2017 IL App (2d) 161020-U
No. 2-16-1020
Order filed September 27, 2017

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. AMJAD H. ALAWIN, Defendant-Appellant.	))))))))))	Appeal from the Circuit Court of Carroll County. No. 13-CF-53 Honorable John F. Joyce, Judge, Presiding.

JUSTICE BIRKETT delivered the judgment of the court.
Justices Zenoff and Jorgensen concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court properly denied defendant's motion to dismiss a charge on double-jeopardy grounds, as the charge of theft of a motor vehicle, and a prior charge of possession of that vehicle in a different county, were based on separate acts.

¶ 2 Defendant, Amjad H. Alawin, appeals from the order of the circuit court of Carroll County denying his motion to dismiss, on double-jeopardy grounds, a charge of motor-vehicle theft (720 ILCS 5/16-1(a)(2) (West 2012)). He contended that his prior prosecution in Will County for possession of the same stolen vehicle barred the theft prosecution in Carroll County.

Because the theft charge was based on a separate act from that underlying the possession charge, we affirm.

¶ 3 I. BACKGROUND

¶ 4 Defendant was charged by complaint in Carroll County with one count of theft of a motor vehicle (720 ILCS 5/16-1(a)(2) (West 2012)). The complaint alleged that on or about July 29, 2013, defendant knowingly obtained control by deception over a 2009 Cadillac with the intent to deprive the owner permanently of its use and benefit. Defendant moved to dismiss on double-jeopardy grounds.

¶ 5 At the hearing on defendant's motion to dismiss, the parties stipulated to the admission of a two-count indictment and a sentencing order from the circuit court of Will County. Count I of the indictment charged defendant with possession of a stolen motor vehicle (the same Cadillac that was stolen in Carroll County) (625 ILCS 5/4-103(a)(1) (West 2012)). Count I further alleged that on or about July 31, 2013, defendant possessed the Cadillac knowing it to have been stolen. Count II charged defendant with theft by deception based on his having sold the Cadillac to a third party (720 ILCS 5/16-1(a)(2)(A) (West 2012)). According to the Will County sentencing order, defendant pled guilty to count I of the indictment.

¶ 6 The trial court denied defendant's motion to dismiss, reasoning that the Carroll County theft charge and the Will County possession charge were based on separate acts. Defendant, in turn, filed a timely notice of appeal.[1]

¶ 7 II. ANALYSIS

[1] Jurisdiction for defendant's interlocutory appeal is pursuant to Illinois Supreme Court Rule 604(f) (eff. Mar. 8, 2016).

¶ 8 On appeal, defendant contends that possession of the stolen Cadillac in Will County was based on the same act underlying the theft of the Cadillac in Carroll County.

¶ 9 Generally, we review a trial court's ruling on a motion to dismiss charges on double-jeopardy grounds for an abuse of discretion. *People v. Dunnavan*, 381 Ill. App. 3d 514, 517 (2008). However, where no factual determinations are involved in the trial court's decision, a purely legal question is presented, and we review the issue *de novo*. *Dunnavan*, 381 Ill. App. 3d at 517.

¶ 10 In determining whether a double-jeopardy violation has occurred, the preliminary question is whether the prosecutions are based on different criminal acts. *People v. Dinelli*, 217 Ill. 2d 387, 404 (2005). If they are, then the prohibition against double jeopardy is not violated. *Dinelli*, 217 Ill. 2d at 404. If, on the other hand, there was only a single physical act underlying both offenses, a court must determine whether one charge is a lesser included offense of the other. *Dinelli*, 217 Ill. 2d at 403-04 (citing *Blockburger v. United States*, 284 U.S. 299 (1932)). Accordingly, we address whether possession of the stolen Cadillac, as charged in Will County, was based on the same act as that underlying the theft of the Cadillac, as charged in Carroll County.

¶ 11 The definition of an act is any overt or outward manifestation that will support a different offense. *Dinelli*, 217 Ill. 2d at 404 (citing *People v. Sienkiewicz*, 208 Ill. 2d 1, 8 (2003), citing *People v. King*, 66 Ill. 2d 551, 566 (1977)). Although the *King* approach continues to be the guiding principle on the issue of whether there was a single physical act, the supreme court has recognized the utility of a six-factor test "in many instances." *Sienkiewicz*, 208 Ill. 2d at 8.

¶ 12 The six-factor test was applied in *Dinelli*. *Dinelli*, 217 Ill. 2d at 404. The court reiterated that the following six factors are "useful in certain circumstances" when considering whether

there was a single act underlying more than one criminal charge: (1) whether the defendant's acts were interposed by an intervening act; (2) the time between the successive parts of the defendant's conduct; (3) the identity of the victim; (4) the similarity of the acts performed; (5) whether the conduct occurred in the same location; and (6) the prosecutorial intent, as shown by the language of the charging instrument. *Dinelli*, 217 Ill. 2d at 404.

