2019 IL App (1st) 162580-U

No. 1-16-2580

Order filed June 28, 2019

Second 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. 11 CR 9824
	)	
DONDRA C. WOODS,	)	Honorable
	)	Pamela M. Leeming,
Defendant-Appellant.	)	Judge, presiding.

JUSTICE PUCINSKI delivered the judgment of the court.
Justices Lavin and Hyman concurred in the judgment.

ORDER

¶ 1 *Held*: Defendant's armed robbery conviction is affirmed where the trial court failed to comply with Illinois Supreme Court Rule 431(b), but the error did not rise to the level of plain error because the evidence at trial was not closely balanced. Defendant's aggravated unlawful restraint conviction is vacated where it concerned the same act as his armed robbery conviction in violation of the one-act, one-crime rule.

¶ 2 Following a jury trial, defendant Dondra C. Woods was convicted of one count of armed robbery and one count of aggravated unlawful restraint, and sentenced to concurrent prison terms

of 21 years and 5 years, respectively. On appeal, defendant argues that (1) the trial court violated Illinois Supreme Court Rule 431(b) (eff. July 1, 2012), and (2) his aggravated unlawful restraint conviction violates the one-act, one-crime rule because it is based on the same physical act as his armed robbery conviction. We vacate defendant's aggravated unlawful restraint conviction, and affirm the judgment of the trial court in all other respects.

¶ 3 Defendant and Parker Benson were charged in the same indictment with one count each of armed robbery (720 ILCS 5/18-2(a)(2) (West 2010)), unlawful possession of a firearm by a felon (720 ILCS 5/24-1.1(a) (West 2010)), and aggravated unlawful restraint (720 ILCS 5/10-3.1 (West 2010)), arising from an incident in Forest Park on May 25, 2011. As to defendant, the State nol-prossed the count for unlawful possession of a firearm by a felon and proceeded to trial on the other two counts. Defendant and Benson were tried simultaneously in severed jury and bench trials, respectively.[1]

¶ 4 During *voir dire*, the trial court told the venire members that defendant is presumed innocent, that the State has the burden of proving him guilty beyond a reasonable doubt, and that defendant is not required to prove his innocence or present any evidence. The court then asked the venire members individually whether they "agree[d] with" the following principles: that defendant was presumed innocent until determined guilty beyond a reasonable doubt, that the State has the burden of proving him guilty beyond a reasonable doubt, and that defendant is not required to present any evidence. The trial court also told the venire members that defendant was not required to testify, and asked whether they would hold his decision not to testify against him.

[1] The witness testimony and cross-examinations specific to Benson's case were conducted outside the presence of the jury. Benson is not a party to this appeal.

The court did not ask the venire members whether they "understood" these principles, and defense counsel did not object to the admonishments.

¶ 5 At trial, Azeem Ahmed testified that on May 25, 2011, at about 12:18 a.m., he was working alone at a gas station in Forest Park, on the corner of Roosevelt Road and Des Plaines Avenue. A man entered the gas station store wearing a black jacket and hoodie and holding a firearm. He pointed the firearm at Ahmed and told him to open the register and lie down. Ahmed complied. A second man wearing black gloves entered the store, and the two men took money, cigarettes, and lottery tickets and ran away. Ahmed called the police, who arrived at the gas station and took him to view two men whom he identified as the "robbers." Then, Ahmed returned to the gas station, and a detective recovered security footage from the store.

¶ 6 The State published the security footage, which is included in the record and depicts the area surrounding the register counter from multiple angles. The video shows a man, whom Ahmed identified as himself, standing behind the counter. Another man enters the camera's view, holding a firearm and wearing a dark jacket with a hood, blue jeans, and dark shoes. Ahmed lies on the ground, and the man in the jacket climbs over the register counter. Ahmed opens the register and lies back down. Then, the man with the firearm takes money from the register, lottery tickets from behind the counter, and cigarettes from the shelves. A second man, who is bald and wearing black clothing, also enters into view and takes something from the register and cigarettes from the shelves. The two men walk out of view, at which point Ahmed testified that he called the police. The faces of the two men robbing the store are not visible at any point in the video.

