2017 IL App (1st) 150241-U

No. 1-15-0241

Order filed July 17, 2017

First Division

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 13 CR 18659
	)	
JEREMIAH CHANDLER,	)	Honorable
	)	William H. Hooks,
Defendant-Appellant.	)	Judge, presiding.

JUSTICE HARRIS delivered the judgment of the court.
Justices Simon and Mikva concurred in the judgment.

ORDER

¶ 1 *Held*: We vacate defendant's conviction for aggravated battery, which violates the one-act, one-crime rule. We affirm defendant's sentences over his contention that the trial court improperly relied on evidence outside the record at sentencing.

¶ 2 Following a bench trial, defendant Jeremiah Chandler was convicted of home invasion (720 ILCS 5/19-6(a)(2) (West 2012)), residential burglary (720 ILCS 5/19-3(a) (West 2012)), aggravated domestic battery based on strangulation (720 ILCS 5/12-3.3(a-5) (West 2012)),

robbery (720 ILCS 5/18-1(a) (2012)), and aggravated battery based on strangulation (720 ILCS 5/12-3.05(a)(5) (West 2012)). The trial court sentenced defendant to concurrent terms of 10 years for home invasion, 10 years for residential burglary, 6 years for aggravated domestic battery, 6 years for robbery, and 5 years for aggravated battery. 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 aggravated domestic battery, and that the trial court improperly relied on evidence outside of the record in imposing sentence. For the following reasons, we vacate defendant's conviction for aggravated battery and affirm defendant's remaining sentences on his convictions for home invasion, residential burglary, aggravated domestic battery, and robbery.

¶ 3 The victim, Arnetta Lloyd, and her daughter, Ashley Laiter, testified for the State at trial. Their testimony established that defendant was in an on-and-off relationship with Lloyd for several years. Lloyd lived in an apartment with Laiter and Laiter's son. Lloyd was the leaseholder on the apartment, and defendant sometimes stayed there when he was not working as a truck driver. Defendant otherwise lived with his mother.

¶ 4 Defendant and Lloyd's relationship ended on August 11, 2013. The next day, defendant retrieved a duffle bag of personal belongings from Lloyd's apartment. Lloyd told defendant not to return to her apartment again. On August 13, 2013, defendant returned to Lloyd's apartment. Lloyd locked herself in Laiter's room and instructed Laiter to inform defendant that she was not home. Laiter told defendant that Lloyd was at work, and he was not allowed to be in the apartment. Defendant said, "that's b***, you know she's home," and indicated that he was there to pick up his grill, which was located on the back porch. Laiter allowed defendant to go to the

porch to pick up his grill, but defendant pushed past her and entered the apartment. He walked room to room and stated that he forgot something inside the apartment. Eventually, he came to Laiter's room and unlocked the door with his fingernail. When he entered the room, defendant "rushed" at Lloyd and put his finger to her forehead and pushed her into the wall. He also placed an open palm on Lloyd's face and pushed her into the wall. Defendant asked where his driver's license was, and Lloyd responded that all of his belongings were in the duffle bag that defendant retrieved the previous day. She also told defendant that he should not be at her home. Defendant smashed Lloyd's iPhone and took her purse, containing her personal belongings, and left the apartment.

¶ 5 Lloyd went into her room. Defendant returned to her apartment, pinned Lloyd to the bed, and started strangling her. Lloyd could not breathe or speak. Defendant told her, "[B]***, you're going to quit f*** with me. Only way out of this relationship is dead." Lloyd went "in and out" of consciousness, and pointed behind defendant to make him think someone was behind him. Defendant let go of Lloyd's neck, and she began to scream. As she was screaming, defendant repeatedly punched her in the face and head with a closed fist, causing blood to "pour[]" out of her face because she was taking blood thinners. Laiter ran into the room upon hearing Lloyd scream "like [she] was dying," and defendant left the apartment.

