

POINT AND AUTHORITIES

Defendants’ Convictions for Aggravated Battery of a Senior Citizen and Robbery Comport with the One-Act, One-Crime Doctrine Because Battering the Victim and Taking His Money Constituted Two Separate Acts	8
<i>People v. Coats</i> , 2018 IL 121926.....	9, 10, 11, 12
<i>People v. King</i> , 66 Ill. 2d 551 (1977).....	9, 10
<i>People v. Miller</i> , 238 Ill. 2d 161 (2010).....	9
<i>People v. Almond</i> , 2015 IL 113817.....	10
<i>People v. Nunez</i> , 236 Ill. 2d 488 (2010).....	10
<i>People v. Rodriguez</i> , 169 Ill. 2d 183 (1996).....	11
<i>People v. Lobdell</i> , 121 Ill. App. 3d 248 (3d Dist. 1983).....	11
720 ILCS 5/12-3 (2008).....	12
720 ILCS 5/18-1 (2008).....	12

NATURE OF THE ACTION

Following severed, simultaneous bench trials, codefendants Stevie Smith and Jerry Brown were convicted of aggravated battery of a senior citizen and robbery. Defendants appealed, claiming that their convictions violated the one-act, one-crime doctrine. The appellate court agreed and vacated their convictions for aggravated battery. This Court allowed the People's petitions for leave to appeal those judgments.

ISSUE PRESENTED FOR REVIEW

Whether defendants' convictions for aggravated battery and robbery comport with the one-act, one-crime doctrine because battering the victim and taking his money constituted two separate acts.

STANDARD OF REVIEW

Application of the one-act, one-crime doctrine is a legal question that this Court reviews *de novo*. *People v. Coats*, 2018 IL 121926, ¶ 12.

JURISDICTION

Jurisdiction lies pursuant to Supreme Court Rules 315, 604(a)(2), and 612(b). On November 28, 2018, this Court allowed the People's petitions for leave to appeal and consolidated the appeals. A20, A31.

PERTINENT STATUTES

720 ILCS 5/12-3(a) (Battery) (2008).

A person commits battery if he intentionally or knowingly without legal justification by any means[] causes bodily harm to an individual[.]

720 ILCS 5/18-1(a) (Robbery) (2008).

A person commits robbery when he or she takes property[] . . . from the person or presence of another by the use of force[.]

STATEMENT OF FACTS**A. Trial and Convictions**

A grand jury indicted defendants on charges of first degree murder, aggravated battery, and robbery. A1-6.¹ The four counts of aggravated battery alleged that defendants caused bodily harm to William Burtner when they “struck [him] about the body.” A2, A4-6. The robbery count alleged that defendants “took United States currency, from the person or presence of William Burtner, by the use of force or by threatening the imminent use of force.” A3.

The cases proceeded to severed, *see* Sm.R.SS3; Br.R.SS3 (granting motion for severance), but simultaneous bench trials, *see* Sm.R.YY14-16; Br.R.ZZ14-16 (accepting jury waivers). The trial testimony established that sixty-five-year-old Burtner, Sm.R.AAA84; Br.R.BBB84, was attacked while attempting to deposit money at the A.J. Smith Bank in Midlothian, Illinois, on the morning of November 16, 2009. In his role as commander of a

¹ “A_” denotes the appendix to this brief. Citations to the record appear as follows: in *People v. Smith*, No. 123901, citations to the common law record and reports of proceedings appear as “Sm.C_” and “Sm.R._,” respectively; in *People v. Brown*, No. 123902, citations to the common law record and reports of proceedings appear as “Br.C_” and “Br.R._,” respectively. The records in the two cases are substantively identical but paginated differently.

Veterans of Foreign Wars post, Burtner was to deposit money into multiple accounts at the bank that morning. Sm.R.ZZ6-9; Br.R.AAA6-9. He carried three bank deposit bags that together held more than \$2,100 in cash, and a cigar box containing a deposit of \$2,100 (consisting of cash and checks). Sm.R.ZZ9-14; Br.R.AAA9-14.

Bank teller Connie Weimar testified that she saw Burtner, a regular customer, walking toward the bank entrance around 10:15 a.m., carrying multiple deposit bags. Sm.R.YY75-76, YY79; Br.R.ZZ75-76, ZZ79. Weimar saw a man in a hooded sweatshirt walk quickly behind him. Sm.R.YY77-78; Br.R.ZZ77-78. She briefly lost sight of both men as they passed behind a wall blocking her view. Sm.R.YY77-78; Br.R.ZZ77-78. Seconds later, the hooded man ran in the opposite direction, carrying something in his hands. Sm.R.YY79-81; Br.R.ZZ79-81. He got into the passenger seat of a black car parked at a nearby Wendy's, which sped off. Sm.R.YY80-81; Br.R.ZZ80-81.

Bank employee Tamara Esposito testified that she heard a supervisor yell out that someone had been robbed and went to the front door, where she found Burtner kneeling on the ground. Sm.R.YY104; Br.R.ZZ104. Esposito and a security guard helped Burtner to a chair inside the bank. Sm.R.YY105-07; Br.R.ZZ105-07. At Burtner's request, Esposito retrieved a cigar box that had fallen to the ground. Sm.R.YY105; Br.R.ZZ105. Burtner held his left side and told Esposito, through labored breathing, that he had been punched in the side. Sm.R.YY108-09; Br.R.ZZ108-09.

