

2019 IL App (2d) 161091-U
No. 2-16-1091
Order filed May 28, 2019

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IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

THE PEOPLE OF THE STATE)	Appeal from the Circuit Court
OF ILLINOIS,)	of Kane County.
)	
Plaintiff-Appellee,)	
)	
v.)	No. 15-CF-1413
)	
LONDON GRAY,)	Honorable
)	Donald Tegeler, Jr.,
Defendant-Appellant.)	Judge, Presiding.

JUSTICE JORGENSEN delivered the judgment of the court.
Justices Hutchinson and Schostok concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court properly found beyond a reasonable doubt the elements of possession and gang membership. However, defendant's four convictions for one act of unlawful possession of a firearm violate the one-act, one-crime rule and three convictions must be vacated. Affirmed in part and vacated in part.

¶ 2 After a bench trial, defendant, London Gray, was convicted of four counts of unlawful possession of a firearm: (1) by a street gang member on a public way (720 ILCS 5/24-1.8 (West 2014)) (count I); (2) by a street gang member in a vehicle (720 ILCS 5/24-1.8 (West 2014)) (count II); (3) by a felon (720 ILCS 5/24-1.1 (West 2014)) (count III); and (4) that had a defaced serial number (720 ILCS 5/24-5(b) (West 2014)) (count IV). The trial court sentenced defendant

to concurrent terms of nine years' imprisonment on count III, eight years' imprisonment on counts I and II, and five years' imprisonment on count IV. It denied defendant's posttrial motion.

¶ 3 Defendant raises three issues on appeal: (1) the State failed to prove beyond a reasonable doubt that (a) he had either actual or constructive possession of the recovered weapon and (b) that he was a gang member, as defined by statute; (2) the court abused its discretion in admitting into evidence, without proper foundation, a Snapchat video; and (3) the court erred in entering four concurrent sentences for one act of unlawful possession of a firearm, in violation of one-act, one-crime principles. For the following reasons, we disagree with defendant's first issue, need not reach the second issue, and agree that the sentences violate one-act, one-crime principles. We affirm in part and vacate three convictions.

¶ 4 I. BACKGROUND

¶ 5 At trial, investigator Kyriako Vogiatzis testified that, on September 4, 2015, he worked in the Aurora Police Department's gang unit. While on patrol, he noticed a vehicle with four occupants in the back seat; he initiated a traffic stop. The vehicle turned into a Burger King parking lot and, as it slowed down, both rear doors of the vehicle opened, and two of the backseat occupants exited the car while the car was still rolling. One occupant, Michael Morales, tripped as he exited the rear, passenger door, and he dropped a handgun. Also in the vehicle were Dayna Benavidas and Ricardo Chairez. Vogiatzis knew defendant and identified him as exiting the rear, driver's side door. Defendant, holding the right side of his pants around his pocket area, began to run southbound on Farnsworth Avenue. Vogiatzis explained that he did not see defendant holding a belt or gun. The only weapon Vogiatzis saw at the scene of the stop was the one that Morales dropped upon exiting the vehicle. The traffic stop video was

played, and Vogiatzis identified each of the persons in the video and explained what each person was wearing. He also testified that the Burger King parking lot is a public way, Farnsworth Avenue and New York Street are public streets, and the area is considered a higher crime area.

¶ 6 Sergeant Liz Robinson-Chan testified that, on September 4, 2015, around 11 p.m., she responded to a dispatch call that defendant, wearing tan pants and a green shirt, fled from a traffic stop and was proceeding southbound on Farnsworth Avenue in Aurora. She proceeded to that area and saw defendant, whom she knew from past dealings, on the west side of the street “walking at a really, really brisk pace. Not walking, not running, but just moving really fast.” Robinson-Chan exited the car and arrested defendant without incident. Defendant did not, at that time, have a weapon on his person.