¶ 6 Lloyd and Laiter called the police. Lloyd was transported to St. Bernard's hospital, where she underwent a CAT scan and had her wounds cleaned. Lloyd had a cut over her eye, bruises on her face, black eyes, a swollen mouth, and cuts on the inside of her mouth. An evidence technician photographed her injuries. At the end of August 2013, Lloyd went to the police station

to collect her purse and keys, which were recovered from defendant. Both Lloyd and Laiter acknowledged they each had prior felony convictions.

¶ 7 Officer Adam Puricelli testified that he responded to the call and noticed Lloyd was emotional and had obvious bruises on her face. Officer Shawn Carroll testified that defendant surrendered himself on August 30, 2013. Defendant gave Officer Carroll a purse and keys which were later inventoried.

¶ 8 Defendant testified that he had assisted Lloyd financially and was a regular overnight guest at her apartment during their relationship. He and Lloyd ended their relationship on August 11, 2013. He returned to Lloyd's apartment the following day without incident to retrieve his belongings. Defendant maintained that, on August 13, 2013, he informed Lloyd that he was coming by her apartment to retrieve the rest of his belongings. He denied that Laiter told him he could not enter the apartment and denied pushing Laiter aside to enter. He repeatedly asked Lloyd where his driver's license and other work-related documents were, but Lloyd told him that she had mailed him the documents. Defendant took some of his items to his car, and then reentered the apartment to retrieve the remaining items. Defendant found his identification cards and bank cards in Lloyd's purse. He acknowledged taking her purse when he left her apartment. He told Lloyd that she would get her purse when he received his "stuff." While defendant acknowledged that he pushed Lloyd with his hands and shoved her with his finger, he denied both hitting her with a closed fist and strangling her. He further acknowledged that he "smacked" Lloyd three or four times in her bedroom and that Lloyd did not have facial injuries when he first entered her apartment. Defendant voluntarily surrendered himself to authorities on August 30, 2013.

¶ 9 Following arguments, the court found defendant guilty of home invasion, residential burglary, aggravated domestic battery, robbery, and aggravated battery. The court found defendant not guilty of two counts, home invasion and aggravated battery, each naming Laiter as the victim. While reciting its findings, the court noted that, with respect to the aggravated battery count, "[t]here is a merging legally for sentencing purposes. There might be a merging for finding purposes." At a hearing on posttrial motions, the court denied defendant's motion to reconsider and motion for a new trial.

¶ 10 At the sentencing hearing, the court asked the parties whether any of the counts should merge. The parties agreed that the aggravated battery count should merge into the aggravated domestic battery count, and the court stated, "Well, [count] six [aggravated battery] merges into [count] four [aggravated domestic battery]."

¶ 11 The State thereafter published a victim impact statement from Lloyd. In the statement, Lloyd indicated that she was suffering ongoing mental distress and taking medication because of defendant's actions on August 13, 2013, had moved into a domestic violence shelter for women, and could no longer work at her job because of her anxiety and posttraumatic stress. In mitigation, defense counsel argued that defendant graduated high school, worked as a truck driver, supported his two children and extended family, had health problems, and had "no criminal history for all intents and purposes." Counsel further noted that defendant had accomplished a lot for someone who grew up in a rough neighborhood. Counsel went on to state,

> "So for someone who grew up in the Roseland neighborhood, which obviously it's easy for someone to get in trouble, let's say, growing up there, the fact that he accomplished as much as he did and avoided some of the criminal elements through his

> whole life and went on to not only graduate from high school but to be gainfully employed as a trucker for many years, there is no disputing that."

¶ 12 In allocution, defendant stated that he did not intend for the incident to "go this far," and he merely wanted to recover his property.

