2018 IL App (1st) 151603-U

No. 1-15-1603

Order filed March 21, 2018

Third 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. 14 CR 12291
	)	
DEMETRIS McCREA,	)	Honorable
	)	James B. Linn,
Defendant-Appellant.	)	Judge, presiding.

JUSTICE LAVIN delivered the judgment of the court.
Presiding Justice Cobbs and Justice Howse concurred in the judgment.

ORDER

¶ 1 *Held*: Defendant's convictions for vehicular hijacking, robbery, and aggravated possession of a stolen motor vehicle affirmed over his arguments that there was insufficient evidence to prove beyond a reasonable doubt that defendant was accountable for codefendant's actions for vehicular hijacking and aggravated possession of a stolen motor vehicle, that there was insufficient evidence that codefendant robbed the victims of money, and that the convictions for both hijacking and aggravated possession of a stolen motor vehicle violated the one-act, one-crime doctrine. Defendant's conviction for aggravated fleeing and eluding a police officer reversed where there was insufficient evidence to satisfy the statutory requirement that pursuing officers be in uniform during the offense.

¶ 2 Following a bench trial, defendant Demetris McCrea was convicted of vehicular hijacking, aggravated possession of a stolen motor vehicle (PSMV), robbery, and aggravated fleeing and eluding a police officer and sentenced to four concurrent terms of four years' imprisonment. On appeal, he argues that the State failed to prove him guilty beyond a reasonable doubt of each charge and that his convictions for vehicular hijacking and aggravated PSMV violate of the one-act, one-crime doctrine. We affirm in part and reverse in part.

¶ 3 At trial, the State's theory of the case was that defendant was guilty by accountability, through codefendant, Joe Jackson,[1] of aggravated vehicular hijacking, aggravated PSMV, and robbery. It also argued he was guilty of the offense of aggravated fleeing and eluding.

¶ 4 Victor Bezic testified that, on May 10, 2014, he lived on North McClurg Court in Chicago. He did not own a car, but was driving to Detroit for work the following week and had rented a 2014 Jeep from Avis. He parked the Jeep in the parking garage attached to his apartment building. At 7:30 p.m. that night, he left with Amanda Duncan. They took the elevator to the parking garage and got in the Jeep to leave, with Bezic in the driver's seat and Duncan in the passenger's seat. Bezic started the car, put his head down, and "started fooling with the radio." The parking spots on both sides of the Jeep were unoccupied.

¶ 5 When Bezic looked up, there was a large, gray, work van that pulled behind them at "a funny angle." The van had distinct scratches on its side. Bezic "didn't know if they were taking the empty spot beside [them] or if they were lost."

¶ 6 Looking over his shoulder, Bezic saw the van had two black, male occupants sitting in the front seats. He could not see the face of the man in the passenger's seat because he was

[1] Jackson was tried separately and is not a party to this appeal.

"hunched over doing something," but saw the face of the driver. After approximately 15 to 20 seconds, the passenger had put on "his hat and whatever else he had on" and exited the van. The passenger approached the Jeep with a handgun and tapped it on the Jeep's driver's-side window. Bezic took his wallet out of his pocket and "flashed it." The man said, "get out of the car," opened Bezic's door, and pointed the gun at Bezic's head. When the man opened Bezic's door, Duncan got out of the Jeep and ran. Bezic got out of the Jeep and slowly backed away from it, going two to three parking spaces away before getting on his knees. The man got in the Jeep and drove away. Bezic went to the lobby and called the police.

¶ 7 On May 14, 2014, Bezic identified defendant from a lineup as the driver of the gray van on May 10, 2014. The prosecutor asked Bezic if he recognized anyone in court whom he had seen "in that van on May 10, 2012" and Bezic identified defendant. When the prosecutor asked Bezic if he had given anyone permission to "take the 2014 vehicle" or "take any of the money," Bezic responded in the negative.

¶ 8 On cross-examination, Bezic testified that he had observed the van by looking over his shoulder and through the rearview mirror. He acknowledged providing a description of the van's passenger and of the van to the 911 operator. He told the operator that the passenger was wearing a fishing hat, a facemask, a black hoodie, dark cargo pants, and was carrying a gun. He did not provide a description of the van's driver to the operator.