¶ 7 Laura Herrera testified that she lives at 136 North Farnsworth Avenue. On September 4, 2015, at around 11 p.m., she was at home watching television in the back of the house, which is near her driveway and garbage cans. Her lights inside the house were turned off. Herrera heard “someone run through the driveway,” and she thought that the noise might be her son returning home:

“But then I heard the trash cans. There were noises from the trash cans. It sound[ed] like somebody had jumped over the fence. It was loud noise regarding the trash cans. And when I didn’t see my son come into the house, I opened the door and I saw the officers with their flashlights.

And my son at that point arrived home. I told him not to come in because I heard someone running by the house and the officers were outside looking for someone.”

Herrera did not see defendant. The officers found a gun by the garbage cans. Herrera's family does not own a gun, and she did not give anyone permission to hide a firearm near her garage and garbage cans.

¶ 8 Investigator Colin Griffin testified that he is a gang investigator for the Aurora police department's special operations group. Around 11 p.m. on the evening in question, Griffin went to the Burger King at New York Street and Farnsworth Avenue to assist with the traffic stop. He was advised that defendant had run southbound on Farnsworth. After speaking with Vogiatzis, Griffin and Officer Brian Hammond walked down Farnsworth looking for possibly-discarded items. When they reached the address of 136 North Farnsworth, a woman and her son flagged down the officers and directed them to the side of her residence near garbage cans. The officers recovered between two garbage cans a Diamondback nine-millimeter, semiautomatic handgun with a defaced serial number. There were six live cartridges in the handgun. Griffin testified that, although the area contained debris and dust, there was no debris or dust on the handgun. Griffin saw Sergeant Robinson-Chan with defendant in handcuffs, approximately three or four houses south of Herrera's home. He agreed that, in general, the area is "kind of a high crime area," and he has been called there on several occasions to deal with situations involving guns.

¶ 9 Investigator Robert Hillgoth testified that he is an Aurora police officer assigned to the gang unit in the special operations group. On September 4, 2015, and prior thereto, Hillgoth knew defendant, as well as the other occupants of the vehicle that was stopped that night (*i.e.*, Morales, Chairez, and Benavides). Hillgoth has the Snapchat social media application installed on his police department phone. Snapchat allows users to send videos to followers; *i.e.*, it is similar to mass video texting. Hillgoth has established a fictitious account and uses that account to befriend documented gang members and their associates and gather intelligence. Hillgoth

testified that defendant is one of his Snapchat “friends” and, on September 4, 2015, before the traffic-stop incident, he received a Snapchat video from an account that he believes belongs to defendant; he has received Snapchats from that account in the past. Since Snapchat messages or videos expire and disappear after 24 hours, Hillgoth used another cell phone to record a video of the Snapchat he received. He then shared the video from his phone with other officers in his police unit. (He explained that if he were to screenshot a photo of the video, the sender of the Snapchat video would be notified). The video was then saved on a CD.

¶ 10 Prior to trial, defendant moved *in limine* to exclude the Snapchat video, arguing that the video did not have probative value, was cumulative, did not take place at the scene of the alleged crimes, and lacked date and time authenticators. Although the video might have been posted on a specific day, there was no method for determining when it was filmed. The court denied the motion, finding that, in a circumstantial-evidence case, the video was more probative than prejudicial. Defendant renewed his objection at trial, but the video was admitted over objection. The video depicts defendant wearing a green shirt and holding a firearm, and then the camera moves to show three other persons with him (apparently, Morales, Chairez, and Benavides), some holding firearms and making hand gestures. Hillgoth testified that the people with defendant when the vehicle was stopped on September 4, 2015, are also in the video.

¶ 11 Investigator Hammond testified that, for three years, he has been a gang investigator for the Aurora police department’s special operations group. Hammond testified to his extensive training in gang investigation, and was accepted, over defendant’s “objection for the record,” as an expert in street gangs, gang identification, gang investigation, and gang structures. He explained that a street gang is a group of three or more individuals who share symbols, colors, and signs and “are involved in criminal activity” with the goal of obtaining funding and territory

for the gang. Hammond was asked, “Is one of the gangs in the City of Aurora named the Insane Deuces?” He replied, “Yes.” Defendant did not object to this testimony.¹

¶ 12 Hammond explained that the Insane Deuces’s colors are green and black, and its symbols include variations on the number two. Hammond further explained that the Aurora police use gang contact sheets as a method to document and describe gang activity. According to Hammond, criteria assessed to determine whether a person is involved with a gang include self-admission, tattoos based on color and symbols, symbolic clothing and jewelry, slogans, hand signals and gestures, “hanging out” with other gang members or at known gang locations, and information received from other agencies.