¶ 13 The trial court engaged in a lengthy discussion of the relevant sentencing factors, first noting that defendant expressed no remorse in his version of the crimes contained within his presentence investigation report (PSI). The court went on to state,

> "From the social history, there is really reported having a good childhood. There is no report of domestic childhood [*sic*] as directed against him during his childhood. He grew up in the Roseland community, which counsel in argument, although good counsel is not familiar with the dynamics, obviously, in the community, there are a lot of good people that grew up in Roseland and a lot of good people that have no, that have come from circumstances that have been less than ideal.
>
> But just for the record, the Roseland community is not comprised of everyone who violates crimes and is not the wild, wild west. You can grow up in Roseland and become a police officer, fireman, doctor, a lawyer, and I know at least two judges that grew up in that neighborhood.
>
> I grew up in a much rougher neighborhood than Roseland. Although with flaws, I survived the process growing up in Woodlawn. Roseland was not even a competing area when I grew up in terms of danger and activities in the community. It become [*sic*] worse much [later]. It's not a neighborhood where everybody goes in and comes out a criminal or somebody who beats up women in their own house."

¶ 14 The court thereafter noted several mitigating factors before it, including defendant's relationships with his siblings, his work as a truck driver, his graduation from high school, and that he took care of and had relationships with his children. The court further acknowledged defendant's lack of criminal history, and the absence of gang affiliations and any learning or behavioral disabilities, commenting that, "All of these are good things." In discussing defendant's housing, the court stated,

> "The defendant reported for the past six years he has been living at his [] mother's house on an on-and-off basis. And as I look at the housing accommodations -- he lived in a five-bedroom house in Roseland community. That's very substantial. The court is not aware of a lot of folks in my childhood, even if there were multiple children in the household, that had a five-bedroom house. He described the neighborhood as so-so, with some gang violence and criminal activity. I don't know if he means now or then. I would suggest then is not as bad as it is now, and now we do have criminal activity. In fact, we have people that are charged and convicted of domestic violence and home invasion, one of which is before me."

¶ 15 The court later stated, "This is something, if the neighborhood was so bad, the defendant denied ever using any illicit drugs. This is better than George Bush's neighborhood. The defendant denied using any illicit drugs whatsoever. I mean that's pretty incredible." Finally, the court acknowledged that the PSI noted defendant was experiencing stress related to his arrest. However, the court stated that Lloyd was experiencing "great emotional distress" as a result of defendant's actions. The court concluded defendant's conduct in "invading" and searching

Lloyd's home, unlocking a locked door, putting his hands on Lloyd and taking her purse was "inappropriate and criminal on all levels."

¶ 16 The court thereafter sentenced defendant to concurrent terms of 10 years for home invasion, 10 years for residential burglary, 7 years for aggravated domestic battery based on strangulation, 7 years for robbery, and 5 years for aggravated battery based on strangulation. When defense counsel reminded the court that the aggravated battery count should have merged into the aggravated domestic battery count, the court acknowledged that the counts merged but also reiterated both sentences. The court later noted, "And so the sentence on that matter is five years on the aggravated battery charge, it's five years IDOC, but it merges with the other matter."

¶ 17 The court then, on its own motion, reduced defendant's sentences for aggravated domestic battery and robbery from 7 years to 6 years, respectively. The court stated that, in imposing sentence, it took into account defendant's lack of remorse, but also his lack of criminal history. Defendant did not file a postsentencing motion. He now appeals.

¶ 18 On appeal, defendant first contends, and the State concedes, that his conviction for aggravated battery violates the one-act, one-crime rule because it was based on the same physical act as his aggravated domestic battery conviction. Defendant did not preserve this issue (see *People v. Hillier*, 237 Ill. 2d 539, 544 (2010) (when a defendant fails to raise a claim before the trial court, he forfeits the claim)), but asks that we review it for plain error.

¶ 19 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)). An alleged violation of the one-act, one-crime rule 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." *Harvey*, 211 Ill. 2d at 389. Prior to addressing plain error, however, we must first determine whether any error occurred. See *People v. Herron*, 215 Ill. 2d 167, 187 (2005).

¶ 20 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).