¶ 9 Bezic also spoke to police after they arrived at the scene. He described the passenger, who was the man with the gun, as between 28 and 34 years old, between 5 feet 11 inches and 6 feet 2 inches tall, and having a dark complexion, brown eyes, and black hair. Bezic said the

passenger carried a semi-automatic handgun in his left hand. He described the driver of the van as a black male, but did not provide police with his height, weight, age, hairstyle, or clothing.

¶ 10 Duncan testified that, on the evening of May 10, 2014, she and Bezic went to the parking garage. The Jeep Bezic had rented was parked with its "nose in toward the wall." Duncan got into the passenger's seat of the Jeep. Approximately 20 or 30 seconds later, Bezic asked, "[W]hat are these guys doing?" and "that is when [Duncan] noticed the van parked behind [them] to the left, almost kind of blocking [them] in." Bezic kept looking over his shoulder. Duncan said, "[M]aybe they're just waiting for a car to pull out." She stopped paying attention and was doing something in her lap.

¶ 11 Bezic made a noise and Duncan "looked over and noticed somebody walking up to the car window." She could not see the man's face or anybody in the van from where she was sitting. The man approaching had a gun and tapped it on Bezic's window. Bezic asked, "[W]hat do you want? Do you want my wallet?" The man responded, "[G]et the f*** out of the car." The man repeated the command before Duncan and Bezic exited the car. Duncan ran to the elevators, passing behind the van. She pressed the button and waited. She could not see the Jeep, but Bezic joined her 20 or 30 seconds later. Duncan and Bezic went to the lobby and called 911.

¶ 12 Chicago police sergeant Edward Wodnicki testified that, in May 2014, he was assigned to an investigation of a vehicular hijacking in the River North area. His investigation identified Jackson as a person of interest.

¶ 13 On May 12, 2014, Wodnicki learned of an address associated with Jackson and drove to East 68th Street and South Calumet Avenue, a residential area. Wodnicki, in plain clothes and driving an unmarked car, passed by the house at the address. The 2014 Jeep and the van from the

hijacking were parked on the east side of Calumet, "across from Joe Jackson's house." Wodnicki parked at the northwest corner of 68th and Calumet and waited. At approximately 5 p.m., Wodnicki observed a man, identified in court as defendant, driving a Chevrolet Cruze eastbound on 68th with Jackson sitting in the passenger's seat. Defendant made a right onto Calumet, a one-way street going southbound, and stopped in front of the Jeep and van. Jackson got out of the Chevrolet and got into the driver's seat of the Jeep.

¶ 14 Wodnicki radioed detectives to alert them to the situation and drove behind the Chevrolet, not yet activating his "Mars" lights. Jackson pulled out of his parking spot and drove the Jeep southbound on Calumet. Defendant followed him in the Chevrolet. Wodnicki "activated [his] lights and sirens" and "was right behind [defendant]." Defendant and Jackson "stopped when they first got to the detectives that were blocking off the street." The detectives had their lights and sirens activated. After initially stopping, the two vehicles jumped the curb, drove over the lawns of the homes there, and went around the detectives blocking the street. Defendant and Jackson drove south along Calumet, ignored a stop sign, turned right, and went westbound onto 69th.

¶ 15 Wodnicki pursued the vehicles and was behind the Chevrolet. Defendant drove westbound at "a high rate of speed." Defendant and Jackson both ran a red light at 69th and Indiana Avenue. Defendant continued to drive through red lights and stop signs until eventually turning onto Interstate 94, with Wodnicki in pursuit. Defendant wove through traffic and took the off-ramp at 111th Street. He drove through a stop sign and was "driving very, very, fast." Wodnicki described the subsequent events:

> "[Defendant] drives right across 111th Street. Now there's, at the time there was this big median in the middle of the street. He drives right over that median, goes up on two wheels—it was frankly unbelievable. And—but the car keeps going, and he, he jumps right back on the expressway, and gets on the ramp back at 111th and the expressway and jumps on the expressway."

