No. 121926

IN THE
SUPREME COURT OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. LESHAWN COATS, Defendant-Appellant.	)))))))))))	Appeal from the Appellate Court of Illinois, First Judicial District, No. 1-14-2028 There on appeal from the Circuit Court of Cook County, Illinois, No. 13 CR 14193 The Honorable Vincent M. Gaughan, Judge Presiding.

BRIEF OF PLAINTIFF-APPELLEE PEOPLE OF THE STATE OF ILLINOIS

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ORAL ARGUMENT REQUESTED

POINTS AND AUTHORITIES

NATURE OF THE CASE

This is a direct appeal from the appellate court's judgment affirming defendant's convictions for (1) armed violence predicated on possession of heroin with intent to deliver and (2) being an armed habitual criminal. The judgment is not based on a jury verdict, and no question is raised on the pleadings.

ISSUES PRESENTED FOR REVIEW

I. Whether defendant forfeited his one act, one crime argument.

II. Whether defendant's convictions for armed violence predicated on possession of heroin with intent to deliver and being an armed habitual criminal violate the one act, one crime doctrine.

III. Whether this Court should adopt a new rule prohibiting multiple convictions involving a common act.

STATEMENT OF FACTS

At defendant's bench trial, an officer testified that, while executing a search warrant for a residence, he found defendant in a bedroom holding a loaded semiautomatic handgun in his left hand and a bag containing ninety-two smaller bags of suspected heroin in his right hand. R. J8-14, J20.[1] Defendant "blurted out 'You got me'" and admitted that he "lived there." *Id.*

[1] The State cites the report of proceedings as "R"; the common law record as "C"; defendant's brief as "Def. Br."; and defendant's appendix as "A."

at J17. The officer further testified that a search of the bedroom revealed ammunition, "narcotics packaging material" (i.e., small plastic bags), $600 in cash, and, inside a small refrigerator, nine more bags of suspected heroin. *Id.* at J14-16. The parties stipulated that defendant had prior convictions for robbery and aggravated robbery and that a forensic chemist would testify that she tested seventy-three of the bags defendant was holding and six of the bags found in the refrigerator and that they tested positive for 15.3 grams of heroin and 1.2 grams of heroin, respectively. *Id.* at J36-39.

The judge found defendant guilty on four counts: (1) being an armed habitual criminal; (2) armed violence predicated on possession of 15-100 grams of heroin with intent to deliver; (3) possession of 15-100 grams of heroin with intent to deliver (based on the heroin defendant was holding); and (4) possession of 1-15 grams of heroin with intent to deliver (based on the heroin found in the refrigerator). *Id.* at J64; C50-53. *See generally* 720 ILCS 5/24-1.7(a)(1) (armed habitual criminal: possession of firearm after conviction of two qualifying prior offenses, including forcible felonies); 720 ILCS 5/2-8 (robbery is forcible felony); 720 ILCS 5/33A-2(a) (armed violence: committing specified felony while armed with dangerous weapon); 720 ILCS 570/401(a)(1)(A) (possession of fifteen grams of heroin with intent to deliver is Class X felony); 720 ILCS 570/401(c)(1) (possession of less than fifteen grams of heroin with intent to deliver is Class 1 felony). Defendant was sentenced to

consecutive seven-year and fifteen-year terms of imprisonment on Counts 1 and 2, respectively; merged Count 3 into Count 2; and imposed no sentence on Count 4. R. L6-7; C118. Defendant did not raise a one act, one crime argument — or any other argument that his multiple convictions were improper — in the trial court. *See* Def. Br. 7 ("This issue was forfeited in the trial court.").

Defendant appealed, arguing that his armed violence and armed habitual criminal convictions violated the one act, one crime doctrine because they were "predicated on the same physical act" of gun possession. A4 at 8. The appellate court rejected that argument and affirmed the judgment, holding that the convictions were proper because defendant committed two "separate acts": "possession of a gun" and "possession of heroin." *Id.* at 10-12.