¶ 13 Hammond reviewed the gang contact sheets for defendant and the other people in the car and Snapchat video. Hammond testified that, in April 2012, defendant was classified as an active Insane Deuces gang member based on his self-admission. He was considered inactive in April 2013 (inactive means that there was no contact sheet records for that person in a 12-month period), but it was Hammond’s opinion that, on September 4, 2015, the date of his arrest, defendant was an active member of Insane Deuces. He explained that an inactive member will be considered active again if a contact occurs and the person still has, for example, gang tattoos or is wearing gang colors, is hanging out with known gang members, or if any of the other criteria are met at that time. Hammond noted that defendant continues to have his name tattooed on his right arm with two dots by the “L.” Hammond viewed the Snapchat video and testified that the video came from the account “Daddy Deuce 22,” an account that is connected with

¹ In his motion for a new trial, however, defendant argued that the evidence did not satisfy the requirements of “street gang” member as provided by statute (720 ILCS 5/24-1.8(a)(1) (West 2014)).

defendant because the majority of the videos and pictures coming from that account feature defendant. Hammond testified that, in the past six months to one year, he had seen “probably hundreds” of videos and pictures from the account “Daddy Deuce 22” with defendant in them. Defendant renewed his objection to the video, and the court overruled the objection. Hammond agreed that, in the video, some of defendant’s associates, including Morales and Chairez, were known, active members of the Insane Deuces street gang. Morales and Chairez were making hand gestures that represented gang symbols, and Morales was holding a gun. Defendant was also holding a handgun, although he did not display gang signs in the video. Hammond testified that, once a person is a gang member, they are always a gang member unless they take an affirmative act toward not being one, such as a tattoo removal. At the time of the traffic stop, defendant was associating with known gang members, was wearing green (again, an Insane Deuces color), and had not removed his tattoo; therefore, defendant was considered an active member of the Insane Deuces street gang.

¶ 14 The parties stipulated that there was no suitable forensic evidence, such as fingerprints or DNA, connecting defendant to the recovered firearm. They also stipulated that, on September 4, 2015, defendant did not have a current, valid FOID card and that he was unable to possess a firearm due to his status as a convicted felon. Finally, they stipulated that the weapon was loaded and capable of being fired. In addition, the court reviewed the squad car video of the stop.

¶ 15 The court found defendant guilty and sentenced him on all four charges. In explaining its decision, the court found that defendant, a convicted felon, possessed the handgun with a defaced serial number at the stop in the Burger King parking lot. In explaining its possession finding, the court noted that, when the vehicle was pulled over, but had not yet come to a complete stop,

defendant jumped out and ran away, holding his right pants pocket. “There is no question that he is holding on the outside of the pants, the front pocket. *** As he runs out of view, he is continuing to hold the front pocket of his legs. He is not, in my opinion, holding up his pants as he is running. He is holding something inside of his pants as he is running. You cannot see what it is.”

¶ 16 The court continued that defendant was apprehended approximately seven minutes later, near Herrera’s house. Nothing was found in defendant’s right pocket, but the gun was found near where Herrera heard noise before defendant was apprehended. The court found Herrera “very credible” in her explanation that there was nobody else that could have been behind her house. The area around the gun was dirty, with dust and debris, but the gun itself was clean, a point that the court found “specifically interesting” and from which it determined the gun had been placed, not thrown. The court noted that defendant ran away from the police, but was not running when he was apprehended, circumstantial evidence from which a logical conclusion could be formed that whatever was in his pants pocket was now gone and, therefore, that defendant no longer was fearful of being stopped. The court noted that, in the Snapchat video, defendant was holding a gun and, while it appeared to be the same type of gun as the one recovered, the court could *not* find beyond a reasonable doubt that it was, in fact, the same gun.