Wodnicki terminated the chase after defendant entered back onto the interstate.

¶ 16 At the police station, Wodnicki "ran" the license plate number of the Chevrolet and found the registered owner, who was later determined to be defendant's grandmother. Wodnicki looked through photos of people arrested with the same last name or home address as the owner. Wodnicki saw a photo of defendant and recognized him as the man driving the Chevrolet.

¶ 17 On cross-examination, Wodnicki testified that he never saw defendant get into or go near either the stolen Jeep or the van associated with the vehicular hijacking. The detectives' vehicles were not fitted with cameras and no video of the chase was captured. Wodnicki did not file any reports involving the events to which he testified.

¶ 18 Chicago police detective Swinkle testified that, in May 2014, he was assigned to a vehicular hijacking case that occurred in the River North area. On May 13, 2014, Swinkle and another detective interviewed defendant after giving him his *Miranda* rights. Defendant described his relationship with Jackson as "friendly." He told the detectives that, on May 10, 2014, he drove Jackson to "a parking garage near Navy Pier and dropped him off at a vehicle." Regarding the May 12, 2014, car chase, Swinkle stated that defendant told him he dropped Jackson off at his house and police tried to curb his vehicle.

¶ 19 On the following day, Swinkle again read defendant his *Miranda* rights and interviewed him with a different detective. Defendant told them that, on May 10, 2014, he took Jackson to a parking garage in a van. Defendant pulled the van near a Jeep, which Jackson got into and drove away "at a high rate of speed." Defendant followed Jackson in the van. Defendant "stated that he knew Jackson to carry guns, [but] that on that particular day, he did not see a gun." Afterward, Swinkle placed defendant in a lineup and Bezic identified defendant as the driver of the van involved in the hijacking.

¶ 20 The State introduced into evidence a surveillance video from the parking garage, which was taken from three different cameras. Swinkle testified that he had viewed videos from the parking garage at the time of the hijacking. The State played a video from the front entrance of the garage and Swinkle testified, "That shows the vehicle that was taken in the carjacking that was driven by Jackson and followed by the gray van driven by McCrea exiting the parking garage." This court has watched the video. On it, the Jeep can be seen breaking the gate and the van follows immediately.

¶ 21 On cross-examination, Swinkle confirmed that he spoke to Duncan on May 14, 2014, by phone and in person, did not show her a lineup, and did not note speaking with her in any reports. The parties stipulated that a representative of Avis would testify that the company rented the 2014 Jeep to Bezic, nobody else had permission to operate or possess it, and it had a value of $25,000 or greater. The State rested its case, and defendant made a motion for a directed finding, which the court denied.

¶ 22 Defendant testified that he and Jackson had been friends for a "year or two," but he would not call Jackson a "close" friend. Defendant fixed cars and Jackson had referred potential

customers to him. He denied ever seeing Jackson on May 10, 2014, or knowing that Jackson had stolen a car that day. At approximately 6:15 p.m. on May 10, 2014, he drove his 2014 Chevrolet Cruze downtown and picked up a friend, Markita Mitchell, from work at the Art Institute. The drive downtown took him "30 or 45 minutes." He then drove Mitchell from the Art Institute to her house at 63rd Street and Artesian Avenue. Defendant stayed there for "30 to 40 minutes" before going to the store to get supplies to Mitchell's car. He returned to Mitchell's home at approximately 8 or 9 p.m. Mitchell cooked defendant dinner, they ate, and he spent the night.

¶ 23 On May 12, 2014, defendant drove his Chevrolet to see a woman who was having starter issues and took Jackson with him. Afterward, defendant and Jackson got food and defendant dropped Jackson off at Jackson's home. Jackson got out of defendant's car and got into a Jeep. Defendant had never seen the Jeep before but knew Jackson to "drive[] a lot of different cars." The following exchange then took place:

> "Q. What happened after he got out and he got into the grey Jeep?
>
> A. He pulled out, I pulled out behind him, and I know is a bunch of police officers swarmed the block we were on, and guns was drawn, and chaos was everywhere.
>
> Q. When you saw the police officers what did you do?
>
> A. I was scared. I will not lie. He jumped the curb and took off, and they was chasing him, and the officer turned towards me, and I didn't know what he had in his hand, it was dark, and I took off.
>
> Q. When you saw the police, they had their lights going?
>
> A. Yes."