¶ 21 Here, the parties agree and the record reflects that defendant's convictions for aggravated battery and aggravated domestic battery were based on the same physical act; namely, that defendant strangled Lloyd. Because defendant did not commit multiple acts, the conviction for aggravated battery violates the one-act, one-crime rule (see *Rodriguez,* 169 Ill. 2d at 186), and therefore, constitutes plain error under the second prong (*Harvey*, 211 Ill. 2d at 389). We find that the trial court should have merged the conviction for aggravated battery, a Class 3 felony, into the conviction for aggravated domestic battery, a Class 2 felony, and not imposed sentence on the aggravated battery count. See *People v. Lee*, 213 Ill. 2d 218, 226-227 (2004) (under the one-act, one-crime doctrine, sentence should be imposed on the more serious offense). Accordingly, we vacate the sentence associated with defendant's conviction for aggravated

battery. Pursuant to Illinois Supreme Court Rule 615(b)(1) (eff. Jan. 1, 1967), we order the clerk of the circuit court of Cook County to correct defendant's mittimus to remove defendant's conviction for aggravated battery. See *People v. Johnson*, 385 Ill. App. 3d 585, 609 (2008) (reviewing court can correct a mittimus at any time).

¶ 22 Defendant next asserts that the trial court improperly considered evidence outside of the record at his sentencing hearing. Specifically, defendant argues that the trial court relied on its own knowledge of defendant's neighborhood and of the court's childhood neighborhood to counter mitigating evidence presented during sentencing. Defendant concedes that he failed to preserve this issue and asks us to review it for plain error. The State responds that the trial court properly considered all relevant sentencing factors, and that the trial court's comments on defendant's neighborhood were responsive to defense counsel's argument in mitigation. The State additionally argues that defendant cannot meet his burden under the plain error doctrine.

¶ 23 Sentencing issues are forfeited for review unless the defendant both objects to the error at the sentencing hearing and raises the objection in a postsentencing motion. *People v. Powell*, 2012 IL App (1st) 102363, ¶ 7. Nevertheless, forfeited sentencing issues may be reviewed for plain error. *Powell*, 2012 IL App (1st) 102363, ¶ 7 (citing *Hillier*, 237 Ill. 2d at 545). In the sentencing context, a reviewing court may consider unpreserved errors when (1) the evidence at the sentencing hearing was closely balanced, or (2) the error was so egregious as to deny the defendant a fair sentencing hearing. *People v. Hall*, 195 Ill. 2d 1, 18 (2000). To obtain relief under this rule, however, a defendant must first show that a clear or obvious error occurred. *People v. Piatkowski*, 225 Ill. 2d 551, 565 (2007).

¶ 24 We accord great deference to a trial court's sentence and will not reverse it absent an abuse of discretion. *People v. Butler*, 2013 IL App (1st) 120923, ¶ 30 (citing *People v. Stacey*, 193 Ill. 2d 203, 209-10 (2000)). In general, "we will not disturb sentences that fall within the statutory guidelines unless they are 'greatly disproportionate' to the nature of the offenses of which the defendant has been convicted." *People v. Bailey*, 409 Ill. App. 3d 574, 591 (2011) (quoting *People v. Johnson*, 347 Ill. App. 3d 570, 574 (2004)).

¶ 25 In this case, defendant's sentences are well within the statutorily prescribed ranges. Defendant was sentenced to 10 years for home invasion, a Class X felony with a sentencing range of 6 to 30 years. 720 ILCS 5/19-6(a)(2), (c) (West 2012); 730 ILCS 5/5-4.5-25 (West 2012). He was sentenced to 10 years for residential burglary, a Class 1 felony with a sentencing range of 4 to 15 years. 720 ILCS 5/19-3(a), (b) (West 2012); 730 ILCS 5/5-4.5-30(a) (West 2012). Defendant was sentenced to terms of 6 years for both aggravated domestic battery and robbery, both Class 2 felonies with a sentencing range of 3 to 7 years. 720 ILCS 5/12-3.3(a-5), (b) (West 2012); 720 ILCS 5/18-1(a), (c) (West 2012); 730 ILCS 5/5-4.5-35(a) (West 2012). Because his sentences were within the applicable ranges, we presume the sentences are proper. *People v. Burton*, 2015 IL (1st) 131600, ¶ 36. Thus, the burden is on defendant to establish that the alleged improper sentencing considerations led to greater sentences. See *People v. Bowen*, 2015 IL App (1st) 132046, ¶ 49.