Within thirty-six hours, Burtner was dead. Immediately after the attack, Burtner went to Metro South Hospital for emergency care, and his wife Mary met him there. Sm.R.YY51; Br.R.ZZ51. As Mary Burtner testified, her husband left the house that morning in relatively good health, but he had been battling lung cancer off and on for three years. Sm.R.YY48-49, YY53, YY65-66; Br.R.ZZ48-49, ZZ53, ZZ65-66. At the hospital, Burtner held his left side and complained of pain. Sm.R.YY51-53; Br.R.ZZ51-53. A radiologist at the hospital reviewed X-rays of Burtner's chest and saw no signs that he had broken ribs, Sm.R.KKK113-15; Br.R.LLL113-15, though he acknowledged at trial that it was possible Burtner had suffered fractures that were not visible on the X-rays, Sm.R.KKK123; Br.R.LLL123.

Mary Burtner testified that after her husband was released from the hospital that evening, he continued to complain of pain in his left side and felt "worse and worse" over the course of the next day. Sm.R.YY53-55; Br.R.ZZ53-55. On the night of November 17th, Burtner had no appetite and went to bed early. Sm.R.YY55-56; Br.R.ZZ55-56. The next morning, Mary Burtner took him to a scheduled chemotherapy treatment and had to use a wheelchair to bring him inside. Sm.R.YY57-58; Br.R.ZZ57-58. Burtner fell asleep in the car on the ride home and, once home, Mary helped him upstairs to the bedroom, where he again fell asleep. Sm.R.YY59-62; Br.R.ZZ59-62. When Mary Burtner checked on him at 8:30 p.m., Burtner lay very still, his skin was a pale gray color, and he was unresponsive. Sm.R.YY63; Br.R.ZZ63.

She called an ambulance, Sm.R.YY63; Br.R.ZZ63, and paramedics attempted cardiopulmonary resuscitation, but Burtner could not be revived, Sm.R.AAA17-18, AAA27-30; Br.R.BBB17-18, BBB27-30.

Following an autopsy, the medical examiner opined that the cause of Burtner's death was "hypertensive cardiovascular disease," and that the assault was "a significant contributing factor" because it stressed Burtner's weakened cardiovascular system. Sm.R.KKK48-49; Br.R.LLL48-49. The medical examiner noted heart abnormalities, arterial blockage, and scar tissue from previous heart attacks. Sm.R.KKK21-24, KKK47-48; Br.R.LLL21-24, LLL47-48. Her internal examination also revealed three broken ribs on Burtner's left side and hemorrhaging on the left chest wall, injuries that were no more than four days old. Sm.R.KKK27-28, KKK34-35; Br.R.LLL27-28, LLL34-35.

Meanwhile, moments after the attack at the bank, police officers attempted to intercept the defendants' getaway car. Officer Ryan Gulli of the Midlothian Police Department was dispatched to the A.J. Smith Bank regarding a black Mustang. Sm.R.ZZ103; Br.R.AAA103. En route, Gulli encountered a black Mustang traveling toward him at more than 100 miles per hour. Sm.R.ZZ105-06; Br.R.AAA105-06. Gulli made a U-turn to follow the car, and he saw it crash at an intersection, then roll to a stop. Sm.R.ZZ107-09; Br.R.AAA107-09. Two men got out of the Mustang; the driver ran north and the passenger ran south. Sm.R.ZZ109-10;

Br.R.AAA109-10. Gulli chased the driver on foot and eventually, with the assistance of other officers, found him hiding beneath a vehicle in the backyard of a nearby residence. Sm.R.ZZ110-12; Br.R.AAA110-12. Police arrested the man, Sm.R.ZZ114; Br.R.AAA114, later identified as defendant Brown, Sm.R.AAA93-94; Br.R.BBB93-94. Brown was carrying \$1,200 in cash at the time of his arrest. Sm.R.AAA93-93; Br.R.BBB93-94.²

The black Mustang suffered heavy damage in the crash. Sm.R.AAA69-70; Br.R.BBB69-70. Three A.J. Smith Bank deposit bags were found on the vehicle's passenger side floor and \$32 in cash was in the console. Sm.R.AAA70-71, BBB25, BBB31; Br.R.BBB70-71, CCC23, CCC31. Blood samples recovered from the passenger-side door frame, door handle, seat, and airbags were subjected to DNA analysis. Sm.R.AAA117, BBB128-31; Br.R.BBB117, CCC128-31. The single DNA profile extracted from them was entered into a DNA database and linked to defendant Smith. Sm.R.BBB131-32; Br.R.CCC131-32. Based on that match, Smith was arrested several months after the attack. Sm.R.AAA117-18; Br.R.BBB117-18.

The trial court convicted defendants of multiple counts of aggravated battery and robbery but acquitted them of murder, finding that the State had not proven that the battery was the cause of Burtner's death. Sm.R.MMM4-

² Gulli misidentified the driver that he arrested as defendant Smith. Sm.R.ZZ113; Br.R.AAA114. But other evidence established that the person arrested on the date of the robbery was Brown. *E.g.*, Sm.R.BBB53-54; Br.R.CCC53-54.