Defendant testified that he did not stop because he did not have a driver's license.

¶ 24 On May 13, 2014, police contacted defendant and he turned himself in. Defendant recalled speaking to Swinkle that day, but denied ever telling detectives that he had "driven a grey van to 400 North McClurg Court with Joe Jackson on May 10th." He denied telling detectives he followed the Jeep in the van at a high rate of speed out of the garage. He did not know Jackson to carry guns and never told officers that he knew Jackson to do so. On May 12, 2014, he was not aware of an alleged carjacking involving Jackson.

¶ 25 On cross-examination, defendant acknowledged that, when speaking with detectives, he never told them that he had picked Mitchell up on May 10, 2014.

¶ 26 Defendant confirmed that, on December 14, 2014, he called the mother of his child from jail. The following exchange took place between the prosecutor and defendant:

> "Q. Did you make a pre-paid phone call on the date of December 14th of 2014 at approximately 1:44 p.m. to the number [phone number]?
>
> A. That is the mother of my son, yes.
>
> Q. What is her name?
>
> A. Her name is Martice.
>
> Q. And did you have a conversation with Martice?
>
> A. Yes we were having a conversation. She was talking to me about what was going on, and I was telling her about what I heard from my lawyer and what my lawyer shared with me, information.
>
> Q. And did you tell her that you wanted to tell—to meet with the State, and you said, 'I know everything down to the gun and where all that shit is he

used to rob those people at. All I was going to do was help stupid ass and not get locked up, and we both got locked up.' Did you tell her that?

A. No. We had a conversation. We was arguing."

The State impeached defendant with a recording of the call and played it for the court. Defendant confirmed that it was his voice on the recording and that the recording was of a conversation he had. We have listened to the recording; it is consistent with the prosecutor's in-court representation of defendant's statements on the telephone call.

¶ 27 On redirect-examination, defendant confirmed that, on the recording of the phone call from jail that he also stated that he "didn't know anything about this robbery because [he was not] with Joe Jackson that day when it happened."

¶ 28 The trial court found defendant guilty of aggravated PSMV by accountability and aggravated fleeing and eluding. As to the other counts, the court gave defendant "the benefit of the doubt as to the gun" and found him guilty of the lesser-included offenses of aggravated vehicular hijacking and robbery. Defendant filed a motion for new trial. At sentencing, the court denied defendant's motion for a new trial. The court then merged the three aggravated vehicular hijacking counts and two robbery counts into one count of each and sentenced defendant to concurrent terms of four years' imprisonment for each of the four remaining counts and recommended that defendant participate in the impact-incarceration program, also known as "boot camp."

¶ 29 This timely appeal followed.

¶ 30 Defendant argues that the State failed to prove him guilty beyond a reasonable doubt of vehicular hijacking, aggravated PSMV, robbery, and aggravated fleeing and eluding and that his

convictions for both vehicular hijacking and aggravated PSMV violates the one-act, one-crime doctrine. We address each argument in turn.

¶ 31 Defendant first argues that the State presented insufficient evidence that he committed vehicular hijacking and aggravated PSMV by accountability. He does not dispute that he dropped Jackson off at the Jeep and that Jackson committed the hijacking. Rather, defendant argues that there was insufficient evidence that he "planned the offense with codefendant [Jackson] or that he had the intent to assist codefendant in committing the offense when he merely drove codefendant to the garage where codefendant exited and stole a car without [defendant's] participation." Defendant has abandoned the alibi defense he presented at trial.

