2019 IL App (1st) 153468-U
No. 1-15-3468
Order filed March 4, 2019

First Division

IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court of
	)	Cook County.
Plaintiff-Appellee,	)	
	)	No. 14 CR 6251
v.	)	
	)	Honorable Gregory R. Ginex,
BRIAN MITCHELL,	)	Judge presiding.
	)	
Defendant-Appellant.	)	

JUSTICE GRIFFIN delivered the judgment of the court.
Justices Pierce and Walker concurred in the judgment.

ORDER

¶ 1 *Held*: Defendant's conviction for residential burglary was not erroneous. His 15-year prison sentence for residential burglary was not excessive. His sentence for unlawful restraint must be vacated for violating the one-act-one-crime rule

¶ 2 Following a 2015 bench trial, defendant Brian Mitchell was convicted of residential burglary, criminal damage to property, and unlawful restraint and sentenced to concurrent prison terms of 15, 3, and 3 years, respectively. On appeal, defendant contends that he was erroneously convicted of residential burglary on grounds not charged or presented at trial. He also contends that his 15-year prison sentence for residential burglary was excessive. Lastly, he contends that

his unlawful restraint conviction should be vacated under the one-act-one-crime rule. As explained below, we vacate defendant's sentence for unlawful restraint, merge the unlawful restraint count into his residential burglary conviction, and otherwise affirm.

¶ 3 Defendant was charged with offenses allegedly committed on or about March 23, 2014. He was charged with two counts of residential burglary (720 ILCS 5/19-3(a) (West 2014)) for knowingly entering the dwelling of Kelly Moore at a specified address with the intent to commit therein the felonies of unlawful restraint and criminal damage to property. He was charged with unlawful restraint (720 ILCS 5/10-3(a) (West 2014)) for knowingly and without legal authority detaining Moore. He was charged with criminal damage to property (720 ILCS 5/21-1(a)(1) (West 2014)) for knowingly damaging Moore's property at the specified address – "her condominium and various items of her furniture therein" – with damages exceeding $300 but not exceeding $10,000.

¶ 4 Before trial, the State sought to amend the residential burglary charges to allege that defendant knowingly entered or remained in Moore's dwelling. Defense counsel made no objection and "waive[d] any formal defects [and] reswearing."

¶ 5 Also before trial, the State filed a motion to introduce other-crimes evidence at trial. The State alleged that defendant had, about an hour or two before the incident at Moore's home on the early morning of March 23, 2014, tried to forcibly enter the home of Rebecca Bolton, his former girlfriend. Specifically, the State alleged that defendant banged on a window of Bolton's home and demanded in vulgar language that she admit him, and about an hour later was at Moore's home demanding in vulgar language that she admit him to her bedroom. The State argued that this evidence would show defendant's "intent, knowledge, continuing narrative,

absence of mistake, dislike of victims, and the course of the investigation." At the hearing on the motion, defense counsel did not object to evidence of "the course of conduct that happened earlier that day," but requested that the State describe with particularity what evidence it would seek to admit. The State replied that its evidence would not go beyond Bolton's grand jury testimony in this case. The court granted the motion to admit other-crimes evidence.

¶ 6 At trial, Kelly Moore testified that she came home at about 3 a.m. on March 23, 2014, and ate a meal before going to bed. She was awakened at about 5:50 a.m. by her burglar alarm. She locked her bedroom door and telephoned 911. Inside her home but outside her bedroom, she heard "a lot of *** loud crashing and banging" from "at least one person in my home *** doing some sort of damage." At some point, a man outside her bedroom door said "Kelly, it's Brian. Open the f***ing door. It's Brian." She recognized the voice but was not "a hundred percent certain." She did not open the door, and the man tried to force it open, but she "barricaded" it with her body to prevent his entry. When the police arrived, she had to leave her bedroom to admit them to her unit. The police found defendant lying on a futon in her home office and arrested him.