¶ 13 Here, we first consider whether defendant's acts were interposed by an intervening act. Defendant stole the Cadillac in Carroll County. He subsequently moved it to Will County. He then possessed it in Will County for the purpose of selling it. Thus, the initial act of stealing the Cadillac in Carroll County, and the subsequent act of possessing it in Will County, were interposed by defendant's having moved it to Will County.

¶ 14 Second, two days had passed between when defendant stole the Cadillac and when he possessed it in Will County. Although not lengthy, the time period between the two acts weighs in favor of finding that each charge was supported by a separate act.

¶ 15 Third, there was only one victim, the dealership in Carroll County. Although the Cadillac was subsequently possessed in Will County, the victim remained the same. The fact that defendant sold the Cadillac to another victim does not affect our conclusion, as that sale constituted a separate offense from the charge of possession. Thus, this factor favors finding that there was only one act underlying the possession charge in Will County and the theft charge in Carroll County.

¶ 16 Fourth, the act of stealing the Cadillac and the act of possessing it, as charged in Will County, were not similar. We recognize that, at the moment that defendant stole the Cadillac, he also possessed it. In that limited sense, the acts of theft and possession were similar. However,

defendant continued to possess the Cadillac in Will County for the purpose of selling it. In that regard, the acts underlying the two charges were not similar.

¶ 17 Fifth, the conduct did not occur in the same location. As noted, defendant stole the Cadillac in Carroll County but later possessed it in Will County.

¶ 18 Sixth, the wording of the respective charging instruments shows that each was based on a different act. The complaint was based on the theft of the Cadillac in Carroll County. The indictment, however, relied on the subsequent possession of the Cadillac in Will County.

¶ 19 The majority of the six factors shows that the two prosecutions were predicated upon separate acts. Therefore, double jeopardy did not bar the subsequent Carroll County charge. That being so, we need not reach the *Blockburger* analysis to determine whether one offense was the lesser included offense of the other. See *Dinelli*, 217 Ill. 2d at 406.

¶ 20 Defendant's reliance on *Brown v. Ohio*, 432 U.S. 161 (1977), is misplaced. In *Brown*, the defendant was charged with auto theft in one county and charged in another county with joyriding in the same vehicle nine days later. *Brown*, 432 U.S. at 162-63. Defendant pled guilty to joyriding, and then moved to dismiss the auto-theft charge on double-jeopardy grounds. *Brown*, 432 U.S. at 163. Although the Ohio Court of Appeals held that joyriding was a lesser included offense of auto theft, it held that double jeopardy did not bar the auto-theft prosecution, because the two prosecutions were based on separate acts occurring nine days apart. *Brown*, 432 U.S. at 163.

¶ 21 The Supreme Court agreed that joyriding was a lesser included offense of auto theft under Ohio law. *Brown*, 432 U.S. at 169. However, the Court disagreed that the defendant could be convicted of both crimes merely because the respective charges "focused on different parts of [the] 9-day joyride." *Brown*, 432 U.S. at 169. In so holding, the Court emphasized that

the double-jeopardy clause is not so fragile that prosecutors can avoid its limitations by dividing a single crime into a series of temporal or spatial units. *Brown*, 432 U.S. at 169. The Court noted that the applicable Ohio statute made both theft and operation of the same vehicle a single offense. *Brown*, 432 U.S. at 169. Because there was only one offense under Ohio law, the different dates in the two charges did not alter the fact that the defendant was prosecuted for the same offense. *Brown*, 432 U.S. at 169-70.

¶ 22 In this case, however, defendant was charged with two separate offenses: theft of a motor vehicle and possession of a stolen motor vehicle. Nor did the prosecutors merely divide the same offense into a series of temporal or spatial units. Thus, *Brown* does not support defendant.

¶ 23 Nor are we persuaded by defendant's mandatory-joinder argument. Because there were separate acts, mandatory joinder did not apply. See 720 ILCS 5/3-3 (West 2012); *People v. Quigley*, 183 Ill. 2d 1, 11 (1998).

¶ 24 Finally, relying on *People v. Brener*, 357 Ill. App. 3d 868 (2005), defendant posits that the prosecutor in Will County and the prosecutor in Carroll County had a duty to coordinate their respective prosecutions to avoid prosecuting him for the same act. That argument lacks merit, however, as the court in *Brener* held that there was only a single act underlying the charges in Winnebago County and Jo Daviess County. *Brener*, 357 Ill. App. 3d at 870. Therefore, it is distinguishable from this case.

¶ 25 III. CONCLUSION

¶ 26 For the reasons stated, we affirm the order of the circuit court of Carroll County denying defendant's motion to dismiss. As part of our judgment, we grant the State's request that defendant be assessed $50 as costs for this appeal. 55 ILCS 5/4-2002(a) (West 2016); see also *People v. Nicholls*, 71 Ill. 2d 166, 178 (1978).

¶ 27 Affirmed.