¶ 32 On a challenge to the sufficiency of the evidence, we inquire " 'whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.' " (Emphasis omitted.) *People v. Davison*, 233 Ill. 2d 30, 43 (2009) (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)). In so doing, we draw all reasonable inferences in favor of the State (*Davison*, 233 Ill. 2d at 43) and we do not retry the defendant (*People v. Collins*, 106 Ill. 2d 237, 261 (1985)). The State must prove each element of an offense beyond a reasonable doubt. *People v. Siguenza-Brito*, 235 Ill. 2d 213, 224 (2009). We will not overturn a criminal conviction "unless the evidence is so improbable or unsatisfactory that it creates a reasonable doubt of the defendant's guilt." *People v. Givens*, 237 Ill. 2d 311, 334 (2010).

¶ 33 To prove vehicular hijacking as charged, the State had to prove defendant, or someone for whom he's accountable, in this case Jackson, knowingly took the Jeep from the person or the immediate presence of Bezic "by the use of force or by threatening the imminent use of force."

720 ILCS 5/18-3(a) (West 2014). To prove aggravated PSMV, the State had to prove that defendant (or someone for whose actions he's accountable) possessed the Jeep without authority and knew the vehicle was stolen. 625 ILCS 5/4-103(a)(1) (West 2014). A person commits aggravated PSMV if the unlawfully possessed motor vehicle has a value of $25,000 or more. 625 ILCS 5/4-103.2(a)(3) (West 2014).

¶ 34 A defendant is legally accountable for the criminal conduct of another person when, "either before or during the commission of an offense, and with the intent to promote or facilitate that commission, he or she solicits, aids, abets, agrees, or attempts to aid that other person in the planning or commission of the offense." 720 ILCS 5/5-2(c) (West 2014). To prove accountability, State is required to establish beyond a reasonable doubt that: (1) the defendant solicited, ordered, abetted, agreed, or attempted to aid another in the planning or commission of the crime; (2) the defendant's participation took place before or during the commission of the crime; and (3) the defendant had the concurrent intent to promote or facilitate the commission of the crime. *People v. Perez*, 189 Ill. 2d 254, 267-68 (2000).

¶ 35 To prove that the defendant possessed the intent to promote or facilitate the crime, the State must present evidence, which establishes beyond a reasonable doubt that either (1) the defendant shared the criminal intent of the principal, or (2) there was a common criminal design. *Id.* at 266. "A defendant's intent may be inferred from the nature of [his] actions and the circumstances accompanying the criminal conduct." *People v. Williams*, 193 Ill. 2d 306, 338 (2000). The "common design rule" provides that if two or more persons engage in a common criminal design, any acts in the furtherance of that common design committed by one party are

considered to be the acts of all parties to the design or agreement and all are equally responsible for the consequences of such further acts. *People v. Cooper*, 194 Ill. 2d 419, 434-35 (2000).

¶ 36 Further, while mere presence at the crime scene with knowledge that a crime was being committed is by itself insufficient to establish accountability (*In re W.C.*, 167 Ill. 2d 307, 338 (1995)), active participation has never been a requirement for guilt under an accountability theory (*People v. Taylor*, 164 Ill. 2d 131, 140 (1995)). A defendant may "aid and abet without actively participating in the overt act." *Id.* Words of agreement are unnecessary to establish a common purpose to commit an offense. *Perez*, 189 Ill. 2d at 267. Moreover, accountability may be established through a person's knowledge of and participation in the criminal scheme, even when there is no evidence that he directly participated in the criminal act itself. *Id.* In addition, evidence that a defendant voluntarily attached himself to a group "bent" on illegal acts, with knowledge of the group's plan, also supports an inference that the defendant shared the common purpose and will sustain his conviction under an accountability theory. *Id.* Similarly, the trier of fact may consider the defendant's presence during the offense, his flight from the scene, his continued affiliation with his companions, and his failure to report the crime. *Id.*

¶ 37 After reviewing the evidence in the light most favorable to the State, we conclude that there was sufficient evidence for a rational trier of fact to find defendant guilty of vehicular hijacking and aggravated PSMV under an accountability theory.