¶ 7 On cross-examination, Ahmed confirmed that he could not see the face of the first person who entered the store, and when he was on the ground, he could not see the second person who entered. Additionally, Ahmed stated that he did not see a vehicle pull into the gas station lot or drive away, and that he did not know if anyone else was outside the store during the incident. The first man whom the officers took Ahmed to identify was in a police vehicle, and the second man was with officers one block away. Defense counsel asked Ahmed whether, as to each of the two men, officers told him "that's the guy that robbed you." Ahmed answered, "Yeah." Later, officers showed Ahmed a photograph of a firearm, and defense counsel asked whether the officers "told [him] this was the gun" and "told [him] to circle it." Ahmed answered both questions affirmatively. Ahmed was unable to make an in-court identification of either defendant or Benson as the men who robbed him.

¶ 8 Forest Park police officer Jose Flores testified that just before 12:30 a.m. on May 25, 2011, he drove towards the gas station in response to an armed robbery call. About 10 seconds after receiving the call, Flores saw two people driving a van eastbound on Roosevelt within a block of the gas station, and decided to ask whether they "saw anything" related to the robbery. About eight blocks from the gas station, Flores activated his emergency lights, the van slowed down, and a passenger jumped out and ran down an alley. Flores exited his vehicle and ordered the van's driver, whom he identified in court as Benson, to leave the van. Then, Flores handcuffed Benson and secured him in his squad car. Flores inspected the van and found 13 sealed packs of Newport cigarettes between the front seats.

¶ 9 Over the radio, Flores heard a report of an officer struggling with the person who fled the van. Flores ran to the location and found Officer Harold Grimes struggling to handcuff

defendant, whom Flores identified in court. Defendant was wearing a "black, Carhartt hooded-jacket" and "some sort of *** mock turtleneck" that looked like a sleeve ripped off a "dark colored T-shirt." Once defendant was handcuffed, Flores returned to his vehicle and Ahmed identified Benson as one of the offenders. Afterwards, Flores took Benson to the police station.

¶ 10 Approximately half an hour later, Flores heard defendant asking another officer at the police station about his charges. Flores said that defendant would be charged "with the gun that was found." Defendant responded, "It's my gun. I carry it for protection." Then, Flores returned to the area surrounding defendant's arrest with Grimes and recovered more items that were missing from the gas station. On cross-examination, Flores confirmed that the armed robbery dispatch he received did not mention a vehicle, and that defendant and Benson did not drive away in the van when he began following them.

¶ 11 Forest Park police officer Robert Kendall testified that at about 12:25 a.m., he responded to the armed robbery call and spoke with Ahmed. He then heard a radio transmission stating that an assisting officer stopped a vehicle and a passenger fled, and helped in the search. Once the passenger was detained, Kendall drove Ahmed to Flores's vehicle, where Ahmed identified Benson. Then, Kendall drove Ahmed to where other officers had detained the passenger who fled. Ahmed stayed in Kendall's vehicle and identified defendant, who was standing 10 to 15 feet away.

¶ 12 Grimes testified that he and Officer Mike Harrison chased the man who fled from the van. The man discarded items from his pockets as he ran, and he wore "a black, hooded jacket," blue jeans, dark shoes, and "some kind of fabric around his neck." Eventually, Grimes "[got] on top of" the man and arrested him with Flores's help. Grimes identified the man in court as

defendant. Several items were recovered from defendant's pockets, including $107, lottery tickets, a lighter displaying the logo of the gas station that was robbed, and two Newport cigarette packs. While backtracking his steps, Grimes also found an unloaded gun. Grimes returned to the police station with Harrison, who inventoried the recovered items, and then returned to the area of the chase and found more cash, lighters displaying the gas station's logo, unopened cigarette packs, and a lottery ticket.

¶ 13 Forest Park police detective Jarlath Heveran testified that on the morning of May 25, 2011, he went to the gas station, reviewed the video surveillance footage with Ahmed, and copied the video. He then met with Harrison and defendant at the police station and read defendant *Miranda* warnings. Defendant told Heveran that he had been watching a basketball game, and was picked up by his cousin "to go driving around." Defendant told Heveran that he carried a gun at that time for protection because he had been shot, and that "[h]e doesn't remember anything else other than *** being stopped by the police a short time later." Defendant also explained that he ran from the police because he had a gun, and stated that he purchased cigarettes and lottery tickets in the gas station where the incident occurred at 11:41 p.m. that night.