¶ 7 Moore was acquainted with defendant, as he was a friend of her ex-boyfriend, Yaeger Hobson. Defendant had been in her home previously, with Hobson and others. However, he did not have permission to be in her home on the night in question. Moore walked through her home after the police arrived and noticed considerable damage that was not there before she went to bed, including a broken closet door, two broken dining room chairs, broken picture frames, a broken ceiling fan, and a hole in the wall. Clothing and books were strewn about the home, and

had not been when she went to bed. She testified that her front door and bedroom door were both damaged. She later spent about $1900 to repair the damage.

¶ 8 Moore identified various photographs as accurately reflecting the state of her home after the police arrived and not reflecting its state when she went to bed. One photograph showed her front door with bootprints on it and the lock broken open. This damage was not there when she came home, and she had not given anyone permission to make bootprints on her door. Photographs of her bedroom door showed that the area around the door handle was severely cracked or bashed in, with the cracks extending through the width of the door and damaging the lock. Moore also identified various receipts as reflecting her expenses in repairing the damage to her home, including $500 for labor in addition to materials. Lastly, she identified a recording of her 911 call as accurately reflecting that call, and the recording was entered into evidence.

¶ 9 On cross-examination, Moore testified that she did not see Hobson at any time that night. She sent Hobson a text message on the early morning in question, and received several calls from him, but she did not answer Hobson's calls, deleted the text message, and blocked Hobson on her cellphone before going to bed. She had broken up with Hobson several months before the night in question and had "a problem" with him, but had no "problem" with defendant before that night. She did not hear her front door being kicked open. She recalled Hobson wearing only sneakers in the past, and could not recall if defendant was wearing boots or sneakers that night. She did not see the intruders in her home but heard their voices and the breakage they were causing, and she was "very scared." She believed there were two intruders, and she told the 911 operator so. She did not recognize defendant's voice until he tried to enter her bedroom, and she

did not recognize Hobson's voice. She told the police that one of the voices "may have been Hobson."

¶ 10 On redirect examination, Moore testified that she did not want anyone to break her door or trap her in her bedroom that night.

¶ 11 Police Sergeant Edward Clancy testified that he and other officers responded to Moore's 911 call. Moore admitted them into her unit, and they searched it. Defendant was found on a futon in a home office. He seemed to be asleep, so Clancy woke him. It took about a minute to do so. After a brief struggle, defendant was arrested. Clancy did not recall any plaster or drywall on defendant's hands or clothing, and Clancy could not recall what kind of shoes he was wearing. However, the inventory of his property upon arrest included a pair of sneakers.

¶ 12 The State rested its case without calling Bolton as a witness or otherwise presenting other-crimes evidence concerning the incident at Bolton's home described in its pretrial motion.

¶ 13 Following closing arguments, the court announced its decision, finding "Moore's testimony to be clear, concise, and extremely credible." After noting that "this is a largely circumstantial case," the court found that:

> "Moore was candid. She didn't see any particular individual, particularly the defendant, break any furniture, break her photographs, cause a hole in the wall, but she heard someone in the apartment. She testified that it possibly was two people, but she said that she knew the defendant. She was corroborated within minutes of the fact that she let the police in, probably less than a minute, seeing the defendant laying on a futon. Yes, that's all circumstantial, but there is some direct evidence. And that direct evidence is 'Kelly open the door. Open the f***ing door. It's Brian,' and words to that effect."

¶ 14 The court found that, regardless of the number of intruders, "there still is an issue of accountability, and circumstantially there is no question about that, that the defendant was present, this damage occurred, and if he was one of the people there and the evidence indicates that he is, then he is accountable for the actions of the others." After discussing in detail the photographic evidence of damage to Moore's home, the court found that the marks on the door were from a shoe rather than a boot. The damage to the bedroom door was "clearly evidence that someone attempted to get into that bedroom. Those are clearly evidence that someone intended to find the person in the bedroom, Ms. Moore. Those are also clearly evidence that this is not an accident, and there is also clearly evidence that the person who did this *** was someone by the name of Brian."