¶ 17 The court found that defendant possessed the weapon as charged “at the time of the Burger King incident.” Further, it noted that it was not finding defendant guilty for potentially possessing the weapon in the Snapchat video; rather: “[t]he issue is the Burger King. I find that he did possess it, based upon all of the circumstantial evidence I have. I can find no other reasonable conclusion in this case. There may be other ones, but I do not find that they are reasonable ***.”

¶ 18 The court further found that the State had proved beyond a reasonable doubt that defendant was either an active or inactive member of the Insane Deuces street gang. The court noted that the statute did not differentiate between the two and, further, that it had received testimony from an expert (presumably Hammond) that defendant is either an inactive or active member of the Insane Deuces. Further:

“I find that based upon – and I used the Snapchat video for that purpose only. But based upon what I see in the Snapchat video, based upon the colors that he is wearing, based upon the people that he is hanging out with on September 4th, 2015, based upon his Snapchat name Daddy Deuce 22 which follows along with the expert testimony that we have would be indicia of gang membership. I find that he is in fact a gang member.

I also base that upon the definition of a street gang member found in the Omnibus Street Gang *** Act. Where it states that any person who actually and in fact belongs to a gang, and any person who knowingly act[s] in the capacity of an agent for an accessor to, or is legally accountable for, or voluntarily associates himself with a course of pattern of gang-related activity, whether in a preparatory, executory or cover-up phase of any activity, or who normally performs, aids or abets in any such activity.

I find that [defendant] was a self-admitted gang member. I find that based on the uncontradicted testimony that I have that he has gang tattoos, he was wears [*sic*] gang colors, he associates with known gang members. That during his association of known gang members, gang signs are being thrown back and forth. I find beyond a reasonable doubt that he is in fact a member of a gang, specifically the Insane Deuces.”

¶ 19 The court sentenced defendant to concurrent terms of nine years' imprisonment on count III, eight years' imprisonment on counts I and II, and five years' imprisonment on count IV, and denied defendant's posttrial motion. Defendant appeals.

¶ 20 II. ANALYSIS

¶ 21 A. Sufficiency

¶ 22 On appeal, defendant argues first that the State failed to prove beyond a reasonable doubt that he had either actual or constructive possession of the weapon found by the garbage cans. He asserts that, although circumstantial evidence may suffice to establish constructive possession, suspicious conduct alone is insufficient to establish that defendant exercised control over the weapon. Rather, defendant contends, where the weapon was not found on his person or in an area under his control, the State must present evidence showing that: (1) the weapon was placed recently where it was found; *and* (2) defendant was the only person in that area during the relevant period. Here, defendant contends that the State established neither circumstance; he notes that, although he was apprehended on the same block as the Herrera home, no one saw him near the garbage cans or on the Herrera's property, nor was there any other evidence that the gun was recently placed by the garbage cans or that he had any, let alone exclusive, control, over that area. He notes that the weapon was found in a high-crime area, and no forensic evidence linked him to the weapon. Defendant argues that the State's failure to establish possession requires reversal of all four convictions.

¶ 23 Defendant also argues that the State failed to prove that he was a member of a street gang, as that term is defined by statute. Specifically, defendant notes that the definition of "street gang" requires evidence that three or more persons with an established hierarchy have engaged in a "course or pattern of criminal activity," which, in turn, requires evidence of two or

more gang-related criminal offenses committed after January 1, 1993, with both offenses being committed within five years of the other and at least one of them involving the solicitation, conspiracy, attempt, or commission of a felony or forcible felony. See 740 ILCS 147/10 (West 2014). Here, defendant argues, there was no evidence to satisfy the statutory requirements that the Insane Deuces was a street gang, where the expert did not discuss the hierarchical nature of the group or that persons in the Insane Deuces engage in a course or pattern of criminal activity. Defendant asserts that the failure to establish his membership in a street gang, as defined by statute, requires reversal of his convictions on counts I and II.