ARGUMENT

I. Defendant Forfeited His One Act, One Crime Argument.

As defendant concedes, he forfeited his one act, one crime argument by failing to raise it in the trial court. Def. Br. 7 ("This issue was forfeited in the trial court"). And although defendant observes that one act, one crime violations will sometimes rise to the level of plain error because they affect the integrity of the judicial process, *id.*, he does not advance a plain-error argument in his brief. In particular, he fails to argue — as he must — that the claimed error was "plain" in the sense that it was clear or obvious. *See People*

v. Hillier, 237 Ill. 2d 539, 545 (2010) ("To obtain relief under th[e plain-error] rule, a defendant must first show that a clear or obvious error occurred."); *People v. Herron*, 215 Ill. 2d 167, 184-85 (2005) ("Both the federal and the state test require that the error must be plain."); *People v. Keene*, 169 Ill. 2d 1, 17 (1995) (determination "that an asserted error is a 'plain' one" is a "crucial" aspect of plain-error review). Accordingly, defendant has forfeited any plain-error argument.[2] *See* Ill. S. Ct. R. 341(a)(h)(7) ("Points not argued are waived and shall not be raised in the reply brief, in oral argument, or on petition for rehearing."); *People v. Ramirez*, 2013 IL App (4th) 121153, ¶ 74 ("Because defendant's brief is bereft of argument as to why the plain-error doctrine should apply to this case, we deem that contention forfeited."); *People v. McCoy*, 405 Ill. App. 3d 269, 274 (1st Dist. 2010) (holding plain-error argument forfeited where briefs mentioned plain error but failed to provide "proper legal framework" for plain-error analysis).

II. Defendant's Convictions Do Not Violate the One Act, One Crime Doctrine Because His Conduct Consisted of Separate Acts: Gun Possession and Drug Possession.

Forfeiture aside, defendant's convictions for armed violence and being an armed habitual criminal do not violate the one act, one crime doctrine. As defendant acknowledges, Def. Br. 6, the doctrine prohibits "carv[ing more than

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[2] To the extent that defendant seeks a new rule, *see infra* Section III, he cannot possibly show "plain" error. *See, e.g.*, *People v. Williams*, 2015 IL App (2d) 130585, ¶ 11 (error is not "plain" if law was unclear at time of trial).

one offense] from a single physical act." *People v. King*, 66 Ill. 2d 551, 566 (1977); *accord People v. Johnson*, 237 Ill. 2d 81, 97 (2010) ("Under the [one act, one crime] rule, a defendant may not be convicted of multiple offenses that are based upon precisely the same single physical act."); *People v. Artis*, 232 Ill. 2d 156, 165 (2009) ("Multiple convictions are improper if they are based on precisely the same physical act."). Where a defendant commits *multiple* acts, however, multiple convictions are permissible so long as none of the offenses are "lesser included" offenses. *King*, 66 Ill. 2d at 566 ("Prejudice, with regard to multiple acts, exists only when the defendant is convicted of more than one offense, some of which are, by definition, lesser included offenses. Multiple convictions . . . should be permitted in all other cases where a defendant has committed several acts, despite the interrelationship of those acts."); *accord Artis*, 232 Ill. 2d at 165 ("[U]nder *King*, a court first must determine whether a defendant's conduct consists of one act or several acts. . . If the [convictions are] based on more than one physical act, a court must then determine whether any of the offenses are lesser-included offenses. If they are, then multiple convictions are improper."). Here, defendant committed *two* acts: possession of a gun and possession of heroin. *See People v. Almond*, 2015 IL 113817, ¶ 48 (possession of loaded gun qualified as "two separate acts — possession of a firearm and possession of firearm ammunition" — for purposes of one act, one crime rule); *see also People v. Hunter*, 2013 IL 114100, ¶ 25

(noting that "the simultaneous possession of different types of contraband may give rise to multiple separate offenses"). Defendant does not argue otherwise; indeed, he explicitly acknowledges "[t]h[e] rule [that] possession of each item of contraband is a separate act." Def. Br. 10. Because defendant committed two acts, he could be convicted of two offenses so long as neither was a lesser included offense.[3] *See King*, 66 Ill. 2d at 566 ("[W]hen more than one offense arises from a series of incidental or closely related acts and the offenses are not, by definition, lesser included offenses, convictions with concurrent sentences can be entered."). Defendant does not argue that armed violence is a lesser included offense of being an armed habitual criminal (or vice versa), nor could he: each offense includes an element that the other does not, so neither is a lesser included offense. *See People v. Miller*, 238 Ill. 2d 161 (2010) (adopting "abstract elements" approach to lesser included offenses for