7; Br.R.NNN4-7. With respect to each defendant, the trial court merged the battery counts into one count of aggravated battery of a senior citizen, and it entered judgments on that count and one count of robbery. Sm.R.MMM7; Br.R.NNN7.

The trial court further held that the nature of defendants' crimes and defendants' lengthy criminal histories warranted imposition of consecutive sentences. Sm.R.OOO11-12; Br.R.PPP11-12. The court sentenced Smith to twelve years for robbery and six years for aggravated battery of a senior citizen; it sentenced Brown to fifteen years for robbery and seven years for aggravated battery of a senior citizen. A7, A9; *see also* Sm.R.OOO11-13; Br.R.PPP11-13.

B. Appeal

Defendants appealed, each arguing that their multiple convictions violated the one-act, one-crime doctrine. A11, A21. They acknowledged that they had forfeited their claims by failing to raise them in the trial court, A13, A23, but the appellate court held that defendants had demonstrated "plain error" to overcome forfeiture because their claims were meritorious, *see* A13-14, A23-24.

Specifically, defendants argued that their convictions stemmed from a single physical act: a punch to Burtner's left side. The People responded that the robbery convictions rested on the defendants' separate acts of taking Burtner's bank deposit bags, A13, A23, but the appellate court disagreed that

the theft conviction was based on anything other than a punch. It reasoned that “[t]here was no evidence that Smith used another act of force to take the money from Burtner,” and noted that Smith might have picked up the bags from the ground after Burtner dropped them. A13; *see also* A24.

In each appeal, the People filed a PLA, noting that the appellate court misapplied the one-act, one-crime doctrine, as recently described in *People v. Coats*, 2018 IL 121926. This Court denied the PLAs but issued supervisory orders directing the appellate court to reconsider its decisions in light of *Coats*. A15, A25. On remand, the appellate court reiterated its conclusions. A19, A29. The People filed a second PLA in each appeal, again arguing that the appellate court misapplied *Coats*, and this Court granted those petitions and consolidated the appeals. A20, A31.

ARGUMENT

Defendants’ Convictions for Aggravated Battery of a Senior Citizen and Robbery Comport with the One-Act, One-Crime Doctrine Because Battering the Victim and Taking His Money Constituted Two Separate Acts.

Defendants’ convictions for aggravated battery of a senior citizen and robbery comport with the one-act, one-crime doctrine because punching Burtner in the ribs and taking his money constituted two separate and distinct acts. Therefore, this Court should reinstate defendants’ convictions and sentences for aggravated battery.

Defendants forfeited their one-act, one-crime claims by failing to raise them in the trial court. A18, A28. A violation of the one-act, one-crime

doctrine constitutes “plain error” for purposes of overcoming forfeiture; thus, whether to excuse defendants’ forfeiture is subsumed by the question of whether error occurred at all. *Coats*, 2018 IL 121926, ¶ 10. Because there was no error, it follows that there was no plain error. *Id.* ¶ 32.

Under the one-act, one-crime doctrine, “a criminal defendant may not be convicted of multiple offenses when those offenses are all based on *precisely* the same physical act.” *Id.* ¶ 11 (emphasis added). Conversely, “[m]ultiple convictions . . . should be permitted in all other cases where a defendant has committed several acts, despite the interrelationship of those acts.” *People v. King*, 66 Ill. 2d 551, 566 (1977).

The one-act, one-crime analysis proceeds in two steps. “First, the court ascertains whether the defendant’s conduct consisted of a single physical act or separate acts.” *Coats*, 2018 IL 121926, ¶ 12. If there were separate acts, “the court then moves to the second step and determines whether any of the offenses are lesser-included offenses.” *Id.* Here, the appellate court answered only the first question, holding that the battery of Burtner and the taking of his money were based on “one single physical act — a single punch to Burtner’s left side.” A18; *see also* A28.³

³ Defendants did not argue to the appellate court that either robbery or aggravated battery was a lesser-included offense of the other, nor could they. To answer that question in the one-act, one-crime context, this Court employs an “abstract elements approach” that compares the statutory elements of two offenses. *People v. Miller*, 238 Ill. 2d 161, 175 (2010). Here, both crimes contain elements not subsumed by the other: robbery requires the taking of property and battery requires resulting bodily harm.

The appellate court was wrong, for the robbery required a separate physical act. An “act” for one-act, one-crime purposes is “any overt or outward manifestation which will support a different offense.” *Coats*, 2018 IL 121926, ¶ 15 (quoting *King*, 66 Ill. 2d at 566). The separate acts may be simultaneous and overlapping. *See id.* ¶ 17 (simultaneous possession of weapon and drugs constituted two separate acts warranting convictions for both armed violence and being an armed habitual criminal); *People v. Almond*, 2015 IL 113817, ¶ 48 (simultaneous possession of handgun and ammunition within handgun were distinct acts that could provide bases for two convictions); *People v. Nunez*, 236 Ill. 2d 488, 493-96 (2010) (through single act of driving, defendant committed separate acts of driving with revoked license and driving under the influence, supporting two convictions).