¶ 26 We presume that the trial court considered only competent and relevant evidence in determining a sentence. *People v. Ashford*, 168 Ill. 2d 494, 508 (1995). A trial court's determination based upon its own personal knowledge constitutes a denial of due process of law. *People v. Dameron*, 196 Ill. 2d 156, 171-72 (2001). However, such improper reliance does not

require remand where it can be determined from the record that "the weight placed on the improperly considered aggravating factor was so insignificant that it did not lead to a greater sentence." *People v. Heider*, 231 Ill. 2d 1, 21 (2008); *People v. Johnson*, 347 Ill. App. 3d 570, 576 (2004). "[T]he question of whether a court relied on an improper factor in imposing a sentence ultimately presents a question of law to be reviewed *de novo.*" *People v. Abdelhadi*, 2012 IL App (2d), 111053, ¶ 8.

¶ 27 Here, during sentencing, the trial court suggested that defendant's neighborhood was not as bad as counsel intimated, and noted that defendant had a "good childhood," grew up in a five-bedroom home, and denied using drugs. The trial court additionally referenced its own childhood neighborhood, which the court alleged was worse than defendant's neighborhood. Viewing the court's remarks in context, we find that the record demonstrates that the trial court made these references in response to defense counsel's argument in mitigation. Although defendant alleges that the court's comments acted to "counter" mitigation evidence, we find, based on a review of the record as a whole, that trial court simply did not share defendant's assessment of the information regarding his neighborhood. See *People v. Markiewicz*, 246 Ill. App. 3d 31, 55 (1993) (noting that although sentencing courts may not disregard mitigating evidence, they retain discretion to assign how much weight it carries)).

¶ 28 While we recognize that the court's comments on its own neighborhood might have been better left unsaid, the entirety of the record indicates that the court did not *rely* on that information, and that the sentences were based on proper sentencing factors. See *People v. Walker,* 2012 IL App (1st) 083655, ¶ 30 ("In determining whether the trial court improperly imposed a sentence, this court will not focus on isolated statements but instead will consider the

entire record.") The trial court extensively discussed defendant's PSI and noted his lack of criminal history, his health, his family and children, and particularly, his lack of remorse. Given that the sentences were within the statutory guidelines and the serious nature of the offenses, we do not find that a clear and obvious error occurred. See *Piatkowski,* 225 Ill. 2d at 565. Because we find no error, there can be no plain error, and accordingly, we must honor defendant's forfeiture of these sentencing issues. *People v. Spicer*, 379 Ill. App. 3d 441, 449 (2007).

¶ 29 In reaching this result, we find *People v. Dameron,* 196 Ill. 2d 156 (2001), cited by defendant, factually inapposite. In *Dameron,* the trial court imposed the death penalty, and relied on two outside sources: a social science book and a transcript of sentencing comments made by the judge's father in a 1966 murder trial. *Id.* at 171. The trial court spoke extensively about social science statistics, recalled his own father's anguish over imposing a death sentence, and compared the brutality of the 1966 murder case to that of the defendant's case, ultimately aligning himself with his father in imposing the death penalty. *Id.* at 178-79. Our supreme court reversed defendant's death sentence and remanded for resentencing, finding the trial court erroneously sought alternative sources of information in its effort to reach the correct result. *Id.* at 179.

¶ 30 Unlike in *Dameron,* this is not a death penalty case and the trial court did not consult outside sources in making its sentencing determination. Rather, the trial court relied heavily on defendant's PSI and his lack of remorse for the crimes, and responded to defense counsel's mitigation argument, as opposed to seeking alternative sources of information in effort to reach the correct result as the court did in *Dameron*. Consequently, we do not find *Dameron* controls.

¶ 31 For the foregoing reasons, we vacate defendant's sentence for aggravated battery and order the clerk of the circuit court of Cook County to correct defendant's mittimus to remove the aggravated battery conviction. We affirm defendant's sentences for home invasion, residential burglary, aggravated domestic battery, and robbery.

¶ 32 Affirmed in part; vacated in part.