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[3] Because the one act, one crime issue can be resolved on the ground that defendant's conduct consisted of two separate physical acts (gun possession and drug possession), this Court need not address defendant's argument that "possession of a single item is a single act." Def. Br. 8. Although the opinion below stated that "each hand gun possession was a separate act," A4 at 11, that portion of the opinion appears to be an error. Because, as defendant acknowledges, Def. Br. 16, unit-of-prosecution issues in possession cases are complicated, and because the question whether possession of a single item can ever constitute multiple physical acts is not squarely presented in this case, the Court should decline to address it here. *See, e.g.*, *People v. White*, 2011 IL 109689, ¶ 144 ("[C]ourts of review should not ordinarily consider issues where they are not essential to the disposition of the cause or where the result will not be affected regardless of how the issues are decided."); *People v. Horrell*, 235 Ill. 2d 235, 241 (2009) ("[W]e may affirm the circuit court's judgment on any basis contained in the record.").

purposes of one act, one crime doctrine). Accordingly, defendant's convictions do not violate the one act, one crime doctrine. *See People v. White*, 311 Ill. App. 3d 374, 386 (4th Dist. 2000) (upholding convictions for unlawful possession of a weapon and armed violence predicated on drug possession because drug possession and gun possession, though potentially simultaneous, constituted "separate acts" for one act, one crime purposes).

III. This Court Should Decline to Adopt a New Rule Prohibiting Multiple Convictions Involving a Common Act.

Although portions of defendant's brief suggest that he seeks only straightforward application of the existing one act, one crime doctrine, Def. Br. 6-7, he in fact asks this Court to "adopt" a new rule that a "shared act precludes multiple convictions" whenever the common act is the "crux" of both offenses, Def. Br. 7, 14-15. But defendant's proposed rule was already rejected by this Court in *People v. Rodriguez*, 169 Ill. 2d 183 (1996). Moreover, the rule is unnecessary, finds no support in the other decisions defendant cites, and is unworkable.

A. This Court rejected defendant's proposed rule in *Rodriguez*.

First, this Court squarely rejected defendant's proposed "common act" rule in *Rodriguez*, where it held that a defendant can be convicted of two offenses that are based in part on a common act so long as he has "committed multiple acts." *Rodriguez*, 169 Ill. 2d at 189. Rodriguez was convicted of

aggravated criminal sexual assault and home invasion; both offenses were based in part on his "threatening the victim with a gun." *Id.* at 187. The appellate court held that multiple convictions were improper due to the "common act," but this Court reversed, explaining that the convictions were permissible because "the defendant committed multiple acts" (i.e., unlawful entry and sexual assault). *Id.* at 187-89. This Court's holding was clear: "a person *can* be guilty of two offenses when a common act is part of both offenses." *Id.* at 188 (brackets omitted; emphasis added). Because this Court has already rejected defendant's proposed rule, it need not consider it again.

B. Defendant's proposed rule is unnecessary.

Defendant urges this Court to adopt a new version of the "common act" rule rejected in *Rodriguez*, with the additional requirement that the common act be the "crux" of both offenses. Def. Br. 7, 14-15. But defendant does not argue that this expansion of the one act, one crime doctrine is necessary to protect criminal defendants, nor could he. The doctrine's original purpose "was to prevent prisoners from being prejudiced in their parole opportunities by multiple convictions and sentences carved from a single physical act," but discretionary parole has been abolished, and the existing version of the one act, one crime doctrine — combined with the constitutional prohibitions against double jeopardy, with which it overlaps — is more than sufficient to protect against any residual unfairness. *See Artis*, 232 Ill. 2d at 164-68 (noting that

doctrine is "not constitutionally mandated" but declining to abandon it despite abolition of parole); *People v. Morgan*, 385 Ill. App. 3d 771, 774-75 (3d Dist. 2008) (noting that doctrine "is used to enforce the third prohibition of double jeopardy, which is that a person should not suffer multiple punishments for the same act"). Defendant's sole argument for expanding the doctrine to encompass his proposed rule is that courts have been "implicitly" applying the rule for years. Def. Br. 7, 11-13. As explained below, however, defendant is incorrect.

1. This Court has never applied defendant's proposed rule.

Contrary to defendant's suggestions, Def. Br. 6-7, 11-15, this Court has never applied his proposed "common act" rule.