But this case does not require a nuanced parsing of simultaneous conduct, because the evidence clearly establishes that defendant Smith (for whose conduct Brown was accountable) engaged in at least two discrete physical acts that were separated in time. Simply put, it was not physically possible for Smith to acquire Burtner’s bank deposit bags by punching Burtner in the ribs; Smith needed to take some additional step to take the bags into his hands and carry them to the getaway car. That is so even if “Burtner dropped the bags after he was punched and fell to the ground,” A19, A29, as the appellate court hypothesized, because even if that were the case, Smith still needed to pick them up from the ground. That separate act was

enough for one-act, one-crime purposes. To prove the robbery, the State did not need to show precisely “*how* the taking of the deposit bags occurred,” A19, A29 (emphasis added), only *that* the taking occurred by use of force. And it proved the taking through testimony that A.J. Smith Bank deposit bags were recovered from the defendants’ getaway car and that Brown possessed more than \$1,200 in cash when he was arrested shortly after the robbery.

The appellate court mistakenly believed that the one-act, one-crime doctrine barred separate convictions unless defendants “used *another act of force* to take the money from Burtner,” A19, A28 (emphasis added), but the State could rely on a single act of force to prove both charges. As this Court recently reiterated, a defendant may be convicted of two offenses that share “a common act.” *Coats*, 2018 IL 121926, ¶ 15 (quoting *People v. Rodriguez*, 169 Ill. 2d 183, 188 (1996)). Indeed, a defendant may be convicted of two offenses even if a single act is “part of one offense and the only act of the other offense.” *Id.* (quoting *People v. Lobdell*, 121 Ill. App. 3d 248, 252 (3d Dist. 1983)).

Here, the robbery hinged on a separate act even if both offenses shared the common act of punching the victim.⁴ The punch was the basis for the

⁴ Notably, it is unclear that a single punch was the only act of force. The punch plainly occurred because Burtner told Esposito that he had been struck in the side, but the fact that Burtner was found on the ground with bruised knees suggests that he may also have been pushed. See Sm.R.YY104, KKK14; Br.R.ZZ104, LLL14. This Court need not decide whether multiple acts of force occurred, however, because one act sufficed.

aggravated battery convictions because it produced bodily harm. *See* 720 ILCS 5/12-3(a) (2008) (“A person commits battery if he intentionally or knowingly without legal justification by any means[] causes bodily harm to an individual[.]”); *see also* A2 (alleging that defendants committed aggravated battery when they “struck William Burtner about the body, causing injuries”). The punch was also relevant to the robbery charge insofar as the People needed to prove that defendants “[took] property[] . . . from the person or presence of” Burtner “by the use of force,” 720 ILCS 5/18-1(a) (2008), and the punch was conclusive proof of such force. But the robbery conviction also rested on proof of the entirely separate act of taking and carrying away the bank bags. Thus, the robbery was “not carved from precisely the same physical act” as the aggravated battery, *see Coats*, 2018 IL 121926, ¶ 17, and defendants’ convictions comport with the one-act, one-crime doctrine.

Accordingly, defendants’ convictions for aggravated battery of a senior citizen and the attendant consecutive sentences should be reinstated.

CONCLUSION

This Court should reverse the appellate court's judgments in part and reinstate defendants' convictions and sentences for aggravated battery of a senior citizen.

February 6, 2019

Respectfully submitted,

KWAME RAOUL
Attorney General of Illinois

DAVID L. FRANKLIN
Solicitor General

MICHAEL M. GLICK
Criminal Appeals Division Chief

ERIN M. O'CONNELL
Assistant Attorney General
100 West Randolph Street, 12th Floor
Chicago, Illinois 60601-3218
Telephone: (312) 814-1235
Fax: (312) 814-1235
eserve.criminalappeals@atg.state.il.us

*Counsel for Plaintiff-Appellant
People of the State of Illinois*

RULE 341(c) CERTIFICATE

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, and the certificate of service, is thirteen pages.

/s/ Erin M. O'Connell
ERIN M. O'CONNELL
Assistant Attorney General

APPENDIX

Table of Contents of Appendix

<u>Document</u>	<u>Pages</u>
Indictments	A1-6
Judgment, <i>People v. Smith</i> , No. 10 CR 4124 (Ill. Cir. Ct. Apr. 22, 2015).....	A7
Notice of Appeal, <i>People v. Smith</i> , No. 10 CR 4124 (filed Apr. 22, 2015).....	A8
Judgment, <i>People v. Brown</i> , No. 10 CR 4124 (Ill. Cir. Ct. Apr. 22, 2015).....	A9
Notice of Appeal, <i>People v. Brown</i> , No. 10 CR 4124 (filed Apr. 22, 2015)	A10
Appellate Opinion, <i>People v. Smith</i> , 2017 IL App (1st) 151312.....	A11-14
Denial of PLA and Supervisory Order, <i>People v. Smith</i> , 95 N.E.3d 470 (Ill. 2018) (Table).....	A15
Amended Appellate Opinion, <i>People v. Smith</i> , 2018 IL App (1st) 151312-B	A16-19
Order Granting PLA, <i>People v. Smith</i> , 111 N.E.3d 967 (Ill. 2018) (Table)	A20
Rule 23 order, <i>People v. Brown</i> , 2017 IL App (1st) 151311-U.....	A21-24
Denial of PLA and Supervisory Order, <i>People v. Brown</i> , 95 N.E.3d 499 (Ill. 2018) (Table).....	A25
Amended Appellate Opinion, <i>People v. Brown</i> , 2018 IL App (1st) 151311-B	A26-30
Order Granting PLA, <i>People v. Brown</i> , 111 N.E.3d 983 (Ill. 2018) (Table)	A31
Table of Contents of Record on Appeal, <i>People v. Smith</i> , No. 10 CR 4124.....	A32-39
Table of Contents of Record on Appeal, <i>People v. Brown</i> , No. 10 CR 4124	A40-48

STATE OF ILLINOIS)

) SS.

