

2019 IL App (1st) 1-17-0824-U

No. 1-17-0824

Order filed March 29, 2019

Fourth 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).

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. 13 CR 22536
)	
JAMES BURNS,)	Honorable
)	Gregory R. Ginex,
Defendant-Appellant.)	Judge, presiding.

JUSTICE BURKE delivered the judgment of the court.
Presiding Justice McBride and Justice Gordon concurred in the judgment.

ORDER

¶ 1 *Held:* Pursuant to the one-act, one-crime rule, defendant's sentence for aggravated unlawful restraint is vacated because it was based on the same physical act as his conviction for armed robbery.

¶ 2 Following a bench trial, defendant, James Burns, was found guilty of armed robbery (720 ILCS 5/18-2(a)(2) (West 2016)), robbery (720 ILCS 5/18-1(a) (West 2016)), aggravated unlawful restraint (720 ILCS 5/10-3.1(a) (West 2016)), and unlawful restraint (720 ILCS 5/10-3(a) (West 2016)). At sentencing, the trial court imposed concurrent terms of 21 years for armed

robbery and 5 years for aggravated unlawful restraint. The other counts were merged. On appeal, defendant contends that his conviction for aggravated unlawful restraint must be vacated under the one-act, one-crime rule because it is based on the same physical act as his conviction for armed robbery. For the following reasons, we vacate defendant's sentence for aggravated unlawful restraint and otherwise affirm defendant's conviction and sentence for armed robbery.

¶ 3 Defendant was charged by indictment with armed robbery, robbery, aggravated unlawful restraint, and unlawful restraint. The armed robbery count alleged that defendant knowingly took property from Jaharie Lee by the use of force or by threatening the use of force and defendant was armed with a firearm. The aggravated unlawful restraint count alleged that defendant knowingly detained Lee while using a firearm.

¶ 4 The evidence adduced at trial showed that, on October 28, 2013, Lee went to Auto Zone to pick up a job application and then he went to his friend Jermaine Harris's house, located in Bellwood near the intersection of Granville Avenue and St. Charles Road. In the garage at the house was Harris, Lavert Horn, and defendant, who was known to Lee at the time only as J.B. Lee could not recall if he had ever met defendant previously, but he had been friends with Harris and Horn for several years. At some point, Harris and Horn left the garage. Defendant then stood up, shut the garage door, approached Lee, and punched him in the left eye. Lee observed a silver revolver in defendant's hand. Defendant told Lee to stand up, face the wall, and empty his pockets. Defendant also punched Lee on the left side of his hip before taking Lee's iPhone, wallet, and Casio G-Shock watch. Defendant then told Lee that if he came outside he would shoot him, and he left the garage.

¶ 5 Eventually, Lee left the garage and went to the laundromat across the street to wash his face. He returned to the garage to wait for Harris and Horn to return. Upon their return, Lee told them what happened and then he went home to tell his parents. He went to the police station and reported the incident to Bellwood police officer Michael Underwood. Lee identified J.B. as defendant at trial.

¶ 6 On November 6, 2013, the Bellwood Police Department contacted Lee, and Lee went to the police station, bringing with him receipts and serial numbers for the watch and cell phone. Lee met with Detective Daniel Martin and told him that he had discovered defendant's full name through an article he found on the Internet that included a picture of defendant. Martin then generated a photo array, and Lee identified defendant from the photos as the perpetrator. Martin went to a Sprint store to learn whether there had been any activity on the stolen phone. There, he learned that the phone had been deactivated and a new phone had been purchased and activated with the same phone number. On November 7, 2013, Martin, accompanied by his partner, went to defendant's house and arrested him. During a custodial search of defendant, a Casio watch was recovered that matched the description Lee gave and the receipt for the watch. The wallet, phone, and firearm were never recovered. Lee returned to the Bellwood Police Department to identify the watch.

¶ 7 Defendant moved for a directed finding, which the trial court denied. The defense rested without presenting any evidence. The trial court found defendant guilty on all counts. After a hearing, the trial court merged the count of unlawful restraint with the count of aggravated unlawful restraint and the count of robbery with the count of armed robbery. The court sentenced

defendant to 21 years' imprisonment for the armed robbery and 5 years' imprisonment for the aggravated unlawful restraint, to be served concurrently.

¶ 8 On appeal, defendant argues that this court must vacate his conviction for aggravated unlawful restraint as a violation of the one-act, one-crime rule because it is based on the same physical act as his conviction for armed robbery. Although defendant failed to preserve this issue through a contemporaneous objection or a posttrial motion, the State concedes, and we agree, that this type of violation is recognized under the second prong of the plain error rule because it implicates the integrity of the judicial process. *People v. Coats*, 2018 IL 121926, ¶ 10; *People v. Nunez*, 236 Ill. 2d 488, 493 (2010).