¶ 15 The court noted Moore's testimony to "different damage that was caused [and] the amount of damage was in the amount of $1800 or more based on the materials to replace as well as the handyman or person hired to do the work." The court found that Moore's 911 call mentioned someone kicking in the door, which was corroborated by the shoeprints and damage to the door, mentioned that it sounded like the intruders were possibly two men, and mentioned that "it is Brian. I know him." The court found that the "damage that's caused here that the victim testified to, again, is a significant amount of damage." It found that "[i]t is obvious by the nature of the entry and by the nature of the facts that Brian clearly forced [Moore] to remain there and lock herself in the bedroom and restrained her." The court also found that "it's obvious to the court that there is an attempt to get at the victim. And based on the damage that was caused, as well as somewhat of the ransacking of the closets, clothing, and other items, books strewn about the floor, that's circumstantial evidence of intent to commit a theft therein." The

court concluded that "the State has proven each and every charge beyond a reasonable doubt. The defendant will be found guilty of all four counts."

¶ 16 Defendant's posttrial motion challenged the sufficiency of the evidence. Specifically, he argued that he was found guilty of residential burglary on an accountability basis but the "State provided no evidence that [d]efendant did anything to promote or abet the [r]esidential [b]urglary." He argued that "someone broke into [Moore's] apartment, and began trashing the inside of the apartment." Defendant argued that, while he "was passed out inside the apartment" when the police arrived, there "was no evidence that [he] broke into the apartment, that he trashed the apartment, or even when [he] entered the apartment."

¶ 17 Following arguments, the court denied the posttrial motion. In reiterating the trial evidence and its findings at length, the court noted the extensive damage to Moore's property including Moore's expense of $1800-1900 to repair the damage. The court also noted that Moore "testified specifically regarding the unlawful restraint" where "she was afraid to leave the bedroom and come out" as a result of defendant yelling at the bedroom door for her to open it.

¶ 18 The July 2015 presentencing investigation report (PSI) indicated that defendant was born in 1979 and had several prior convictions including robbery in 1998 and batteries in July 2002, November 2002, and 2006. He received seven years' imprisonment for the robbery, with a recommendation for impact incarceration, and served 40 months in prison after impact incarceration was revoked. His parents divorced when he was an infant, he lived as a child with his mother and a stepfather, and he reported no childhood abuse. He did not complete high school but received his GED. He worked as a laborer from 2011 onward, and was self-employed as a painter and drywall installer from 2001 to 2011. He has two children, in their mother's

custody, and he admitted that he "has not seen the children in the past two years so he has stopped paying" child support. He reported good physical health and no history of mental health issues. He admitted using alcohol and marijuana daily before his arrest, and denied receiving substance abuse treatment.

¶ 19 At the sentencing hearing, the parties had no corrections to the PSI and the court said that it reviewed the PSI.

¶ 20 Assistant State's Attorney (ASA) Brittney Burns testified that, in prosecuting defendant and presenting this case to the grand jury, she spoke with Rebecca Bolton before she and Bolton went in front of the grand jury in April 2014. When Burns was asked what Bolton had said, trial counsel objected on grounds of relevance and hearsay. The court overruled the objection on the basis that it was a sentencing hearing. Burns testified that Bolton told her she had a romantic relationship with defendant but he was physically and verbally abusive throughout the relationship. Trial counsel objected on grounds of speculation and foundation, but the court overruled the objection. Bolton also told Burns that defendant had tried to enter her home, less than two blocks from Moore's home, at about 4 a.m. on the day in question. Burns presented Bolton to the grand jury, where she testified under oath.

¶ 21 ASA Burns read Bolton's grand jury testimony into the sentencing record. Bolton testified that she spoke with the police on the night in question, and her account to them was "the same thing" she told the grand jury. Bolton identified a photograph of defendant as depicting a man she dated from June 2013 until March 2014. Bolton testified that, during a trip around Thanksgiving, defendant choked her and pulled her hair despite her screaming for him to stop, then struck her legs until he passed out. She went to a different hotel that night, but eventually

returned to him "because I was scared to leave him." He was alternately "extremely charming" and "belittling" of her. Bolton was asleep in her first-floor condominium on the early morning of March 23, 2014, when she was awaked at about 4 a.m. by tapping on several of her windows and defendant screaming "Becky, open the f***ing door!" He continued to do so for about 45 minutes before Bolton resolved to confront him. She opened a window and told him that he had to leave and she would not open the door. He replied "F*** you, then, you f***ing bitch." Bolton returned to her bedroom and "heard a little bit" more noise from defendant before "it kind of quieted down" and she went back to sleep.