COUNTY OF COOK)

The FEBRUARY, 2010 Grand Jury
Circuit Court of Cook County

The Grand Jurors chosen, selected and sworn, in and for the
County of Cook, in the State of Illinois, in the name and by the
authority of the People of the State of Illinois, upon their oaths
present that on or about NOVEMBER 16, 2009 at and within the County
of Cook, Illinois

JERRY BROWN
STEVIE SMITH

committed the offense of FIRST DEGREE MURDER

in that THEY, WITHOUT LAWFUL JUSTIFICATION, STRUCK WILLIAM BURTNER
ABOUT THE BODY AND KILLED WILLIAM BURTNER, DURING THE
COMMISSION OF A FORCIBLE FELONY, TO WIT: ROBBERY,
IN VIOLATION OF CHAPTER 720 ACT 5, SECTION 9-1(a)(3),
OF THE ILLINOIS COMPILED STATUTES 1992, AS AMENDED, AND

Contrary to the Statute and against the peace and dignity of the same
People of the State of Illinois.

CHARGE ID CODE: 735200
(COUNT 01)

The Grand Jurors chosen, selected and sworn, in and for the County of Cook, in the State of Illinois, in the name and by the authority of the People of the State of Illinois, upon their oaths present that on or about NOVEMBER 16, 2009 at and within the County of Cook, Illinois

JERRY BROWN
STEVIE SMITH

committed the offense of AGGRAVATED BATTERY OF A SENIOR CITIZEN

in that THEY, INTENTIONALLY AND KNOWINGLY WITHOUT LEGAL
JUSTIFICATION AND BY ANY MEANS, CAUSED GREAT BODILY HARM TO
WILLIAM BURTNER, A PERSON SIXTY YEARS OF AGE OR OLDER,
TO WIT: THEY STRUCK WILLIAM BURTNER ABOUT THE BODY, CAUSING
INJURIES,
IN VIOLATION OF CHAPTER 720 ACT 5, SECTION 12-4.6(a)
OF THE ILLINOIS COMPILED STATUTES 1992, AS AMENDED, AND

Contrary to the Statute and against the peace and dignity of the same
People of the State of Illinois.

CHARGE ID CODE: 945250
(COUNT 02)

The Grand Jurors chosen, selected and sworn, in and for the County of Cook, in the State of Illinois, in the name and by the authority of the People of the State of Illinois, upon their oaths present that on or about NOVEMBER 16, 2009 at and within the County of Cook, Illinois

JERRY BROWN
STEVIE SMITH

committed the offense of ROBBERY

in that THEY, TOOK UNITED STATES CURRENCY, FROM THE PERSON OR PRESENCE OF WILLIAM BURTNER, BY THE USE OF FORCE OR BY THREATENING THE IMMINENT USE OF FORCE, IN VIOLATION OF CHAPTER 720 ACT 5, SECTION 18-1(a), OF THE ILLINOIS COMPILED STATUTES 1992, AS AMENDED, AND

Contrary to the Statute and against the peace and dignity of the same People of the State of Illinois.

CHARGE ID CODE: 1100000
(COUNT 03)

The Grand Jurors chosen, selected and sworn, in and for the County of Cook, in the State of Illinois, in the name and by the authority of the People of the State of Illinois, upon their oaths present that on or about NOVEMBER 16, 2009 at and within the County of Cook, Illinois

JERRY BROWN
STEVIE SMITH

committed the offense of AGGRAVATED BATTERY

in that THEY, INTENTIONALLY OR KNOWINGLY WITHOUT LEGAL JUSTIFICATION AND BY ANY MEANS CAUSED GREAT BODILY HARM TO WILLIAM BURTNER, TO WIT: THEY ^{STUCK} ~~STUCK~~ WILLIAM BURTNER ABOUT THE BODY CAUSING INJURIES, IN VIOLATION OF CHAPTER 720 ACT 5 SECTION 12-4(a), OF THE ILLINOIS COMPILED STATUTES 1992 AS AMENDED AND

Contrary to the Statute and against the peace and dignity of the same People of the State of Illinois:

CHARGE ID CODE: 935000
(COUNT 04)

The Grand Jurors chosen, selected and sworn, in and for the County of Cook, in the State of Illinois, in the name and by the authority of the People of the State of Illinois, upon their oaths present that on or about NOVEMBER 16, 2009 at and within the County of Cook, Illinois

JERRY BROWN
STEVIE SMITH

committed the offense of AGGRAVATED BATTERY

in that THEY, INTENTIONALLY OR KNOWINGLY WITHOUT LEGAL JUSTIFICATION AND BY ANY MEANS CAUSED BODILY HARM TO WILLIAM BURTNER, TO WIT: THEY ^{STUCK} ~~STUCK~~ WILLIAM BURTNER ABOUT THE BODY CAUSING INJURIES, WHILE THEY WERE ON OR ABOUT A PUBLIC WAY, TO WIT: 14757 S. CICERO AVENUE, MIDLOTHIAN, COOK COUNTY, ILLINOIS, IN VIOLATION OF CHAPTER 720 ACT 5 SECTION 12-4(b)(8), OF THE ILLINOIS COMPILED STATUTES 1992 AS AMENDED AND

Contrary to the Statute and against the peace and dignity of the same People of the State of Illinois.