¶ 24 When a defendant challenges the sufficiency of the evidence, we consider whether, viewing the evidence in a light most favorable to the State, the finder of fact could have found the essential elements of the crime beyond a reasonable doubt. See, e.g., *People v. Collins*, 214 Ill. 2d 206, 217 (2005). We may not substitute our judgment for that of the fact finder on questions involving the weight or credibility of the evidence. *People v. Jackson*, 232 Ill. 2d 246, 280-81 (2009). Further, we note that the beyond-a-reasonable-doubt standard does not require that the fact finder be satisfied beyond a reasonable doubt as to each link in the chain of circumstances; rather, it is sufficient if all of the evidence taken *together* satisfies the trier of fact beyond a reasonable doubt of the defendant's guilt. *Id.* at 281. "The trier of fact is not required to disregard inferences which flow normally from the evidence before it, nor need it search out all possible explanations consistent with innocence and raise them to a level of reasonable doubt." *Id.* We will not reverse a conviction unless the evidence is "unreasonable, improbable, or so unsatisfactory as to justify a reasonable doubt of the defendant's guilt." *Id.*

¶ 25 We address first defendant's sufficiency argument concerning possession of the weapon. Defendant frames his argument as requiring the State to establish that he had constructive

possession of the weapon where it was found. However, we agree with the State that the court here did not find constructive possession; rather it found that defendant *actually* possessed the weapon *at the traffic stop* in the Burger King parking lot. Indeed, the court stated in its holding that the issue was possession at the traffic stop, and that the evidence, collectively, supported a finding beyond a reasonable doubt that defendant possessed the firearm there. Although defendant argues that the evidence remained insufficient because it reflected no more than suspicious activity, we disagree. As recounted by the court, the traffic stop video (which this court has reviewed) reflects that defendant fled from the stop, before the car stopped, while holding his right, front pants pocket. While defendant certainly has no burden of proof, he did not rebut the reasonable inference that he was holding his pocket and fleeing because there was something incriminating on his person. Indeed, defendant's flight while holding his pants pocket reasonably supports an inference of both consciousness of guilt (see, *e.g.*, *People v. Hart*, 214 Ill. 2d 490, 518-19 (2005)) and that he did not want to be apprehended with something incriminating on his person. Defendant's flight path led him near the Herrera home, where a credible witness (reasonably determined by the court) testified to having heard noise near her garbage cans and the recovery of a weapon with a defaced serial number around the same time that defendant was apprehended nearby (only three or four houses away) and while no longer running. The court's inference from these circumstances, *i.e.*, that defendant no longer had reason to run because he had discarded the weapon found from his pants pocket, is not unreasonable. As such, the issue is not, as defendant has framed it, one concerning the State's proof that, when he was apprehended, defendant had *present, constructive* possession of the weapon. Rather, the issue is whether the evidence was sufficient for the court to conclude beyond a reasonable doubt that defendant had *past, actual* possession of the weapon. Based on the foregoing, viewing the evidence in the light

most favorable to the State, the circumstantial evidence taken as a whole was sufficient for the court to find possession beyond a reasonable doubt. See *Jackson*, 232 Ill. 2d at 281.

¶ 26 Next, we turn to defendant's sufficiency argument concerning gang membership. We reject defendant's argument that there was insufficient evidence to establish that the Insane Deuces is a street gang as statutorily defined. In *People v. Berrios*, 2018 IL App (2d) 150824, an investigator (from the Aurora special operations unit) testified as an expert in street gangs, explaining that a gang is a group of three or more individuals who pursue common and often criminal goals. Further, the expert testified that he tracked Aurora-area gangs, including the Latin Kings and explained the department's process for storing gang contact information sheets, as well as the criteria for determining an individual's relationship and status with a gang. This court rejected on appeal the defendant's argument that the State failed to establish that the Latin Kings was a street gang as defined by statute, as there was no evidence that the group had committed two or more gang-related offenses after January 1, 1993, within five years of each other. *Id.* at ¶¶ 16, 22. We noted prior precedent that a gang expert may opine on the ultimate issue whether a group is a street gang engaged in a course or pattern of criminal activity without testifying to specific dates or incidents. *Id.* at ¶ 22 (citing *People v. Murray*, 2017 IL App (2d) 150599, ¶ 83, and *People v. Jamesson*, 329 Ill. App. 3d 446, 460 (2002)); see also *People v. Murray*, 2018 IL App (2d) 150824, ¶¶ 79-83. Further, we noted that, although the testimony could have been more comprehensive, the expert's testimony that he tracked street gangs, including the Latin Kings, sufficed to support a reasonable determination that the Latin Kings was a street gang, as statutorily defined. *Id.*