¶ 22 Defense counsel did not cross-examine ASA Burns.

¶ 23 Kelly Moore testified that, since she was "woken up in the middle of the night to an intruder in my room," she added locks on her doors, bought a gun and dog, and keeps the gun in a safe next to her bed. She believed that having a burglar alarm "saved my life" on the night in question. She was not afraid before but "now I have a plan, a strategy. I go over it every night in my head before I go to sleep." Her plan centered on having her loaded gun and cellphone at hand so she would be "ready for the intruder to knock down my bedroom door." She described defendant being in her home and trying to enter her bedroom as "a reoccurring nightmare" that she had to relive before and during trial.

¶ 24 Defense counsel argued that defendant's record was "a litany of misdemeanor drunken actions" with a single felony conviction, and defendant was found "passed out drunk" in this case, indicating that he "had a drinking problem and *** definitely needs help." While his drunkenness was no excuse for the instant case or for what he did to Bolton, it was a mitigating

factor. Counsel also noted that defendant completed a "12-step fellowship program" and mentoring program while in jail. Counsel asked for the minimum prison sentence of 4 years.

¶ 25 The State argued that none of the statutory mitigating factors, including not causing or threatening physical harm, was applicable here. Defendant threatened serious harm to Moore, according to her sentencing testimony. The State also argued that defendant's focus on Bolton and Moore – an ex-girlfriend and acquaintance respectively – on the early morning in question belied that he "was a blackout drunk" merely looking for a place to sleep. The State argued defendant's alcohol abuse in aggravation as a cause of his recidivism. "This is going to occur again as soon as he gets his hands on another bottle of booze." Defendant was "picking up batteries" while on parole for his robbery conviction, and in two years "he picks up more batteries." "This defendant has nothing to offer society except half-ass home invasions, domestic violence, and terrorism of women." Noting that defendant's offense was subject to 50% credit, the State asked for the maximum prison sentence.

¶ 26 Defendant addressed the court, apologizing to "the Moore family as a whole." He noted that his "drunken night at the club made me lose my freedom [and] caused me to drag my family into this mess." He professed to be unable to remember his actions that night. "The fact that I passed out and did damage to your home, Kelly, I am to blame and accept responsibility." He ended by stating "I clearly have a drug and alcohol addiction," asking for a recommendation for treatment, and saying "I throw myself on the mercy of the court."

¶ 27 The court stated that it heard defendant's allocution and the trial evidence, describing the latter as "frightening." It noted that it heard Moore's trial and sentencing testimony. The court stated that it overruled the defense objection to ASA Burns' testimony to Bolton's grand jury

testimony because it had granted the State's pretrial motion to introduce other-crimes evidence regarding Bolton. The court reiterated that "it is proper evidence, and it was properly admitted." The court noted that it reviewed the PSI and remarked upon defendant's multiple battery convictions indicating a "history of violence," his admitting to not paying support for his two children, and his "marijuana and alcohol abuse." The court agreed with the State that no statutory mitigating factors applied. "What I see is an individual who is somewhat narcissistic, probably needs some help for alcohol and drug abuse, has a history of violence, and has an absolutely total disrespect for women." The court found that defendant's offense was "horrible" "whether or not he was drunk" at the time, and particularly noted his "terrifying" Moore by entering her home and demanding she open her bedroom door.

¶ 28 The court sentenced defendant to concurrent prison terms of 15 years for one count of residential burglary, 3 years for unlawful restraint, and 3 years for criminal damage to property. The court merged the residential burglary count based on criminal damage to property into the count based on unlawful restraint, and imposed no sentence for residential burglary based on criminal damage to property.

¶ 29 Defendant's postsentencing motion challenged the sentence as excessive on various grounds, but did not argue that any sentencing evidence was improperly admitted. Following arguments, the court denied the motion. The court noted that ASA Burns' testimony provided "significant matters relating to the defendant's additional aggravating conduct." It clarified that, when it found no mitigating factors, it meant that there were no significant mitigating factors that would reduce defendant's sentence.

