

No. 1-17-1502

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).

IN THE INTEREST OF DEONCIO D., A Minor,)	Appeal from the
)	Circuit Court of
)	Cook County
(THE PEOPLE OF THE STATE OF ILLINOIS)	
)	
Petitioner-Appellee)	No. 16 JD 2259
v.)	
)	
DEONCIO D., A Minor,)	Honorable
)	Linda J. Pael,
Respondent-Appellant))	Judge Presiding.

PRESIDING JUSTICE PIERCE delivered the judgment of the court.
Justices Mikva and Griffin concurred in the judgment.

ORDER

¶ 1 *Held:* Respondent’s convictions for aggravated unlawful use of a weapon and unlawful possession of a firearm are vacated under the one-act, one-crime rule and merged in the remaining count of aggravated unlawful use of a weapon.

¶ 2 Respondent, Deoncio D., was adjudicated delinquent for two counts of aggravated unlawful use of a weapon (AUUW) and unlawful possession of a firearm (UPF). Count 1 alleged that respondent committed the offense of AUUW based on respondent’s possession of a

weapon without a valid firearm owner's identification (FOID) card (720 ILCS 5/24-1.6(a)(1), (3)(a) (West 2016)). Count 2 alleged that respondent committed the offense of AUUW in that he was in possession of a gun while not in his home, was under the age of 21 and was not engaged in lawful activities under the Wildlife Code (720 ILCS 5/24-1.6(a)(1), (3)(I) (West 2016)). In count 3, respondent was charged with UPF for being under 18 and possessing a firearm of a size which may be concealed upon on the person (720 ILCS 5/24-3.1(a)(1) (West 2016)).

Respondent was sentenced to two years probation.

¶ 3 On appeal respondent argues that the State failed to prove him guilty beyond a reasonable doubt of counts 1 and 3, and, in the event we find counts 1 and 3 were proven beyond a reasonable doubt, alternatively one of his AUUW adjudications and his adjudication for UPF should be vacated pursuant to the one-act, one-crime rule. For the following reasons, we vacate respondent's adjudication for AUUW under count 1 and his adjudication for UPF under count 3, merge counts 1 and 3 into count 2, and affirm the AUUW adjudication of delinquency on count 2.

¶ 4 **BACKGROUND**

¶ 5 A full recitation of the underlying facts giving rise to this appeal is not necessary to our disposition of this appeal. On October 7, 2016, Officer Hernandez saw respondent running with a gun in his hand. Officer Hernandez and his partner Officer David, who were on patrol after a report of multiple gunshots in the area, saw respondent bend down to retrieve the gun. As Officer Hernandez got out of his vehicle, respondent fled. Officer Hernandez chased respondent and eventually caught up with him. Officer David stayed with the gun. Defendant was arrested and charged with two counts of AUUW and one count of UPF.

¶ 6 After a trial, respondent was adjudicated delinquent on both AUUW charges and the UPF charge. He was sentenced to two years probation. This appeal followed.

¶ 7 ANALYSIS

¶ 8 Respondent does not challenge the sufficiency of his AUUW adjudication on count 2. See 720 ILCS 5/24-1.6(a)(1), (a)(3)(I) (West 2016). Respondent makes two claims related to counts 1 and 3. First, he claims that the State did not prove beyond reasonable doubt count 1, AUUW based on his possession of a firearm without having been issued a FOID card (720 ILCS 5/24-1.6(a)(1), (a)(3)(C) (West 2016)), and count 3, UPF based on his possession of a firearm of a “size which may be concealed upon the person.” 720 ILCS 5/24-3.1(a)(1) (West 2016). Respondent’s other argument is that he was convicted of two counts of AUUW and one count of UPF based on the single act of possessing one firearm, which violates the one-act, one-crime rule. Therefore, respondent argues, this court should vacate one count of AUUW and the one count of UPF.

¶ 9 The parties agree that, based on the one-act, one-crime doctrine, respondent's possession of one gun is subject to only one adjudication of delinquency, not three. See *People v. Johnson*, 237 Ill. 2d 81, 97 (2010) (one-act, one-crime rule prohibits multiple convictions “that are based upon precisely the same single physical act”). Under the one-act, one-crime rule, if a defendant is convicted of more than one offense arising from the same single physical act, the conviction for the less serious offense must be vacated. *Id.* The rule applies equally in juvenile delinquency proceedings. See *In re Samantha V.*, 234 Ill. 2d 359, 375 (2009). Because respondent did not raise this issue in the trial court, we review this claim for plain-error. *In re Samantha V.*, 234 Ill. 2d 359, 378-79 (2009).

¶ 10 Respondent and the State further agree that all three offenses are class 4 felonies with the same punishments. Therefore, it is impossible to differentiate which of these offenses is the more serious. *In re Tyreke H.*, 2017 IL App (1st) 170406, ¶ 23. The parties also agree that, rather than remand this matter to the trial court to determine which offense is the most serious, which is “an impossible task,” we should vacate one of the AUUW adjudications and the UPF adjudication and merge those two counts into the remaining AUUW adjudication. *Id.* (citing *People v. Price*, 221 Ill. 2d 182, 194 (2006) (supreme court vacated one of two theft convictions rather than remand to trial court, where punishments were same and where defendant “expressed no preference” for which of two to vacate); *People v. Gordon*, 378 Ill. App. 3d 626, 642 (2007) (where three DUI convictions were equally serious, merging two convictions with third conviction without remand to trial court)).

¶ 11 We agree with the parties that one of the AUUW adjudications and the UPF adjudication should be vacated and merged into the second AUUW adjudication. The relief respondent seeks is that only one delinquency adjudication should be entered, not three. We can furnish this relief without commenting on respondent’s second issue relating to the sufficiency of the evidence on count 1, AUUW for failure to have a FOID card (720 ILCS 24-1.6(a)(1), (a)(3)(C) (West 2016), and UPF for possessing a handgun that cannot be concealed on a person, by vacating the delinquency adjudications under count 1 and count 3 and merging those counts into the count 2 AUUW adjudication under section 24-1.6(a)(1), (a)(3)(I). By doing so, respondent is afforded the relief he requested, only under the one-act, one-crime rule.

¶ 12

CONCLUSION

¶ 13 For the foregoing reasons, we vacate respondent’s adjudication of delinquency on counts

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1 and 3, and merge these counts into count 2. We affirm the adjudication of delinquency on count 2.

¶ 14 Affirmed in part; vacated in part.