¶ 38 First, defendant's actions are indicative of his knowing participation in a criminal design. Bezic testified that, when the van pulled up, it was at an odd angle. Duncan testified it was "kind of blocking [them] in." Bezic identified defendant as the driver of the gray van that the man with the gun had gotten out of prior to taking the Jeep. At no time did defendant attempt to part ways

with Jackson or indicate any opposition to Jackson's actions. Bezic's testimony showed that defendant remained with Jackson after Jackson put on a hat and facemask and took the Jeep from Bezic. The surveillance videos shows defendant stayed with Jackson after the offense, following Jackson out of the garage after Jackson broke through the garage's gate. Defendant was even with Jackson two days later when Swinkle saw defendant driving Jackson in a Chevrolet Cruze and dropping Jackson off at Jackson's house, where the gray van and stolen Jeep were parked.

¶ 39 Defendant's statements following the robbery also support the trial court's finding that defendant knowingly participated in a criminal design. Swinkle testified defendant admitted he dropped Jackson off at a Jeep and followed Jackson out of the parking garage. Further, defendant's statement in a call from jail that "[a]ll [he] was going to do was help stupid ass and not get locked up, and [they] both got locked up" indicates both that he had knowledge of Jackson's criminal design prior to the offense and that he voluntarily participated in that design.

¶ 40 In light of the foregoing, a rational trier of fact could find defendant accountable for defendant's actions in the parking garage. To the extent defendant argues that his statement in the phone call that he "helped" Jackson "could have only been referring to giving codefendant [Jackson] a ride that day that the police found the stolen car," the trier of fact is not required to "search out all possible explanations consistent with innocence, and raise those explanations to a level of reasonable doubt." *In re Jonathon C.B.*, 2011 IL 107750, ¶ 60. This argument is not enough to raise a reasonable doubt regarding his guilt.

¶ 41 In reaching this conclusion, we are not persuaded by defendant's reliance on *People v. Estrada*, 243 Ill. App. 3d 177, 184-85. In *Estrada*, we reversed the defendant's murder conviction premised on accountability after finding no evidence that the defendant was aware of

the driver's (codefendant's) intent to shoot the victim, as defendant's actions prior to the crime indicate he was unaware of the codefendant's intentions prior to their occurrence. *Id.* Specifically, the defendant was exiting the car when the codefendant shot at the victim from the driver's seat. *Id.* We noted that, if the defendant in *Estrada* had known the driver's plan in advance, it was less likely he would have gotten out of the car. *Id.* Here, unlike *Estrada*, there was evidence that defendant knew Jackson was planning on committing a crime before Jackson stole the Jeep where Bezic testified that he saw defendant and Jackson sitting in the van, saw Jackson putting on a hat and "whatever else he had on," and then saw Jackson approaching the Jeep in a facemask. Moreover, unlike *Estrada*, there is evidence that defendant acted to facilitate a crime before it occurred where defendant parked the van behind the Jeep to prevent the Jeep from exiting before Jackson successfully completed his role in the crime. Accordingly, a trier of fact could find defendant accountable for defendant's actions in the parking garage.

¶ 42 Defendant next argues that the State presented insufficient evidence to prove him guilty of robbery by accountability beyond a reasonable doubt. Specifically, he argues that there was no evidence that Jackson ever obtained money from Bezic during the hijacking. The State responds that Bezic and Duncan's testimony at trial was sufficient for a rational trier of fact to find that Jackson took money from Bezic and, therefore, to find defendant guilty of robbery. To prove a defendant committed robbery, the State must prove "he or she knowingly takes property *** from the person or presence of another by the use of force or by threatening the imminent use of force." 720 ILCS 5/18-1(a) (West 2014). Here, Bezic testified that when Jackson tapped on the window and told him to get out of the car, Bezic "flashed" his wallet to Jackson. When the prosecutor asked Bezic if he had given anyone permission to "take the 2014 vehicle" or "take

any of the money," Bezic responded in the negative. Drawing all reasonable inferences in favor of the State (*Davison*, 233 Ill. 2d at 43), we conclude that a rational trier of fact could infer that defendant took Bezic's money from him before he dispossessed Bezic of the Jeep. Accordingly, a rational trier of fact could have found defendant guilty of robbery beyond a reasonable doubt.