CHARGE ID CODE: 935800
(COUNT 05)

The Grand Jurors chosen, selected and sworn, in and for the County of Cook, in the State of Illinois, in the name and by the authority of the People of the State of Illinois, upon their oaths present that on or about NOVEMBER 16, 2009 and within the County of Cook, Illinois

JERRY BROWN
STEVIE SMITH

committed the offense of AGGRAVATED BATTERY

in that THEY, INTENTIONALLY OR KNOWINGLY WITHOUT LEGAL
JUSTIFICATION AND BY MEANS CAUSED BODILY HARM TO WILLIAM
BURTNER, A PERSON SIXTY YEARS OF AGE OR OLDER,
TO WIT: THEY STRUCK WILLIAM BURTNER ABOUT THE BODY CAUSING
INJURIES,
IN VIOLATION OF CHAPTER 720 ACT 5, SECTION 12-4(b)(10)
OF THE ILLINOIS COMPILED STATUTES 1992, AS AMENDED, AND

Contrary to the Statute and against the peace and dignity of the same
People of the State of Illinois.

CHARGE ID CODE: 936000
(COUNT 06)

And Always

IN THE CIRCUIT COURT OF COOK COUNTY

PEOPLE OF THE STATE OF ILLINOIS) CASE NUMBER 10CR0412402
 V.) DATE OF BIRTH 05/24/84
 STEVIE SMITH) DATE OF ARREST 02/05/10
 Defendant) IR NUMBER _____ SID NUMBER 047251600

ORDER OF COMMITMENT AND SENTENCE TO
 ILLINOIS DEPARTMENT OF CORRECTIONS
 =====

The above named defendant having been adjudged guilty of the offense(s) enumerated below s hereby sentenced to the Illinois Department of Corrections as follows:

Count	Statutory Citation	Offense	Sentence	Class
02	720-5/12-4.6(A)	AGG BATTERY SR CITIZEN >6	YRS. 006 MOS.00	2
	and said sentence shall run consecutive to count(s) 003 _ _ _			
03	720-5/18-1(A)	ROBBERY/VIC HANDICAP OR 6	YRS. 012 MOS.00	1
	and said sentence shall run concurrent with count(s) _ _ _			
			YRS. _ MOS. _	
	and said sentence shall run (concurrent with)(consecutive to) the sentence imposed on:			
			YRS. _ MOS. _	
	and said sentence shall run (concurrent with)(consecutive to) the sentence imposed on:			
			YRS. _ MOS. _	
	and said sentence shall run (concurrent with)(consecutive to) the sentence imposed on:			

On Count ___ defendant having been convicted of a class _ offense is sentenced as class x offender pursuant TO 730 ILCS 5/5-5-3(C)(8).

On Count ___ defendant is sentenced to an extended term pursuant to 730 ILCS 5/5-8-2.

The Court finds that the defendant is entitled to receive credit for time actually served in custody for a total credit of 1378 days as of the date of this order

IT IS FURTHER ORDERED that the above sentence(s) be concurrent with the sentence imposed in case number(s) _____
 ID: consecutive to the sentence imposed under case number(s) _____
 08CR1609501 _____

IT IS FURTHER ORDERED THAT CTS.4,5,6 TO MERGE INTO CT.2, CT.2 TO BE SERVED AT 85%, CREDIT OF 1378 DAYS FROM 07/13/11 TO 04/21/15, CT.1-FNG ON 02/24/15 _____

IT IS FURTHER ORDERED that the Clerk provide the Sheriff of Cook County with a copy of this Order and that the Sheriff take the defendant into custody and deliver him/her to the Illinois Department of Corrections and that the Department take him/her into custody and confine him/her in a manner provided by law until the above sentence is fulfilled.

DATED APRIL 22, 2015 ENTER: 04/22/15
 CERTIFIED BY P PIEKARSKI DEPUTY CLERK
 VERIFIED BY _____
 JNP1 04/22/15 15:36:30

ENTERED
 APR 22 2015
 DOROTHY BROWN
 CLERK OF THE CIRCUIT COURT
 OF COOK COUNTY, IL
 DEPUTY CLERK

Michele M. Pitman
 JUDGE: PITMAN, MICHELE M. 1832 1832

CCG N305
 C: 00223

TO THE APPELLATE COURT OF ILLINOIS - 1ST DISTRICT
FROM THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT - CRIMINAL DIVISION

PEOPLE OF THE STATE OF ILLINOIS,)
)
Plaintiff,)
)
vs.)
)
STEVIE SMITH)
Defendant-Appellant.)

No. 10 CR 4124 (02)
Honorable Judge Pittman

FILED
D-6-106
APR 22 2015
DOROTHY BROWN
CLERK OF THE CIRCUIT COURT
OF COOK COUNTY, ILL.