¶ 14 Heveran returned to the gas station and showed Ahmed a photograph of the recovered gun, which Ahmed identified as the gun used in the robbery. Back at the station, defendant also identified the gun in the photograph as the gun "that he had earlier," and signed the photograph. Heveran showed defendant the gas station surveillance footage, and defendant "said it was he that was in the video committing the robbery." Heveran was present while Assistant State's Attorney Brad Dickey Mirandized and interviewed defendant. Afterwards, Dickey typed a

statement, and defendant read aloud the portion concerning *Miranda* rights and signed each page.

¶ 15 Dickey testified that he met with Heveran and defendant, and Mirandized defendant. Defendant told Dickey what happened, and Dickey typed what defendant said. Defendant then read the statement and signed it.

¶ 16 The statement, which Dickey read to the jury, stated in relevant part that defendant watched a basketball game at a friend's house and then called his cousin, Benson, to pick him up. Defendant carried a gun with him, which he had carried since he was shot in 2009. Defendant walked down Roosevelt and saw a gas station. He "decided to rob it because there was nobody around and there was only one person working inside who was cleaning up."

¶ 17 In the statement, defendant described in detail how he pointed his gun at the worker; told the worker to lay on the ground; climbed over the counter; and took cigarettes, a lighter, and "about [$]60 to $70" from the cash register. Defendant exited the store, saw Benson driving a purple minivan down Roosevelt, and "flagged him down." As Benson and defendant drove down Roosevelt, the police stopped them. Defendant ran, tossed his gun, and was caught by police. The statement, as read by Dickey, then concluded:

> "Dondra Woods states that he can read and write English and demonstrated this by reading the first paragraph of this statement aloud and then followed along as the rest of the statement was read aloud by the Assistant State's Attorney. Dondra states that he was [allowed] to make any changes or corrections to this statement and he put his initials by any changes or corrections and signed the bottom of each page to show that it is accurate. Dondra states that everything contained in this statement is true and correct."

¶ 18 The State entered a stipulation that if called, a forensic scientist would testify that the gun recovered had "no latent fingerprint impressions suitable for comparison." The State also entered several pieces of evidence, including, *inter alia*, the footage from the gas station; the gun; photographs of the stolen items in the locations where they were found; photographs of defendant's jacket and the van he fled from; evidence signed by defendant, including a *Miranda* form and a photograph of the gun; the signed statement typed by Dickey; and a map of the area where defendant was pursued and arrested.

¶ 19 The State rested, and the trial court denied defendant's motion for a directed verdict.

¶ 20 Defendant testified that on the evening of May 24, 2011, he was drinking, smoking cannabis, and watching a basketball game at a friend's house in Maywood. Between 11 p.m. and 12 a.m., he called Benson, whom he "consider[ed] *** family," said he was walking down Roosevelt, and asked Benson to pick him up. Benson picked him up on Roosevelt between 5th Avenue and 9th Avenue, and they were pulled over 5 to 10 minutes later. Defendant saw flashing lights and "thought [Benson] messed up because we both had been drinking." He saw a police officer with a gun drawn, put his hands on the dashboard, and "did what [the officer] said." The officer handcuffed Benson and escorted him to a squad car. A second squad car pulled up, and another officer escorted defendant from Benson's minivan to the second squad car. According to defendant, he did not leave the minivan until the other officer "proceeded to walk towards the minivan."

¶ 21 Defendant further testified that he was taken to a holding cell, and denied telling officers he carried a gun that evening for protection. In an interrogation room, he told a detective he had been drinking and answered questions about his background. The detective left and returned with

Dickey "two or three hours later." Defendant spoke with Dickey and signed a four-page statement, but only read the "top half" of the front page containing *Miranda* rights. After he read this portion, defendant "did nothing with" the statement, which the detective kept "in his possession." Defendant testified that he initialed every page of the statement because Dickey told him to do so, and he believed the document was "[m]y paperwork and my Miranda rights." He also confirmed that he signed a photograph of a revolver.