¶ 43 Defendant argues, and the State agrees, that that there was insufficient evidence to prove defendant guilty of aggravated fleeing and eluding a police officer. We accept the State's concession. Where proof of an element of the crime is wholly lacking, it follows that the conviction cannot stand. See *People v. Robinson*, 2013 IL App (2d) 120087, ¶ 11. A conviction for the offense of aggravated fleeing or attempting to elude a peace officer requires that the State prove the pursuing officer was wearing a police uniform. 625 ILCS 5/11-204(a) (West 2014); see *People v. Williams*, 2015 IL App (1st) 133582, ¶ 14 ("[T]he plain language of section 11-204(a) of the Illinois Vehicle Code requires a pursuing officer be in police uniform for a defendant to be found guilty of fleeing or attempting to elude a peace officer."). Here, Sergeant Wodnicki testified that, although his lights and sirens were on during the car chase involving defendant, he was in plain clothes. There is no evidence in the record that any of the other police officers involved in the car chase involving defendant on May 12, 2014, were in uniform either. We therefore agree with the parties and reverse, finding the State failed to satisfy an essential element of the offense—that the police officers pursuing defendant were in uniform.

¶ 44 The defendant's final argument is that, pursuant to the one-act, one-crime doctrine, his conviction for aggravated PSMV should be vacated because that offense was based on the same act as his vehicular hijacking conviction. The State responds that they were not the same act and, therefore, are not subject to the one-act, one-crime doctrine.

¶ 45 The defendant acknowledges that he forfeited this issue by failing to raise it in the trial court proceedings or in a post-sentencing motion, but argues, and the State agrees, that review under the plain-error doctrine is warranted. We agree. "[F]orfeited 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). Whether a conviction should be vacated under the one-act, one-crime doctrine is a matter which we review *de novo*. *People v. Almond*, 2015 IL 113817, ¶ 47.

¶ 46 Under the one-act, one-crime doctrine, multiple offenses cannot stand "when those offenses are all based on precisely the same physical act." *People v. Coats*, 2018 IL 121926, ¶ 11 (citing *People v. King*, 66 Ill. 2d 551, 566 (1977)). To determine whether simultaneous convictions violate the one-act, one-crime doctrine, this court performs a two-step analysis. *Id.* ¶ 12. First, it must be determined whether the defendant's conduct in committing the two offenses consisted of multiple physical acts or a single physical act. *Id.* If it took multiple physical acts to commit the two offenses, both convictions can stand even if the acts were interrelated. *People v. Rodriguez*, 169 Ill. 2d 183, 188-89 (1996). "Multiple convictions are improper," however, "if they are based on precisely the same physical act." *People v. Miller*, 238 Ill. 2d 161, 165 (2010).

¶ 47 If the criminal conduct involved multiple physical acts, we proceed to the second step of the analysis, which is to ask whether one offense is a lesser-included offense of the other offense. *Coats*, 2018 IL 121926, ¶ 11. The one-act, one-crime doctrine forbids simultaneous convictions of the greater offense and the lesser-included offense. *Miller*, 238 Ill. 2d at 165. When deciding whether a charged offense is a lesser-included offense of another charged offense, we employ the

abstract-elements approach. *Coats*, 2018 IL 121926, ¶ 30 (citing *Miller*, 238 Ill. 2d at 166). Under the abstract-elements approach, we compare the statutory elements of the two offenses. *Miller*, 238 Ill. 2d at 166. If all the elements of one offense are included in the second offense and if the first offense contains no element that the second offense lacks, the first offense is a lesser included offense of the second. *Id.* Pursuant to our *de novo* review (*Nunez*, 236 Ill. 2d at 493), we will apply this two-step analysis to the offenses of vehicular hijacking and aggravated PSMV.