NOTICE OF APPEAL

The Defendant-Appellant, STEVIE SMITH, gives Notice that an appeal is taken from the order of judgment described below:

Appellant's Name: Stevie Smith
Appellant's Address: Cook County Jail
Appellant's Attorney: State Appellate Defender
Offense: Robbery, Aggravated Battery To A Senior Citizen,
and Aggravated Battery
Judgment: Guilty
Date: February 24, 2015
Sentence:

Sentence Date: April 22, 2015

VERIFIED PETITION FOR REPORT OF PROCEEDINGS, COMMON LAW RECORD
AND FOR APPOINTMENT OF COUNSEL ON APPEAL FOR INDIGENT
DEFENDANT

Under Supreme Court Rules 605-608, appellant asks the Court to order the Official Court Reporter to transcribe an original and copy of the proceedings, file the original with the Clerk and deliver a copy to the appellant; order the Clerk to prepare the Record on Appeal and to appoint counsel on appeal. Appellant, being duly sworn says that at the time of his conviction, he was and is unable to pay for the Record and/or to retain counsel for appeals.

ENTERED
JUDGE MICHELE M. PITMAN-1832
APR 22 2015
DOROTHY BROWN
CLERK OF THE CIRCUIT COURT
OF COOK COUNTY, IL
DEPUTY CLERK

Stevie Smith
Appellant (signed in open court)

Michele M. Pitman
2852

IN THE CIRCUIT COURT OF COOK COUNTY

PEOPLE OF THE STATE OF ILLINOIS) CASE NUMBER 10CR0412401
 V.) DATE OF BIRTH 11/19/81
 JERRY BROWN) DATE OF ARREST 11/16/09
 Defendant) IR NUMBER _____ SID NUMBER 042196810

ORDER OF COMMITMENT AND SENTENCE TO
 ILLINOIS DEPARTMENT OF CORRECTIONS
 =====

The above named defendant having been adjudged guilty of the offense(s) enumerated below is hereby sentenced to the Illinois Department of Corrections as follows:

Count	Statutory Citation	Offense	Sentence	Class
102	720-5/12-4.6(A)	AGG BATTERY SR CITIZEN >6	YRS. 007 MOS.00	2
and said sentence shall run consecutive to count(s) 003 _____				
103	720-5/18-1(A)	ROBBERY/VIC HANDICAP OR 6	YRS. 015 MOS.00	1
and said sentence shall run concurrent with count(s) _____				
_____			YRS. _____	MOS. _____
and said sentence shall run (concurrent with)(consecutive to) the sentence imposed on:				
_____			YRS. _____	MOS. _____
and said sentence shall run (concurrent with)(consecutive to) the sentence imposed on:				
_____			YRS. _____	MOS. _____
and said sentence shall run (concurrent with)(consecutive to) the sentence imposed on:				

On Count ___ defendant having been convicted of a class _ offense is sentenced as class x offender pursuant TO 730 ILCS 5/5-5-3(C)(8).

On Count ___ defendant is sentenced to an extended term pursuant to 730 ILCS 5/5-8-2.

The Court finds that the defendant is entitled to receive credit for time actually served in custody for a total credit of 0579 days as of the date of this order

IT IS FURTHER ORDERED that the above sentence(s) be concurrent with the sentence imposed in case number(s) _____
 ND: consecutive to the sentence imposed under case number(s) _____
 _____ 08CR122201 09CR1420201 _____

IT IS FURTHER ORDERED THAT CTS.4,5,6 TO MERGE INTO CT.2, CT.2 TO BE SERVED AT 85%, CREDIT OF 579 DAYS FROM 09/20/13 TO 04/21/15, CT.1-FNG ON 02/24/15

IT IS FURTHER ORDERED that the Clerk provide the Sheriff of Cook County with a copy of this Order and that the Sheriff take the defendant into custody and deliver him/her to the Illinois Department of Corrections and that the Department take him/her into custody and confine him/her in a manner provided by law until the above sentence is fulfilled.

DATED APRIL 22, 2015

ENTER: 04/22/15

VERIFIED BY P PIEKARSKI-REZACK

DEPUTY CLERK

ENTERED
 JUDGE MICHELE M. PITMAN-1832

VERIFIED BY _____

JUDGE: PITMAN, MICHELE M.

APR 22 2015

1832

CCG N305

JNP1 04/22/15 15:34:48

DOROTHY BROWAG
 CLERK OF THE CIRCUIT COURT
 OF COOK COUNTY, IL

C : 00255

TO THE APPELLATE COURT OF ILLINOIS - 1ST DISTRICT
FROM THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT - CRIMINAL DIVISION

PEOPLE OF THE STATE OF ILLINOIS,)
)
Plaintiff,)
)
vs.)
)
JERRY BROWN)
Defendant-Appellant.)