¶ 22 On cross-examination, defendant denied having a gun or wearing a black Carhartt coat and "piece of fabric" around his neck. Defendant further denied running from the police or tossing items from his pocket. Additionally, defendant denied that Dickey read aloud the statement defendant signed. Defendant confirmed reading a portion of the statement out loud but later denied ever doing so. After Dickey asked defendant "about three questions," defendant told Dickey, "I want a lawyer and I have nothing else to say." Defendant denied telling Dickey he carried a gun because he had been shot, or telling Dickey he robbed the gas station. On redirect examination, defendant stated he was still drunk when he was at the police station, but on recross examination, confirmed that he signed the statement more than 12 hours after he stopped drinking.

¶ 23 During closing arguments, defense counsel characterized the Forest Park officers as a "tight-knit" group who "work together every night" and did not testify honestly. According to defense counsel, during the identification, Kendall affirmatively told Ahmed defendant had robbed him, and Ahmed only said "okay," assuming "the police probably know something he doesn't." In rebuttal, the State questioned how a four-page statement was produced during Dickey's interview with defendant, when defendant claimed Dickey only asked him three

questions. The State asserted that the evidence is "overwhelming" and included "[t]he physical evidence, the testimonial evidence, the video evidence and his own confession evidence."

¶ 24 The jury found defendant guilty of one count of armed robbery and one count of aggravated unlawful restraint. Defendant filed a motion for new trial, arguing the State failed to prove him guilty beyond a reasonable doubt and did not establish a proper chain of custody for the gun entered into evidence. The trial court denied defendant's motion and sentenced him to concurrent prison terms of 21 years for armed robbery and 5 years for aggravated unlawful restraint.

¶ 25 On appeal, defendant first argues that the trial court violated Illinois Supreme Court Rule 431(b) (eff. July 1, 2012) by failing to ask the venire members whether they "understood" the principles enumerated in the rule. The State concedes the error, but argues that a new trial is not necessary because the evidence was not closely balanced.

¶ 26 Illinois Supreme Court Rule 431(b) (eff. July 1, 2012) provides that, during *voir dire*, the trial court "shall ask each potential juror" whether he or she "understands and accepts" four principles:

> "(1) that the defendant is presumed innocent of the charge(s) against him or her; (2) that before a defendant can be convicted the State must prove the defendant guilty beyond a reasonable doubt; (3) that the defendant is not required to offer any evidence on his or her own behalf; and (4) that if a defendant does not testify it cannot be held against him or her; however, no inquiry of a prospective juror shall be made into the defendant's decision not to testify when the defendant objects."

¶ 27 Rule 431(b), which contains the four principles set forth in *People v. Zehr*, 103 Ill. 2d 472, 477 (1984), "was designed to ensure that the defendant has a fair and impartial jury." *People v. Sebby*, 2017 IL 119445, ¶ 67. "[C]ompliance with Rule 431(b) is mandatory and noncompliance calls into question the integrity of the jury's verdict." *People v. Albarran*, 2018 IL App (1st) 151508, ¶ 64. The trial court must use the words "understand and accept," and failure to question the jurors as to each of the *Zehr* principles violates the rule. (Internal quotation marks omitted.) *People v. Jackson*, 2017 IL App (1st) 142879, ¶ 37. The trial court's compliance with Rule 431(b) is subject to *de novo* review. *People v. Space*, 2018 IL App (1st) 150922, ¶ 62.

¶ 28 Here, the trial court asked each of the venire members whether they "agree[d] with" the *Zehr* principles, but did not ask whether they understood those principles. Our supreme court has instructed judges to ask each person on the venire eight simple questions. This judge got 50% of them right. When a defendant's most fundamental liberty interest is at stake, it is not asking judges, even seasoned busy ones, too much to go the full measure to assure the potential juror member's qualifications. Accordingly, we agree with the parties that the trial court erred in delivering the Rule 431(b) admonishments. *Id.* ¶ 64 (stating "the failure to ask the jury whether it understands the principles of Rule 431(b), by itself, constitutes error").

¶ 29 Defendant concedes that he forfeited this issue by failing to raise it in a timely objection or in a posttrial motion, but asserts that we may consider the issue under the plain-error doctrine. *People v. Wilmington*, 2013 IL 112938, ¶ 31. The plain-error doctrine applies where "a clear or obvious error occurred" and (1) "the evidence is so closely balanced that the error alone threatened to tip the scales of justice against the defendant, regardless of the seriousness of the

error," or (2) the "error is so serious that it affected the fairness of the defendant's trial and challenged the integrity of the judicial process, regardless of the closeness of the evidence." (Internal quotation marks omitted.) *People v. Sebby*, 2017 IL 119445, ¶ 48.

