Counts 4 and 5 that the defendant possessed a knuckle weapon and the sword and is guilty of that."

¶ 29 Following closing arguments, the court found defendant guilty of aggravated domestic battery for permanently disfiguring the victim, two counts of UPWF, two counts of aggravated battery, and domestic battery. The court sentenced defendant to nine years in the IDOC for aggravated domestic battery and merged into that count the convictions for aggravated battery

and domestic battery. The court additionally sentenced defendant to two concurrent sentences of nine years for each UPWF conviction. This appeal followed.

¶ 30 On appeal, defendant contends that his convictions for aggravated domestic battery and UPWF for possessing a sword violate the one-act, one-crime rule because the State failed to distinguish between the act of possessing the sword and the act of stabbing the victim. The State counters that the one-act, one-crime rule was not violated because each offense alleged separate acts, and UPWF is not a lesser-included offenses of aggravated domestic battery.

¶ 31 Although defendant concedes that he waived this issue by failing to object to this error at trial, he asks that we apply a plain error analysis. The plain-error doctrine permits a reviewing court to consider unpreserved errors when " '(1) the evidence in a criminal case is closely balanced or (2) where the error is so fundamental and of such magnitude that the accused was denied a right to a fair trial.' " *People v. Harvey*, 211 Ill. 2d 368, 387 (2004) (quoting *People v. Byron*, 164 Ill. 2d 279, 293 (1995)). The Illinois Supreme Court has ruled that a violation of the one-act, one-crime doctrine affects the integrity of the judicial process and therefore implicates the second prong of plain error analysis. *In re Samantha V.*, 234 Ill. 2d 359, 378-79 (2009). Prior to addressing plain error, however, we must first determine whether any error occurred. *People v. Herron*, 215 Ill. 2d 167, 187 (2005).

¶ 32 Aggravated domestic battery requires that a person committing domestic battery knowingly causes permanent disability or disfigurement. 720 ILCS 5/12-3.3(a) (West 2012). UPWF requires that a felon knowingly possess on or about his person any weapon prohibited under section 24-1 of the Criminal Code of 2012. 720 ILCS 5/24-1.1(a) (West 2012). Section

24.1 prohibits a felon from possessing a dangerous knife "with intent to use the same unlawfully against another." 720 ILCS 5/24-1(a)(2) (West 2012). With regard to count II, aggravated domestic battery, the State alleged that defendant "intentionally or knowingly caused permanent disfigurement" to the victim by stabbing him "about the body." The disputed UPWF charge alleged that defendant, a felon, "knowingly possessed on or about his person" a sword.

¶ 33 The one-act, one-crime doctrine prohibits multiple convictions which arise from the same physical act. *People v. Miller*, 238 Ill. 2d 161, 165 (2010); *People v. King*, 66 Ill. 2d 551, 566 (1977). When evaluating whether a conviction violates the one-act, one-crime rule, we must determine (1) whether the defendant committed multiple acts and (2) if so, whether any of the charges are lesser-included offenses. *King*, 66 Ill. 2d at 566; *People v. Rodriguez*, 169 Ill. 2d 183, 186 (1996). We review *de novo* whether a defendant's convictions violate the one-act, one-crime doctrine. *People v. Csaszar*, 375 Ill. App. 3d 929, 943 (2007).

¶ 34 We first turn to whether defendant's conduct constituted multiple acts. In *People v. King*, our supreme court defined an act as "any overt or outward manifestation which will support a different offense." 66 Ill. 2d at 566. Interrelated acts may still give rise to multiple acts. *People v. Dixon*, 91 Ill. 2d 346, 355-56 (1982) (finding that individual blows of a mop handle during a beating constituted multiple acts under *King*); see also *People v. Crespo*, 203 Ill. 2d 335, 342 (2001) (noting that each of the victim's three stab wounds from a single attack could potentially support individual charges).

¶ 35 Offenses that share a common act may result in multiple convictions where the defendant commits a second outward manifestation that supports a second offense. *Rodriguez*, 169 Ill. 2d at

189. In *Rodriguez*, the defendant was charged with aggravated sexual assault based on sexual penetration while threatening the victim with a gun and home invasion based on unlawfully entering the victim's home and threatening her while armed with a gun. *Id.* at 190. The court concluded that the two convictions were based on separate acts because although they each shared the act of threatening the victim with a gun, entering the victim's bedroom was an additional act that supported the home invasion conviction. *Id.* at 188-89.

¶ 36 In the case at bar, we conclude that defendant's convictions for aggravated domestic battery and UPWF were based on separate acts. The victim testified to several relevant, overt manifestations made by defendant. When the victim turned around in the basement, defendant was holding the sword. Defendant then swung the sword and cut the victim's arm, resulting in scarring on the victim's arm. Later, defendant was still in possession of the sword when he forced his way into the laundry room. Once inside the room, defendant stabbed the victim again, resulting in nerve damage and further scarring on the victim's arm. Further, Green testified that defendant was still holding the sword when he was on the porch after the incident in the basement. Therefore, the acts of possessing the sword and stabbing the victim are separate, overt manifestations.

¶ 37 Moreover, although defendant was in possession of the sword when he stabbed the victim, aggravated domestic battery in this case did not require possession of a weapon. Aggravated domestic battery required only that defendant, in committing domestic battery, caused permanent disability or disfigurement. See 720 ILCS 5/12-3.3(a) (West 2012). UPWF

required a both a previous felony conviction and that defendant possess a weapon. See 720 ILCS 5/24-1.1(a)(West 2012). Thus, defendant's conduct constituted multiple acts.

¶ 38 Defendant does not contend that the UPWF conviction is a lesser-included offense of the aggravated domestic battery conviction, and therefore his convictions do not violate *King's* second prong. See *Rodriguez*, 169 Ill. 2d at 186.

¶ 39 Additionally, we note that defendant's reliance on *People v. Crespo*, 203 Ill. 2d 336 (2001) is misplaced as it is factually distinguishable. In *Crespo*, the defendant stabbed the victim three times in rapid succession and was convicted of multiple offenses arising out of that conduct. *Id.* at 338-39. The court reversed the defendant's multiple convictions because the State treated the three stabs as a single act in the indictment and at trial. *Id.* at 345. Here, however, defendant's convictions arose out of separate acts, *i.e.*, possessing the sword and battering the victim, causing permanent disfigurement. Further, the State charged defendant's offenses as separate acts. We therefore conclude that defendant's convictions for aggravated domestic battery and UPWF are separate offenses and did not result from the same act. Accordingly, defendant's convictions do not violate the one-act, one-crime rule.

¶ 40 For the foregoing reasons, we affirm the order of the circuit court of Cook County.

¶ 41 Affirmed.