This Court's decisions holding that multiple convictions for the same murder are improper — *People v. Lego*, 116 Ill. 2d 323, 344 (1987); *People v. Szabo*, 94 Ill. 2d 327, 350 (1983); and *People v. Mack*, 105 Ill. 2d 103, 137 (1984) — did not apply defendant's proposed "common act" rule; they simply reflect the long-standing principle that "first degree murder is a single offense, and the different theories embodied in the first degree murder statute are merely different ways to commit the same crime." *People v. Daniels*, 187 Ill. 2d 301, 316 (1999); *see also People v. Smith*, 233 Ill. 2d 1, 16 (2009) ("first degree murder is a single offense"); *People v. Cooper*, 194 Ill. 2d 419, 428 (2000) ("there is but one crime of murder").

And *People v. Shum*, 117 Ill. 2d 317 (1987), which held that multiple convictions are proper when there are multiple victims, did not mention defendant's proposed "common act" rule. Instead, it applied the well-settled rule that a "single physical act will constitute two criminal acts where the criminal act is statutorily defined as being directed at a person and the defendant's physical act is directed at multiple people." *People v. Hardin*, 2012 IL App (1st) 100682, ¶ 30; *see Shum*, 117 Ill. 2d at 363 ("[T]here were two distinct victims of the defendant's single action . . . . In Illinois it is well settled that separate victims require separate convictions and sentences.").

Further, contrary to defendant's suggestion, Def. Br. 14, *People v. McLaurin*, 184 Ill. 2d 58 (1998), did not hold that unlawful entry of a dwelling is the "crux" of both home invasion and residential burglary, and nothing in *McLaurin* suggests that a defendant cannot be convicted of both of those offenses. Indeed, *McLaurin* explicitly acknowledged that the offense of home invasion involves multiple physical acts. *McLaurin*, 184 Ill. 2d at 105 ("[T]he two offenses were not carved from the same physical act of setting the fire where the offense of home invasion involved an additional physical act of entering the dwelling of the victim."). Although *McLaurin* vacated a defendant's home invasion conviction based on the one act, one crime doctrine, it did so because he committed only two physical acts — entering the victim's home and starting a fire that killed him — but was convicted of *four* offenses:

aggravated arson, residential burglary, home invasion (based on setting a fire that killed the victim), and intentional murder (based on setting a fire that killed the victim). *Id.* at 103-04. McLaurin challenged all four convictions under the one act, one crime doctrine, and this Court vacated the two least serious convictions, aggravated arson and residential burglary. *Id.* at 105-07. *McLaurin* thus held only that a single physical act cannot be "double counted" for one act, one crime purposes. There is no double-counting problem in defendant's case, however, because he committed two physical acts (gun possession and drug possession) and was convicted of two offenses.

Finally, *People v. Lombardi*, 184 Ill. 2d 462 (2005), did not rely on defendant's proposed rule to determine the "essence" or "crux" of any offense. *Contra* Def. Br. 12-13. Like the decisions discussed above, *Lombardi* did not mention defendant's proposed rule or any of his buzzwords ("crux," "essence," "gravamen," or "crucial act"); it merely held that the penalty for armed violence comports with due process because it is reasonably related to the legislative goal of "deterring individuals from arming themselves with dangerous weapons during the commission of a felony." *Lombardi*, 184 Ill. 2d at 472.

In sum, this Court has never applied defendant's proposed rule — implicitly or otherwise — and none of this Court's decisions offers any reason to adopt it.

2. The Second District did not apply defendant's proposed rule in *Williams*.

Contrary to defendant's claims, Def. Br. 10-11, the Second District's decision in *People v. Williams*, 302 Ill. App. 3d 975 (2d Dist. 1999), did not apply his proposed rule to hold that possession of a dangerous weapon is the "crux" of armed violence.[4] As with the other decisions defendant cites, *see supra* Section III(B)(1), *Williams* did not mention defendant's proposed rule or any of his buzzwords. Nor did *Williams* hold that "possession of a single item is a single act." *Contra* Def. Br. 8. Instead, *Williams* merely misapplied the one act, one crime doctrine by holding that the simultaneous possession of two types of contraband constituted a single physical act. *Williams*, 302 Ill. App. 3d at 978 ("In the case decided herein, the common act is a felon possessing a gun and drugs simultaneously."). But as this Court held in *Almond*, the simultaneous possession of different types of contraband constitutes "separate acts" for one act, one crime purposes. *Almond*, 2015 IL 113817, ¶ 48 (possession of loaded gun constituted "two separate acts—possession of a firearm and possession of firearm ammunition"). Although defendant maintains that *Williams* was "correctly reasoned," Def. Br. 10, he does not