¶ 30 Here, defendant argues that the first prong of the plain-error doctrine applies because the evidence at trial was closely balanced. In determining whether the evidence at trial was closely balanced, we "must evaluate the totality of the evidence and conduct a qualitative, commonsense assessment of it within the context of the case." *Id.* ¶ 53. Our "inquiry involves an assessment of the evidence on the elements of the charged offense or offenses, along with any evidence regarding the witnesses' credibility." *Id.* "Whether the evidence is closely balanced is *** a separate question from whether the evidence is sufficient to sustain a conviction on review against a reasonable doubt challenge." (Internal quotation marks omitted.) *People v. Jamison*, 2018 IL App (1st) 160409, ¶ 44.

¶ 31 Section 10-3(a) of the Criminal Code of 1961 (Code) (720 ILCS 5/10-3(a) (West 2010)) provides that "[a] person commits the offense of unlawful restraint when he or she knowingly without legal authority detains another." Aggravated unlawful restraint occurs where a person "commits unlawful restraint while using a deadly weapon." 720 ILCS 5/10-3(a) (West 2010). Under section 18-1(a) of the Code (720 ILCS 5/18-1(a) (West 2010)), "[a] person commits robbery when he or she takes property *** from the person or presence of another by the use of force or by threatening the imminent use of force." "A person commits armed robbery when he or she violates Section 18-1" and "carries on or about his or her person or is otherwise armed with a firearm." 720 ILCS 5/18-2(a)(2) (West 2010).

¶ 32 At trial, the State presented the testimony of Ahmed, who worked at the gas station where the armed robbery occurred; video footage that corroborated Ahmed's testimony; the testimony of multiple officers describing the investigation that linked defendant to the robbery; and evidence of the stolen items, which were found on defendant's escape route, in his pockets, and in the minivan he fled. This evidence showed that defendant entered the gas station, held Ahmed at gunpoint, and took several items from behind the counter. Benson joined defendant, and the two left the station in a minivan, which Officer Flores saw within a block of the gas station and pulled over. Defendant ran from the police and discarded a gun and several items, which the State's witnesses identified as cash, lottery tickets, cigarette packs, and lighters bearing the logo of the gas station that was robbed. Similar items were also found in the minivan and defendant's pockets, and officers recovered a gun from the scene of defendant's chase. When shown a photograph of the recovered gun, Ahmed identified it as the one used in the robbery, and defendant identified the gun as the one "that he had earlier." Additionally, the State presented defendant's statement, memorialized by an assistant state's attorney and signed by defendant, which stated that defendant "decided to rob" the gas station, and that defendant had a gun. The statement's description of the robbery closely mirrored the testimony of Ahmed, as well as the video footage entered into evidence. Given the strength of the State's case, which contained strongly corroborated evidence in the form of testimony, physical evidence, and a statement signed by defendant, we find the evidence was not closely balanced. *People v. Boston*, 2018 IL App (1st) 140369, ¶ 100 (finding the evidence was not closely balanced, where the State presented the testimony of multiple officers and experts who were corroborated by physical evidence); *People v. Willis*, 409 Ill. App. 3d 804, 810 (2011) (finding evidence was not closely

balanced, where multiple police officers testified that defendant sold drugs, and proceeds from a sale were found in his possession upon his arrest).

¶ 33 With respect to Ahmed's identification testimony, we note that, even with his testimony that the police told him this defendant was one of the robbers, we cannot conclude that this trial was fundamentally unfair or the evidence was closely balanced. It is clear from the video that Ahmed could not identify the robbers. But his identification was only one part of the evidence. As previously discussed, the State presented other evidence to make the evidence not closely balanced, such as defendant's statement and the stolen goods found on his person and in the minivan he was in immediately after the robbery. However, why the State did not introduce fingerprints from the cigarette packages — when defendant was clearly not gloved — remains a mystery. One additional missing link could easily have led us to conclude the evidence was closely balanced and the State runs a great risk when it takes short cuts.