¶ 30 On appeal, defendant first contends that he was erroneously convicted of residential burglary on grounds not charged or presented at trial, thus violating his rights to be informed of the charges against him and to present a defense with the assistance of counsel. Specifically, he contends that the court improperly found him guilty of residential burglary based on theft.

¶ 31 Defendant admits that he did not raise such a claim in the trial court and thus forfeited it. *People v. Harvey*, 2018 IL 122325, ¶ 15. He contends that we should consider this claim as a matter of plain error, whereby we consider a forfeited but obvious error when either the evidence was closely balanced or the error was so serious that it affected the fairness of the defendant's trial. *Id.* The first step of plain-error analysis is determining whether there was error. *Id.* Defendant also contends that trial counsel was ineffective for not raising this claim. Ineffective assistance is shown when counsel's performance was objectively unreasonable and prejudiced the defendant. *People v. Dupree*, 2018 IL 122307, ¶ 44.

¶ 32 Defendant was charged with two counts of residential burglary, one based upon his intent to commit the felony of unlawful restraint in Moore's home and the other based upon his intent to commit the felony of criminal damage to property in Moore's home. Neither charge alleged that defendant intended to commit theft in Moore's home. Defendant correctly notes that the trial court, in announcing its findings of guilt after the trial, inferred the intent to commit theft therein. Specifically, the court said "the ransacking of the closets, clothing, and other items, books strewn about the floor, that's circumstantial evidence of intent to commit a theft therein." When a defendant is charged with burglary based on the intent to commit a felony other than theft, such as sexual assault, evidence from which an intent to commit theft may be inferred is insufficient to convict. *People v. Toolate*, 101 Ill. 2d 301, 308 (1984).

¶ 33 However, we find that the court here did not find defendant guilty of residential burglary based on intent to commit theft. Instead, it found him guilty of the charged offenses of residential burglary based on his intent to commit unlawful restraint and criminal damage to property. The court referenced the charges when it found defendant "guilty of all four counts," and thus necessarily found him guilty of the offenses of unlawful restraint and criminal damage to property as well as residential burglary based on his intent to commit those offenses. The court did not enter a finding of guilt of residential burglary based on theft, despite its extraneous reference to theft.

¶ 34 Moreover, the court's findings repeatedly and extensively referenced the damage inside Moore's home, including an express finding that the damage exceeded $1800. The court also found that "someone attempted to get into that bedroom [and] find the person in the bedroom, Ms. Moore," and that "Brian clearly forced her to remain there and lock herself in the bedroom and restrained her." The court's findings, taken as a whole rather than focusing on one portion, clearly indicate that it found the elements of residential burglary based on defendant's intent to commit unlawful restraint and criminal damage to property. Thus, defendant is incorrect that, "although a reasonable trier of fact *could* have found the elements of the offense proven beyond a reasonable doubt, the actual trier of fact *did not* do so." (Emphasis in original.) The trial court clearly *did* do so.

¶ 35 It is axiomatic that intent is properly and typically inferred from the circumstances, including the natural and probable consequences of one's actions. *People v. Robards*, 2018 IL App (3d) 150832, ¶ 14. It is also axiomatic that a trier of fact need not be satisfied beyond a reasonable doubt as to each link in a chain of circumstances, nor must it seek all possible

explanations consistent with innocence and elevate them to reasonable doubt. *In re Jonathon C.B.*, 2011 IL 107750, ¶ 60. Lastly, it is axiomatic that the court conducting a bench trial is not required to mention everything – or indeed anything – that contributed to its findings, and we may take into account any facts in the record that support affirmance even when the trial court did not expressly state that it relied on those facts. *People v. Graham*, 339 Ill. App. 3d 1049, 1058 (2003); *People v. Mandic*, 325 Ill. App. 3d 544, 547 (2001).