[4] Defendant's assertion that *Williams*'s one act, one crime holding involved the offense of unlawful use of a weapon, Def. Br. 8, is incorrect; the offense at issue was unlawful possession of a weapon by a felon. *Williams*, 302 Ill. App. 3d at 978.

explain how *Williams* survives *Almond*, which he also cites, *id.* No such explanation is possible, and *Williams* should be disapproved.[5]

C. Defendant's proposed rule is unworkable.

Finally, defendant's proposed rule is neither "clear" nor "easily applied." *Contra* Def. Br. 14-16. Defendant never explains how to determine the "crux" of an offense that involves two or more physical acts, and the positions he takes with respect to particular offenses are illogical. For instance, his claim that the "crux" of home invasion is "the unlawful entry of a dwelling," not the use or threat of force against the occupant, Def. Br. 14, is at odds with this Court's observation that home invasion "is not a property crime" but rather "a crime that protects persons from intruders." *People v. Hill*, 199 Ill. 2d 440, 452 (2002), *overruled on other grounds by People v. Sharpe*, 216 Ill. 2d 481 (2005). And his positions regarding offenses that are "enhanced" by the use of a weapon are inconsistent: with respect to aggravated criminal sexual assault, defendant contends that the "crux" is the underlying assault, rather than the weapon use, Def. Br. 13-14, but as to armed violence he argues the opposite, claiming that the weapon use itself is the "crux" of the offense, Def. Br. 15-16. *See generally People v. Del Percio*, 105 Ill. 2d 372, 378 (1985) (weapon "enhance[s]" underlying felony to armed

[5] *People v. Brown*, 2017 IL App (3d) 150070, which followed *Williams*, was also wrongly decided. A petition for leave to appeal (No. 122507) is pending in that case.

violence); *People v. Wade*, 131 Ill. 2d 370, 374 (1989) (same). Defendant goes on to suggest that certain offenses do "not [involve] 'physical acts' at all," Def. Br. 16, but offers no insight as to how his proposed rule would apply to such offenses. As these examples demonstrate, far from being "intuitive," Def. Br. 15, defendant's proposed rule is utterly unworkable.

Even putting aside the unworkability of defendant's proposed rule in a wide variety of cases, it would be of no help to him here because his offenses do not have the same "crux." While the crux of the armed habitual criminal offense is possession of a firearm, the crux of armed violence is not. Instead — as this Court has consistently noted — the dangerous-weapon element of armed violence is merely an aggravating factor that enhances the penalty for the underlying felony. *See, e.g.*, *People v. Koppa*, 184 Ill. 2d 159, 175 (1998) (weapon "elevated" underlying felony to armed violence); *Del Percio*, 105 Ill. 2d at 378 (weapon "enhance[d underlying felony] to armed violence"); *Wade*, 131 Ill. 2d at 374 (handgun "enhanced" underlying felony to armed violence); *see also People v. Donaldson*, 91 Ill. 2d 164, 168 (1982) (in enacting armed violence statute, "legislature intended . . . to increase or enhance the minimum penalty upon conviction of a felony when the violator was in possession of a dangerous weapon while committing the felony"). The crux of armed violence is thus the underlying felony, not the weapon, and defendant's proposed rule would not change the outcome in his case.

For all of these reasons, this Court should decline to adopt defendant's proposed rule.

CONCLUSION

This Court should affirm the appellate court's judgment.

August 30, 2017

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages containing the Rule 341(d) cover, the Rule 341(h)(1) statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342(a), is fifteen pages.

/s/ Retha Stotts
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PROOF OF FILING AND SERVICE

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct. On August 30, 2017, the **Brief of Plaintiff-Appellee People of the State of Illinois** was (1) filed with the Clerk of the Supreme Court of Illinois, using the Court's electronic filing system, and (2) served by transmitting a copy from my e-mail address to the email addresses of the person named below:

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Additionally, upon its acceptance by the court's electronic filing system, the undersigned will mail thirteen copies of the brief to the Clerk of the Supreme Court of Illinois, 200 East Capitol Avenue, Springfield, Illinois, 62701.

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