¶ 34 While defendant asserts the evidence at trial amounted to a closely balanced "credibility contest," a trier of fact could have reasonably found that defendant did not present a credible explanation of what happened. Defendant testified that he never robbed the gas station and was pulled over while driving with Benson. According to defendant, he never ran from the minivan when it was stopped and did not leave the vehicle until he was approached by a police officer. Defendant additionally asserted that he did not confess to the armed robbery at the police station. Based on the foregoing, defense counsel suggested during closing arguments that the Forest Park police officers and detectives were working together to falsely testify against defendant. That theory, however, was unsupported by any other evidence at trial. Further, defendant's testimony regarding his written statement also contained inconsistencies. Defendant stated that he was

drunk when he was in the police station, but acknowledged that he had stopped drinking more than 12 hours earlier. Defendant also testified that he read part of the statement out loud but later denied doing so. Given the theory presented by defendant and the inconsistencies in his testimony, a trier of fact could have reasonably found defendant's version of the events lacked credibility. The State, on the other hand, presented a number of witnesses with consistent testimonies that were corroborated by other evidence. *People v. Jackson*, 2019 IL App (1st) 161745, ¶ 48 ("No 'credibility contest' exists when one party's version of events is unrefuted, implausible, or corroborated by other evidence."). Accordingly, we find the evidence at trial was not closely balanced, and defendant is not entitled to relief under the plain-error doctrine. Therefore, his forfeiture of the Rule 431(b) issue will be honored.

¶ 35 Lastly, defendant argues, and the State concedes, that his aggravated unlawful restraint conviction violates the one-act, one-crime rule, since it is based on the same physical act as his armed robbery conviction. Defendant raises his one-act, one-crime rule claim for the first time on appeal, and so the issue is forfeited. *People v. Harvey*, 211 Ill. 2d 368, 388-89 (2004). Nonetheless, an alleged one-act, one-crime violation "affects the integrity of the judicial process, thus satisfying the second prong of the plain error rule." *Id.* at 389. Therefore, if we find a one-act, one-crime error occurred, the plain-error exception to the forfeiture rule applies. *In re Samantha V.*, 234 Ill. 2d 359, 378-79 (2009). We review one-act, one-crime violations *de novo*. *People v. Almond*, 2015 IL 113817, ¶ 47.

¶ 36 Under the one-act, one-crime rule, "a criminal defendant may not be convicted of multiple offenses when those offenses are all based on precisely the same physical act." *Harvey*, 211 Ill. 2d at 389 (citing *People v. King*, 66 Ill. 2d 551, 566 (1977)). We must first ascertain

whether "defendant's conduct consisted of separate acts or a single physical act." *People v. Rodriguez*, 169 Ill. 2d 183, 186 (1996). Multiple convictions based on the same physical act are improper. *Id.* If the defendant committed multiple acts, we must then determine whether any of the offenses are lesser included offenses and, if so, multiple convictions are improper. *Id.*

¶ 37 We agree with the parties that defendant's conviction for aggravated unlawful restraint should be vacated because it violates the one-act, one-crime rule. Defendant's aggravated unlawful restraint conviction concerned the same act as his armed robbery conviction, since his restraint of Ahmed was an inherent part of the armed robbery for which he was convicted. More specifically, defendant pointed his gun at Ahmed, threatening Ahmed with the use of force, in order to restraint Ahmed on the ground while he took items from behind the gas station counter. *People v. Daniel*, 2014 IL App (1st) 121171, ¶¶ 50, 55 (finding the one-act, one-crime rule applies where "defendant restrained [the victim] from the beginning until the end of the armed robbery").

¶ 38 Because defendant improperly received multiple convictions for the same act, he must "be sentenced on the most serious offense and the less serious offense should be vacated." *In re Samantha V.*, 234 Ill. 2d at 379. Aggravated unlawful restraint is a Class 3 felony, while armed robbery is a Class X felony. 720 ILCS 5/10-3.1(b) (West 2010) (aggravated unlawful restraint); 720 ILCS 5/18-2(b) (West 2010) (armed robbery). Accordingly, we vacate defendant's conviction and sentence for aggravated unlawful restraint, and amend the mittimus to reflect this modification. *People v. Sandifer*, 2017 IL App (1st) 142740, ¶ 78; Ill. S. Ct. R. 615(b) (eff. Jan. 1, 1967).

¶ 39 For the foregoing reasons, we vacate defendant's aggravated unlawful restraint conviction and affirm the judgment of the circuit court in all other respects.

¶ 40 Affirmed in part; vacated in part.