¶ 27 We find *Berrios* controlling here. Indeed, as in *Berrios*, Hammond testified as an expert in street gangs, gang identification, gang investigation, and gang structures. He explained that a

street gang is a group of three or more individuals who share symbols, colors, and signs and are involved in “criminal activity” with the goal of obtaining funding and territory for the gang. While a sufficiency argument cannot be waived, we note that defendant did not contemporaneously object to Hammond’s testimony that the Insane Deuces is an Aurora gang. Further, defendant’s reliance on *People v. Lozano*, 2017 IL App (1st) 142723, ¶ 43, is unpersuasive, as the court there specifically noted that the case before it was a jury trial, as opposed to a bench trial where, “[i]mportantly, *** the judge is presumed to know the law that applies.” In this bench trial, we may presume that the trial judge understood Hammond’s opinion that the Insane Deuces is a street gang in light of that term’s statutory definition. *Id.*

¶ 28

B. Snapchat Video

¶ 29 Next, defendant argues that counts I and II must be reversed because the court abused its discretion in admitting into evidence the Snapchat video without proper authentication and foundation. Defendant notes that there was no time stamp on the video, nor an IP address to link the video to the device upon which it was taken. He notes that the State did not present evidence to show when the video was taken, that “Daddy Deuce 22” was his account, or that defendant was responsible for the video’s contents. Defendant further notes that anyone can create a fictitious Snapchat account or potentially gain access to another’s account, as evidenced by Officer Hillgoth having created a fake account here. Defendant argues that there were other persons in the video and that there was no testimony demonstrating that he was the person who posted the Snapchat messages that Hillgoth received that day or had previously received from that account. Defendant argues that the court’s abuse of discretion was not harmless error, because the court relied on the Snapchat evidence to find that defendant was a street gang member.

¶ 30 We, however, need not reach defendant's arguments concerning admission of the Snapchat video. As seen in the following section, defendant next argues that his convictions violate one-act, one-crime principles, and we agree. Because our decision requires vacating defendant's convictions on counts I and II, the only counts wherein admission of the Snapchat video was relevant (because the court considered it only as it spoke to defendant's gang membership), we decline to address defendant's arguments on this issue.

¶ 31 C. Sentencing

¶ 32 Finally, defendant argues that the trial court erred in imposing four concurrent sentences on his convictions for one act of unlawful possession of a firearm, in violation of one-act, one-crime principles. He contends that he was convicted of several counts of unlawful possession of a weapon, but they were all based upon the same physical act of possession. Defendant asks that we review this issue for plain error, conceding that it was not raised in his posttrial motion.

¶ 33 The plain error doctrine allows us to review an unpreserved error where a clear or obvious error occurred and: (1) the evidence is so closely balanced that the error alone, regardless of its seriousness, threatened to tip the scales of justice against the defendant; or (2) regardless of the closeness of the evidence, the error is so serious that it affected the fairness of the defendant's trial and challenged the integrity of the judicial process. See *People v. Coats*, 2018 IL 121926, ¶ 9. As "one-act, one-crime violations fall within the second prong of the plain error doctrine as an obvious error so serious that it challenges the integrity of the judicial process," (*Id.* at ¶ 10), we will address defendant's argument, despite forfeiture, under the second prong of the doctrine.