¶ 36 In light of these axioms, we find that the court's multiple findings referencing Moore's restraint by "Brian" and the damage to her property duly support its ultimate findings of guilt of residential burglary as charged, based on defendant's intent to commit unlawful restraint and criminal damage to property. Merely because the court did not expressly mention defendant's intent to commit unlawful restraint or criminal damage to property does not mean that, as defendant contends, the court did not find such intent. We particularly reject that contention because the trial court found defendant guilty of the offenses of unlawful restraint and criminal damage to property. We conclude that the court properly found defendant guilty of the two charged counts of residential burglary.

¶ 37 Defendant is expressly not challenging the sufficiency of the evidence for residential burglary as charged. In his plain-error argument that the evidence was closely balanced, he does challenge the trial court's inferences. However, because we have found no error, we find no plain error. We therefore need not, and shall not, address whether the evidence was closely balanced. Similarly, because there was no error, defendant was not prejudiced by counsel's failure to raise the claim in the trial court.

¶ 38 Defendant also contends that his 15-year prison sentence is excessive because the court considered at sentencing other-crimes evidence that was "unreliable, and therefore inadmissible." Specifically, he contends that ASA Burns' sentencing testimony to her interview of Bolton and to Bolton's grand jury testimony regarding other-crimes evidence was unreliable hearsay evidence of uncharged conduct.

¶ 39 While defendant unsuccessfully raised a hearsay objection to ASA Burns' testimony, he did not preserve it in his postsentencing motion, in which he claimed that his sentence was excessive but did not challenge the admission of any of the sentencing evidence. A sentencing error is forfeited unless a contemporaneous objection was made and a written postsentencing motion raised the issue. *People v. Cunningham*, 2018 IL App (4th) 150395, ¶ 25. Forfeiture of a sentencing issue may be set aside under the plain-error doctrine, where we consider a clear or obvious error if either (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. *Id*. ¶ 26. The first step in plain-error analysis is determining whether an error occurred at all. *Id*.

¶ 40 Defendant does not raise a separate contention of error that the court abused its discretion in granting the State's pretrial motion to admit other-crimes evidence. Indeed, he admits that, "[h]ad the State presented evidence of these other crimes at trial, in a competent and admissible fashion, then there would have been no problem with the judge considering that evidence at sentencing." Defendant instead argues that the unreliability arises from the fact that the other-crimes evidence was admitted at sentencing as hearsay, through ASA Burns' testimony to her interview of Bolton and to Bolton's grand jury testimony, rather than from Bolton herself. He acknowledges that hearsay evidence is admissible at a sentencing hearing if it is relevant and

reliable (*Id.* ¶¶ 31, 33) but argues that ASA Burns' evidence was unreliable because Bolton, its ultimate source, was not subject to confrontation or cross-examination.

¶ 41 However, a hearsay objection at sentencing, as trial counsel made here, goes to the weight of the evidence rather than its admissibility, and whether particular hearsay was reliable is a matter for the trial court's sound discretion. *Id.*; *People v. Varghese*, 391 Ill. App. 3d 866, 873 (2009). " '[H]earsay testimony is not *per se* inadmissible at a sentencing hearing as unreliable or as denying a defendant's right to confront accusers,' " and "uncorroborated hearsay 'is not inherently unreliable,' particularly when the information was compiled during the course of an official investigation and where the evidence was never directly challenged." *Cunningham*, 2018 IL App (4th) 150395, ¶ 31 (quoting *People v. Foster*, 119 Ill. 2d 69, 98-99 (1987)). Moreover, our supreme court has held that an ASA testifying to a witness's sworn grand jury testimony, when the ASA presented the witness to the grand jury, is sufficiently reliable to be admitted at sentencing. *People v. Banks*, 237 Ill. 2d 154, 204 (2010).

