

2018 IL App (1st) 153292-U

No. 1-15-3292

Order filed June 15, 2018

Fifth Division

**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).

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST DISTRICT

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THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 14 CR 2844
	)	
ROBERT PERDUE,	)	Honorable
	)	James B. Linn,
Defendant-Appellant.	)	Judge, presiding.

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PRESIDING JUSTICE REYES delivered the judgment of the court.  
Justices Hall and Lampkin concurred in the judgment.

**ORDER**

¶ 1 *Held:* Defendant's convictions for robbery and aggravated battery are affirmed where each offense was based on a separate act.

¶ 2 Following a bench trial, defendant, Robert Perdue was convicted of robbery (720 ILCS 5/18-1(a) (West 2014)) and aggravated battery (720 ILCS 5/12-3.05(c) (West 2014)). He was sentenced to respective, concurrent terms of 12 and 5 years' imprisonment. On appeal, defendant contends that his conviction for aggravated battery must be vacated under the one-act, one-crime

rule because it was based on the same physical act as his robbery conviction. For the following reasons, we affirm.

¶ 3 Defendant and co-defendant Michael Hubbert were charged<sup>1</sup> by indictment (14 CR 2845) with robbery, aggravated battery and unlawful restraint of Sederick Person. Count 1 of the indictment charged defendant with robbery in that he “knowingly took property, to wit: a jacket, cap, and cell phone, from the person or presence of Sederick Person, by the use of force or by threatening the imminent use of force.” Count 2 of the indictment charged defendant with aggravated battery in that he “in committing a battery, other than by the discharge of a firearm, knowingly caused bodily harm to Sederick Person, to wit: Michael Hubbert and [defendant] struck Sederick Person about the body, while they were on or about a public way, to wit: North Spaulding Avenue, Chicago[.]” Defendant waived his right to a jury trial and the case proceeded to a bench trial. Because defendant does not challenge the sufficiency of the evidence to sustain his convictions, we recount the facts only to the extent necessary to resolve the issue raised on appeal.

¶ 4 The facts adduced at trial showed that, on January 25, 2014, about 6:15 p.m., the victim, Sederick Person, was walking near the 600 block of North Spaulding Avenue. Person, who was wearing headphones and listening to music, saw a gray car pass him on the street. The car stopped about two houses ahead of him and three passengers exited the car. Person described one of the individuals as being “light skinned with dreads,” and identified defendant, in court, as this individual. When the passengers exited the car, Person removed his headphones and continued

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<sup>1</sup> Defendant was also charged by two separate indictments (14 CR 2843 & 14 CR 2844) with additional offenses that occurred on the same date as the robbery and aggravated battery of Person. Defendant’s cases were tried simultaneously. Only the facts that pertain to defendant’s robbery and aggravated battery convictions are included in this order.

walking. Defendant ran up to Person and hit him in the back of the head. Person fell to the ground and “balled up.” Defendant and the other two men then began punching Person and going through his pockets. Person testified that he had his money and cell phone in his pockets. Defendant took Person’s cell phone and ran back to the car. Person saw the car proceed towards Chicago Avenue.

¶ 5 Shortly after the incident, Person saw a police car on the next corner. Person approached the police officer and explained what had just happened. The officer relayed a description of the car involved in the robbery over the police radio. Person estimated the time from the incident to his reporting it to the police officer was about a minute. Approximately five minutes later, Person was notified by the police to come to the intersection of Spaulding and Chicago. There, Person saw the gray car and defendant. Person identified both defendant and the car at the scene and one of the officers handed Person his cell phone.

¶ 6 Chicago police officer Vincent Macias testified that he was approached by Person, who explained that he had been robbed. Person gave Macias a description of the three men that beat and robbed him, and a description of the vehicle that was used in the incident. Officer Kim, along with his partner, arrived at the scene and Macias gave Kim the description provided by Person. Kim and his partner began touring the area. Kim saw a silver Pontiac Grand Prix with several occupants in the 3200 block of West Chicago. When Kim approached the vehicle, he noticed defendant in the driver’s seat. Kim recovered four cell phones from the vehicle. Person arrived on the scene and identified defendant, the car and his cell phone. Defendant was subsequently arrested and gave a statement to detective Kevin Bor. In the statement, defendant admitted being present for the robbery, but denied exiting the car.

¶ 7 At the conclusion of the evidence, the trial court found defendant guilty of the robbery, aggravated battery and unlawful restraint of Person. In doing so, the court noted “looking at all the evidence as it relates to this case in its entirety, I believe the government has met their burden of proof beyond a reasonable doubt.”

¶ 8 After hearing factors in aggravation and mitigation, the trial court merged the unlawful restraint count with the robbery and sentenced defendant to concurrent terms of 12 years’ imprisonment for the robbery and 5 years’ imprisonment for the aggravated battery.

¶ 9 On appeal, defendant contends that his conviction for aggravated battery should be vacated because it violates the one-act, one-crime rule where it is based on the same physical act as his robbery conviction. In setting forth this argument, defendant acknowledges that he failed to preserve the issue for appeal, but argues that it is reviewable under the second prong of the plain error doctrine because the error affects his substantial rights.

¶ 10 The State concedes, and we agree, that the alleged violation of the one-act, one-crime principle affects the integrity of the judicial process and thus it is reviewable under the second prong of the plain error doctrine. *People v. Nunez*, 236 Ill. 2d 488, 493 (2010) (citing *People v. Artis*, 232 Ill. 2d 156, 167-68 (2009)). However, before considering whether the plain-error exception to the rule of forfeiture applies, we must first determine whether any error occurred. *People v. Herron*, 215 Ill. 2d 167, 187 (2005). Here, we find that it did not.