¶ 34 A defendant may not be convicted of multiple offenses "when those offenses are all based on precisely the same physical act." *Id.* at ¶ 11. We consider *de novo* whether a one-act,

one-crime error occurred, asking first whether defendant's conduct consisted of a single "physical act" or multiple acts. *Id.* at ¶ 12. If defendant committed multiple acts, then we must determine whether any of the offenses are lesser-included offenses. *Id.* Multiple convictions are proper only if defendant committed multiple acts and none of the offenses constitute lesser-included offenses. *Id.* To clarify, a defendant may be convicted of multiple offenses where they share a common act. *People v. Rodriguez*, 169 Ill. 2d 183, 188 (1996). However, where multiple offenses share a common act, there must be additional overt acts to sustain the additional convictions. *Id.* at 188-89; see *Coats*, 2018 IL 121926, ¶ 16 (summarizing cases reflecting that, as long as there are multiple *physical* acts, their interrelationship does not preclude multiple convictions).

¶ 35 Here, defendant argues that, although his four unlawful possession of a firearm convictions each concerned different *circumstances* (possession by a gang member on a public way, possession by a gang member in a vehicle, possession by a felon, and possession of a weapon with a defaced serial number), they all arose from a single physical *act* of possessing one weapon. The State disagrees, arguing that, although possession of the handgun was a common act across the offenses, each conviction contained different elements that required proof beyond a reasonable doubt and, therefore, they were separate acts. We disagree with the State's argument.

¶ 36 The definition of "act," as stated by our supreme court, is "any overt or outward manifestation which will support a different offense." *People v. King*, 66 Ill. 2d 551, 566 (1977). As noted in *Coats*, overt, physical acts are required to form the basis of multiple convictions, even if one overt act is shared by all. In *Coats*, our supreme court rejected the defendant's one-act, one-crime argument, noting that while the act of possessing a handgun served as a basis for

both of the defendant's convictions, his armed-violence conviction was also based on a *second* act, specifically, drug possession, that "appli[ed] only to the armed[-] violence offense." *Id.* ¶¶ 6, 17. Thus, "[s]ince the possession of the handgun was only part of the conduct which formed the basis for the separate armed[-]violence conviction, the two offenses were not carved from precisely the same physical act." *Id.* However, and critically here, the court disagreed with the concept that multiple convictions for unlawful possession of a weapon could be sustained simply by the fact that one of those convictions required the additional element of unlawful possession by a felon, explaining that "status" as a felon is not an "act" but, rather, "a state of being." *Id.* at ¶ 27; see also *People v. Quinones*, 362 Ill. App. 3d 385, 397 (2005) (two convictions for unlawful use of a weapon could not stand, where one was based on the weapon being uncased, loaded, and accessible, and the other was based on possession without a FOID card; both were based on the same single act, *i.e.*, possession of the firearm); *People v. Carter*, 344 Ill. App. 3d 663 (2003) (*aff'd in part and rev'd in part on other grounds*, *People v. Carter*, 213 Ill. 2d 295 (2004)) (unlawful possession of a weapon by a felon was based on the same conduct as possession of a firearm without a FOID card in violation of one-act, one-crime rules).

¶ 37 Here, the court convicted defendant of unlawfully possessing one firearm at the traffic stop (there is no argument or evidence that defendant possessed more than one firearm at that time, that he also possessed drugs, etc.) Thus, here, defendant's convictions were all based on precisely the same physical act. Indeed, there was only one overt physical act (possession of the firearm) that formed the basis of the convictions. Defendant's commission of that act while a gang member, a felon, and while the firearm was defaced, concern characteristics of status or states of being, as opposed to overt acts. See *Coats*, 2018 IL 121926, ¶ 27.

¶ 38 Under the one-act, one-crime rule, a court should impose a sentence on the more serious offense and vacate the less serious offense. *People v. Artis*, 232 Ill. 2d 156, 170 (2009). In order to determine whether one offense is more serious than another, we look to their possible punishments and consider which offense has the more culpable mental state. *Id.* at 170-71. Here, the trial court noted that count III carried the greatest potential sentence of 14 years' imprisonment and, further, it imposed upon defendant a higher sentence (9 years) for that conviction than for any other. Accordingly, we vacate defendant's convictions on counts I, II, and IV. We affirm defendant's conviction on count III and his sentence in all other respects.

¶ 39

III. CONCLUSION

¶ 40 For the reasons stated, the judgment of the circuit court of Kane County is affirmed in part and vacated in part.

¶ 41 Affirmed in part and vacated in part.