¶ 42 Defendant attempts to distinguish *Banks* on the basis that the *Banks* defendant pled guilty to the offense that was the subject of the grand jury testimony. However, a police investigator testifying at sentencing to evidence he gathered from witnesses during an official investigation has been held to be sufficiently reliable to be admissible at sentencing. *Cunningham*, 2018 IL App (4th) 150395, ¶¶ 31-33 (citing *Foster*, 119 Ill. 2d at 98-99). We consider an ASA testifying at sentencing to her interview of a witness, and to the witness's grand jury testimony that the ASA presented, to be sufficiently analogous to an investigator testifying to witness accounts from his official investigation that we find no reason not to follow *Banks*. Stated another way, we see no reason in light of *Foster* and *Cunningham* to conclude that the guilty plea in *Banks* was

the necessary or decisive factor on reliability. Thus, we find ASA Burns' testimony to Bolton's sworn grand jury testimony, which ASA Burns had presented, is sufficiently reliable to be admitted at sentencing. We conclude that the trial court did not abuse its discretion in admitting and considering ASA Burns' testimony at sentencing.

¶ 43 Defendant also contends generally that his 15-year prison sentence was excessive in light of the nature of the offense and his personal characteristics.

¶ 44 Residential burglary is a Class 1 felony punishable by a prison term of 4 to 15 years. 720 ILCS 5/19-3(b) (West 2014); 730 ILCS 5/5-4.5-30(a) (West 2014). A sentence within statutory limits – such as defendant's 15-year sentence – is presumed proper. *People v. Branch*, 2018 IL App (1st) 150026, ¶ 34. We review a sentence for abuse of discretion, and we may alter a sentence only when it varies greatly from the spirit and purpose of the law or is manifestly disproportionate to the nature of the offense. *People v. Jones*, 2018 IL App (1st) 151307, ¶ 72 (citing *People v. Snyder*, 2011 IL 111382, ¶ 36, and *People v. Alexander*, 239 Ill. 2d 205, 212-13 (2010)). The trial court has broad discretion, so we cannot substitute our judgment merely because we would weigh the sentencing factors differently. *Id.* The trial court is accorded such deference because it has a superior opportunity to evaluate and weigh a defendant's credibility, demeanor, character, age, mental capacity, social environment, and habits. *Id.*

¶ 45 The trial court must consider both the seriousness of the offense and the defendant's rehabilitative potential. *People v. Sandifer*, 2017 IL App (1st) 142740, ¶ 81 (citing Ill. Const. 1970, art. I, § 11). The court considers all matters relevant to a defendant's sentencing, including his personality, propensities, and tendencies. *Id.* While alcohol abuse may be a mitigating factor, it may also be an aggravating factor regarding a defendant's likeliness to reoffend. *People v.*

Arbuckle, 2016 IL App (3d) 121014-B, ¶ 49. While the court may not disregard mitigating evidence, it determines the weight of such evidence. *People v. Brown*, 2017 IL App (1st) 142877, ¶ 63. The most important sentencing factor is the seriousness of the offense, and the court need not give greater weight to rehabilitation than to the severity of the offense. *Sandifer*, 2017 IL App (1st) 142740, ¶ 82. The presence of mitigating factors does not require a minimum sentence or preclude a maximum sentence. *People v. Harmon*, 2015 IL App (1st) 122345, ¶ 123. We presume the court considered all mitigating factors on the record absent an indication to the contrary other than the sentence itself. *Brown*, 2017 IL App (1st) 142877, ¶ 64.

¶ 46 Here, the court expressly acknowledged reviewing the PSI, which included defendant's alcohol and cannabis abuse and his employment history. Moreover, the court expressly acknowledged defendant's history of substance abuse. However, in light of defendant's repeated misdemeanor batteries as well as the instant offenses, the court could properly conclude, as the State argued, that his substance abuse would lead to further offenses in the future and thus was an aggravating factor rather than a mitigating one.

¶ 47 Defendant argues that he did not cause, or intend to threaten, physical harm to Moore. However, while he did not utter an *express* threat of violence to Moore, the court found at trial that defendant demanded in vulgar language that Moore open her bedroom door, and then attempted to force that door open. Such language and actions, in the early morning by a brazen intruder to Moore's home, may reasonably be deemed an implicit threat of physical harm by defendant to Moore. Fear, to the point of terror, is a natural and probable consequence of such language and actions and, as stated above, it is reasonable to infer that one intended the natural and probable consequences of one's actions. Thus, a reasonable trier of fact and sentencing court

could conclude that defendant intended to at least threaten Moore. Moore's sentencing testimony makes clear that she took that language and action as a threat to her life, as she testified that she felt her life was saved on the night in question by having a burglar alarm that woke her in time to lock her bedroom door. As a result of defendant trying to force his way into Moore's bedroom, she went from a woman who was not afraid at home to one who keeps a loaded gun near her bed in nightly anticipation of an intruder forcing his way into her bedroom as defendant tried to do. The court's finding that defendant terrified Moore was well-supported.