¶ 11 The one-act, one-crime principle prohibits a defendant from being convicted of multiple offenses based on the same physical act. *People v. King*, 66 Ill. 2d 551, 566 (1977). To determine whether simultaneous convictions violate the one-act, one-crime rule, this court performs a two-step analysis. *People v. Miller*, 238 Ill. 2d 161, 165 (2010). First, we determine whether the

defendant's conduct in committing the two offenses consisted of multiple physical acts or a single physical act. "Multiple convictions are improper if they are based on precisely the same physical act." *Id.* An "act" has been defined as "any overt or outward manifestation that will support a separate conviction." *King*, 66 Ill. 2d at 566. If we determine that the offenses stem from separate acts, we move on to the second step of the analysis and determine whether any of the offenses are lesser-included offenses. *Miller*, 238 Ill. 2d at 166. Whether a conviction should be vacated under the one-act, one-crime principle is a question of law that is reviewed *de novo*. *People v. Almond*, 2015 IL 113817, ¶ 47.

¶ 12 In this case, defendant does not argue that his aggravated battery conviction is a lesser-included offense of his robbery conviction. Rather he contends that his conviction for aggravated battery is based on the same physical act as his robbery conviction. Therefore, we review only whether the two convictions are based on the same physical act.

¶ 13 Initially, we note that, contrary to defendant's argument that the State did not attempt to distinguish two separate acts necessary to sustain a conviction for each offense, the record shows that the State charged defendant with robbery and aggravated battery based on different physical acts. Specifically, Count 1 charged defendant with robbery in that he knowingly took property from Person "by the use of force or by threatening the imminent use of force." Count 2 charged defendant with aggravated battery in that he "in committing a battery, \*\*\*, knowingly caused bodily harm to Sederick Person, to wit: \*\*\* [defendant] struck Sederick Person about the body, while they were on or about a public way, to wit: North Spaulding Avenue, Chicago[.]" Therefore, the charging instrument sufficiently differentiated between the types of acts for each crime: the force used in the robbery and striking on a public way for aggravated battery. See

*People v. Crespo*, 203 Ill. 2d 335, 343-45 (2001) (To sustain multiple convictions, the charging instrument must indicate that the State intends to treat the defendant's conduct as separate and multiple acts). As such, we decline defendant's invitation to deem that his convictions arose from the same physical act. Rather, we consider the evidence presented at trial to determine whether defendant's convictions were based on the same physical act.

¶ 14 Here, we find that the trial court did not err in convicting defendant of both robbery and aggravated battery where the evidence presented at trial demonstrated that defendant committed two separate acts. Person testified that, as he was walking on Spaulding Avenue, defendant hit him in the head, causing him to fall to the ground. After being knocked to the ground, Person "balled up" and defendant and his co-defendants then began punching Person about his body. Defendant also went through Person's pockets and took his cell phone. The act of striking Person in the head while on the public way satisfied the elements of the aggravated battery charge. Separate and apart from defendant's act of hitting Person in the head, defendant also began hitting Person about his body and took his cell phone, thus satisfying the elements of robbery. See *People v. Pearson*, 331 Ill. App. 3d 312, 321-22 (2002) (upholding defendant's robbery and aggravated battery convictions where the defendant's conduct of grabbing the victim's purse and knocking her to the ground constituted two separate acts).

¶ 15 Defendant nevertheless argues that the evidence presented did not show that he committed two acts because Person did not describe a time interval between the punch in the head and the robbery. However, "two separate acts do not become one solely because of proximity in time." *Pearson*, 331 Ill. App. 3d at 322 (citing, *People v. Myers*, 85 Ill. 2d 281, 287-88 (1981)). Moreover, multiple acts may be found even where the acts are interrelated. *People v.*

*Dixon*, 91 Ill. 2d 346, 355 (1982); see also *People v. Rodriguez*, 169 Ill. 2d 183, 188-89 (1996) (even where two offenses share an act in common, multiple convictions are permissible if the defendant commits a second overt manifestation which supports a second offense). Here, as mentioned, defendant committed multiple acts where the evidence showed that he first struck Person in the head causing him to fall to the ground and then punched him while he was on the ground, went through his pockets, and ultimately took his cell phone. Accordingly, the trial court did not err in convicting defendant of aggravated battery and robbery.

¶ 16 In reaching this decision, we are not persuaded by defendant's reliance on *In re Samantha V.*, 234 Ill. 2d 359 (2009). In *Samantha V.*, the juvenile respondent was charged with multiple counts of aggravated battery based on a beating that occurred in front of the victim's home. The court found that the State did not differentiate between strikes or blows to the victim when drafting the charging instrument. Instead, "respondent was charged with the same conduct under two different theories of criminal culpability." *Id.* at 377. The court also found that during the trial, "the State failed to elicit any testimony which discussed specific strikes or blows that were administered to the victim by respondent." *Id.* Here, unlike *In re Samantha V.*, the State sufficiently differentiated between defendant's actions and elicited testimony from Person regarding defendant's conduct of striking him on the head, followed by repeated blows to his body while he was on the ground, and then taking his phone.

¶ 17 For the reasons stated, we affirm the judgment of the circuit court of Cook County.

¶ 18 Affirmed.