¶ 9 In the seminal case of *People v. King*, 66 Ill. 2d 551 (1977), the supreme court held that a defendant cannot be convicted of multiple offenses based on the same physical act, which came to be known as the one-act, one-crime rule. *People v. Almond*, 2015 IL 113817, ¶ 47 (citing *King*, 66 Ill. 2d at 566). The word “act,” as it relates to this rule, is defined as “any overt or outward manifestation that will support a separate conviction.” *Id.* Whether a conviction should be vacated pursuant to the one-act, one-crime rule is a question of law that we review *de novo*. *Coats*, 2018 IL 121926, ¶ 12.

¶ 10 In undertaking our analysis, we first ascertain whether the defendant's conduct consisted of a single act or separate acts. *Id.* In cases where a defendant is charged with unlawful restraint (or aggravated unlawful restraint) along with other offenses, the offense of unlawful restraint or aggravated unlawful restraint is only punishable as a separate crime if the restraint is independent of those other offenses and arose from separate acts. *People v. Alvarado*, 235 Ill. App. 3d 116, 117 (1992). As relevant here, where the restraint does not exceed that inherent in the armed

robbery, the restraint conviction must be vacated. *People v. Daniel*, 2014 IL App (1st) 121171, ¶ 45; *People v. McWilliams*, 2015 IL App (1st) 130913, ¶ 22.

¶ 11 With these principles in mind, we agree with defendant that his conviction for aggravated unlawful restraint violates the one-act, one-crime rule because defendant's act of restraint was inherent in the armed robbery. In this case, the restraint was not an independent physical act separate from the armed robbery. Defendant used force when he closed the garage door and punched Lee and he continued to threaten the imminent use of force by displaying a gun. He continued the use of force by punching Lee in the side. He then robbed Lee by ordering him to empty his pockets and taking Lee's wallet, phone, and watch. Defendant then left the garage but not before threatening Lee not to follow him. The armed robbery was ongoing from defendant closing the garage door until defendant left the garage. As in *Daniel* and *McWilliams*, defendant's act of armed robbery necessarily included his restraint of Lee.

¶ 12 In reaching this conclusion, we briefly note that the charging instruments in this case did not allege separate acts. See *People v. Kotero*, 2012 IL App (1st) 100951, ¶ 22 (stating that the court must look at the charging instruments to determine whether the separate offenses are based on the same physical act). Count I charged armed robbery on the basis that defendant knowingly took property from Lee "by the use of force or by threatening the imminent use of force and [defendant] *** [was] armed with a firearm." Count III charged aggravated unlawful restraint on the basis that defendant knowingly detained Lee "while using a deadly weapon, to wit: a firearm." The charging instrument "must indicate that the State intended to treat the conduct of defendant as multiple acts in order for multiple convictions to be sustained" (*People v. Crespo*,

203 Ill. 2d 335, 345 (2001)), and here, the State did not distinguish the physical acts that constituted the robbery and the restraint.

¶ 13 Finally, we are not persuaded by the State's argument that the incident involved two separate restraints: (1) defendant closing the garage door, punching Lee, pointing a gun at him, and making him turn around, and (2) defendant pointing a gun at Lee and ordering him to empty his pockets. Such a distinction intentionally creates two acts out of one. See *McWilliams*, 2015 IL App (1st) 130913, ¶ 20. The restraint involved here was not separate or independent from the armed robbery, as it was necessary to effectuate the armed robbery. But see *People v. Williams*, 143 Ill. App. 3d 658, 667 (1986) (holding that convictions for armed robbery and unlawful restraint *were* proper because the conduct comprising the restraint was separate from the armed robbery and not necessary to effectuate the robbery).

¶ 14 Moreover, the actions of closing the garage door and then threatening Lee not to leave the garage do not exceed the restraint necessarily inherent in armed robbery. In *McWilliams*, the offenders initially ordered the victims to the ground and made threats to the victims after taking their property in order to effectuate their escape, and the court rejected the State's argument that these equated to separate acts of restraint, stating that it was a continued restraint inherent in the act of armed robbery. *McWilliams*, 2015 IL App (1st) 130913, ¶ 20; see also *People v. Dennis*, 181 Ill. 2d 87, 103 (1998) (“[T]he force which occurs simultaneously with flight or an escape may be viewed as continuing the commission of the offense.”). Similarly, defendant's restraint of Lee was a single, continuous act inherent in the armed robbery. See *McWilliams*, 2015 IL App (1st) 130913, ¶ 20.

¶ 15 When convictions violate the one-act, one-crime rule, the less serious offense must be vacated. *People v. Lee*, 213 Ill. 2d 218, 226-27 (2004). Here, the offense of aggravated unlawful restraint is the less serious offense because it is a Class 3 felony (720 ILCS 5/10-3, 10-3.1 (West 2016)) whereas armed robbery is a Class X felony (720 ILCS 5/18-2(a)(1) (West 2016)). Accordingly, we vacate the sentence for aggravated unlawful restraint, and the trial court's guilty finding on that count will merge with the conviction for armed robbery. See 730 ILCS 5/5-1-5 (West 2016) (a "conviction" requires a finding of guilt combined with a sentence). We order the mittimus corrected to reflect a single conviction for armed robbery.

¶ 16 Affirmed in part; vacated in part.