¶ 48 Bolton's grand jury testimony established that defendant had tried shortly before coming to Moore's home to enter ex-girlfriend Bolton's home, making similar vulgar imprecations to admit him for nearly an hour before going to Moore's nearby home. Defendant's physical and verbal abuse of Bolton was consistent with his treatment of Moore in the instant case, both of which supported the court's conclusion that defendant had "disrespect for women."

¶ 49 In sum, we conclude that the court did not abuse its considerable discretion in sentencing defendant to 15 years' imprisonment for residential burglary as he committed it.

¶ 50 Lastly, defendant contends that his unlawful restraint conviction should be vacated under the one-act-one-crime rule. He was also convicted of residential burglary based on the intent to commit unlawful restraint therein, and he argues that both offenses were based on the same act of entering Moore's home, which forced her to lock herself in her bedroom. The State argues in turn that those two offenses are based on separate, albeit related, acts; that residential burglary was based on defendant's entry to Moore's home while unlawful restraint was based on defendant's attempted entry to Moore's bedroom.

¶ 51 While defendant did not raise this claim below, we consider otherwise-forfeited one-act-one-crime claims as a matter of plain error. *People v. Coats*, 2018 IL 121926, ¶ 10.

¶ 52 Generally, a defendant may not receive convictions for multiple offenses arising out of the same physical act. *Id.* ¶ 11. Two offenses with a common act as part of both offenses may support two convictions, even where the common act is the entirety of one of the offenses. *Id.* ¶ 15. Also, multiple related acts may support multiple convictions. *Id.* ¶ 16. However, multiple convictions are supported only when the charging instrument reflects the State's intent to apportion a defendant's conduct into multiple offenses. *People v. Reese*, 2017 IL 120011, ¶ 80. Where multiple convictions are not supported, the one-act-one-crime rule dictates that the duplicative convictions must be vacated. *Id*. A conviction is a finding of guilt upon which a sentence has been imposed. *People v. Salem*, 2016 IL App (3d) 120390, ¶¶ 45-47.

¶ 53 Here, the State did not distinguish in the charging instrument between defendant's entry to Moore's home, the specified basis for the residential burglary charges, and his attempted entry to her bedroom as a potential separate basis for unlawful restraint. Indeed, the unlawful restraint charge did not allege *how* defendant restrained or detained Moore but simply that defendant "knowingly without legal authority detained Kelly Moore." It is proper to charge unlawful restraint without alleging how the victim was restrained. *People v. Wisslead*, 108 Ill. 2d 389, 394-97 (1985). However, multiple convictions must be based upon charges apportioning a defendant's actions into multiple offenses. *Reese*, 2017 IL 120011, ¶ 80. Thus, it is irrelevant that defendant's entry to Moore's home and attempted entry to Moore's bedroom are separate physical acts that *could*, in the abstract, support separate charges because that is not how he was *actually* charged. Pursuant to the one-act-one-crime rule, we must vacate the less serious of the

two convictions at issue, which is the Class 4 felony of unlawful restraint rather than the Class 1 felony of residential burglary. 720 ILCS 5/10-3(b), 19-3(b) (West 2014). Thus, we vacate defendant's sentence for unlawful restraint and merge the unlawful restraint guilty finding into his conviction for residential burglary, so that no conviction for unlawful restraint stands.

¶ 54 Accordingly, we vacate the sentence for unlawful restraint. We direct the clerk of the circuit court to correct the mittimus to reflect said vacatur and the merger of the unlawful restraint count into the residential burglary conviction. The judgment of the circuit court is otherwise affirmed.

¶ 55 Affirmed in part, vacated in part, and mittimus corrected.