¶ 48 First, we must determine whether the conduct by which defendant committed these two offenses consisted of the same physical act as opposed to multiple physical acts. See *Coats*, 2018 IL 121926, ¶ 11. The vehicular hijacking statute states:

> "A person commits vehicular hijacking when he or she knowingly takes a motor vehicle from the person or the immediate presence of another by the use of force or by threatening the imminent use of force." 720 ILCS 5/18-3(a) (West 2014).

This crime thus includes two acts: "take[ing] a motor vehicle" and using "force or by threatening the imminent use of force." *Id.*

The aggravated PSMV statute provides it is a violation for:

> "[A] person not entitled to the possession of a vehicle having a value of $25,000 or greater to receive, possess, conceal, sell, dispose or transfer the vehicle, knowing that the vehicle has been stolen or converted." 625 ILCS 5/4-103.2(a)(3) (West 2014).

The aggravated PSMV statute thus requires only one physical act, that is to "receive, possess, conceal, sell, dispose or transfer" a stolen vehicle. 625 ILCS 5/4-103.2(a)(3) (West 2014).

¶ 49 Accordingly, the conduct comprising vehicular hijacking and aggravated PSMV does not consist of precisely the same physical act; rather, the conduct consists of multiple physical acts, *i.e.*, taking a motor vehicle and possessing a vehicle. See *Rodriguez*, 169 Ill. 2d at 188-89. Therefore, the first step of the *Miller* analysis does not prevent simultaneous convictions for vehicular hijacking and aggravated PSMV. See *Miller*, 238 Ill. 2d at 165.

¶ 50 The second step of the analysis asks whether aggravated PSMV is a lesser-included offense of vehicular hijacking. *Coats*, 2018 IL 121926, ¶ 30.

¶ 51 In the instant case, the State argues that offense of "[a]ggravated possession of a stolen motor vehicle contains none of the same elements as vehicular hijacking" and, therefore, defendant may be properly convicted of both without running afoul of the one-act, one-crime doctrine.

¶ 52 The elements to the offense of aggravated PSMV are that the defendant possessed a vehicle, that the defendant was not entitled to possession of the vehicle, that the defendant knew that the vehicle was stolen, and that the vehicle have a value of $25,000 or greater. 625 ILCS 5/4-103.2(a)(3) (West 2014). The elements to the offense of vehicular hijacking are the taking of a motor vehicle from a person by using force or threatening the imminent use of force (720 ILCS 5/18-3 (West 2014).

¶ 53 We addressed a similar issue in *People v. Eggerman*, 292 Ill. App. 3d 644 (1997), which considered whether PSMV was a lesser-included offense of vehicular hijacking and concluded:

> "Based upon these statutory provisions, we agree that the offense of possession of a stolen motor vehicle is a lesser included offense of vehicular hijacking and aggravated vehicular hijacking. The taking of a motor vehicle, as required in the

> vehicular hijacking offenses, includes unauthorized possession and knowledge that the vehicle is stolen since the person charged with the hijacking is the one who has taken the vehicle by force or threat of force." *Eggerman*, 292 Ill. App. 3d at 648.

However, unlike *Eggerman*, defendant here was convicted of *aggravated* PSMV, which includes the added element not present in vehicular hijacking that the vehicle have a value of $25,000 or greater. This element is not included in the offense of vehicular hijacking. Accordingly, aggravated PSMV is not a lesser-included offense of vehicular hijacking and the second step of the *Miller* analysis does not prevent simultaneous convictions for both offenses. See *Miller*, 238 Ill. 2d at 166.

¶ 54 In sum, the simultaneous convictions of aggravated PSMV and vehicular hijacking do not violate the one-act, one-crime doctrine because the criminal conduct that was the basis of those offenses consisted of multiple physical acts instead of precisely the same physical act and, under the abstract-elements approach, aggravated PSMV is not a lesser included offense of vehicular hijacking.

¶ 55 Based on the foregoing, we affirm the judgment of the circuit court of Cook County with respect to defendant's convictions for vehicular hijacking, robbery, and aggravated PSMV. We reverse the judgment of the circuit court regarding the finding of guilt for aggravated fleeing and eluding a police officer.

¶ 56 Affirmed in part and reversed in part.