No. 10 CR 4124 (01)
Honorable Judge Pittman

FILED
D 6 -
APR 22 2015
DOROTHY BROWN
CLERK OF THE CIRCUIT COURT
OF COOK COUNTY, IL

NOTICE OF APPEAL

The Defendant-Appellant, JERRY BROWN, gives Notice that an appeal is taken from the order of judgment described below:

Appellant's Name: Jerry Brown
Appellant's Address: Cook County Jail
Appellant's Attorney: State Appellate Defender
Offense: Robbery, Aggravated Battery To A Senior Citizen, and Aggravated Battery
Judgment: Guilty
Date: February 24, 2015
Sentence:

Sentence Date: April 22, 2015

VERIFIED PETITION FOR REPORT OF PROCEEDINGS, COMMON LAW RECORD
AND FOR APPOINTMENT OF COUNSEL ON APPEAL FOR INDIGENT
DEFENDANT

Under Supreme Court Rules 605-608, appellant asks the Court to order the Official Court Reporter to transcribe an original and copy of the proceedings, file the original with the Clerk and deliver a copy to the appellant; order the Clerk to prepare the Record on Appeal and to appoint counsel on appeal. Appellant, being duly sworn says that at the time of his conviction, he was and is unable to pay for the Record and/or to retain counsel for appeals.

Jerry Brown
Appellant (signed in open court)

ENTERED
JUDGE MICHELE M. PITMAN - 1832
APR 22 2015
DOROTHY BROWN
CLERK OF THE CIRCUIT COURT
OF COOK COUNTY, IL
DEPUTY CLERK

Michele M. Pittman
1832

A10

C : 00264

2017 IL App (1st) 151312
Appellate Court of Illinois,
First District,
Second Division.

The PEOPLE of the State of
Illinois, Plaintiff–Appellee,
v.
Stevie SMITH, Defendant–Appellant.

No. 1–15–1312
|
Opinion filed October 17, 2017
|
Rehearing denied November 14, 2017

Synopsis

Background: Following bench trial, defendant was convicted in the Circuit Court, Cook County, Michele M. Pitman, J., of robbery and aggravated battery of a senior citizen. Defendant appealed.

The Appellate Court, Hyman, J., held that conviction of aggravated battery of a senior citizen violated the one-act, one-crime principle.

Affirmed in part and vacated in part.

Appeal from the Circuit Court of Cook County. No. 10 CR 4124, Honorable Michele M. Pitman, Judge, presiding.

Attorneys and Law Firms

Christopher Cronson and Brett Cronson, of Cronson & Cronson, Ltd., of Waukegan, for appellant.

Kimberly M. Foxx, State's Attorney, of Chicago (Alan J. Spellberg, Mary P. Needham, and Marci Jacobs, Assistant State's Attorneys, of counsel), for the People.

OPINION

JUSTICE HYMAN delivered the judgment of the court, with opinion.

****177 ¶ 1** Following simultaneous but severed bench trials, defendant Stevie Smith and codefendant Jerry Brown were convicted of robbery and aggravated battery of a senior citizen (Brown is not a party to this appeal). Smith was sentenced to consecutive prison terms of 12 years and 6 years, respectively. On appeal, Smith contends only that his conviction for aggravated battery of a senior citizen should be vacated because it violates the one-act, one-crime doctrine where it is based on the same single physical act as his robbery conviction.

¶ 2 We agree and vacate the aggravated battery of a senior citizen conviction. On this record, we hold that the one-act, one-crime principle was violated, as the basis for both convictions—robbery and aggravated battery of a senior citizen—was Smith's single physical act of punching Burtner.

***1012 **178 ¶ 3** Background

¶ 4 Smith and Brown were tried on charges of first degree murder, aggravated battery of a senior citizen, robbery, and aggravated battery. At trial, Deborah Halloran testified that William Burtner was the commander of the Veterans of Foreign Wars (VFW) post in Midlothian, where she was employed as the bar manager. At about 9:30 a.m. on November 16, 2009, Burtner and Halloran prepared money for deposit into four accounts the VFW maintained at the local A.J. Smith Bank. Deposits for three accounts were placed into three bank deposit bags. An additional amount was placed inside a cigar box so Burtner could open a new account. Burtner left the VFW post with the three deposit bags and the cigar box and drove to the bank.

¶ 5 A teller at the A.J. Smith Bank, Connie Weimar, testified that at about 10:15 a.m. on November 16, she looked out the window and saw Burtner walking towards the bank carrying bank deposit bags in his hand. As Burtner approached the entrance, he passed behind a wall and Weimar lost sight of him. Weimar next saw a man wearing a hooded sweatshirt walking quickly past the front of the bank towards Burtner. The hood covered the man's head and Weimar could not see his face. Nothing was in the man's hands. The man disappeared from Weimar's sight for “a matter of seconds.” When she next saw him, he was carrying something in his hand, had turned around, and was running to the adjacent Wendy's

parking lot. He got into the front passenger seat of a black car that then took off. Weimar yelled “Call 911.” Two bank employees brought Burtner inside the bank and sat him down in a chair. Later, the man wearing the hooded sweatshirt was determined to be Smith.

¶ 6 Tamara Esposito was at the bank when her supervisor yelled “Call 911, I believe somebody was just robbed.” Esposito went to the front door and saw Burtner on the ground outside. Esposito and a security guard went outside and helped Burtner. He asked Esposito to retrieve a cigar box from the ground, which contained money and checks. Esposito saw a black sports car speeding out of the Wendy's parking lot. Esposito and the security guard brought Burtner inside the bank. Burtner was slightly bent over and holding his left side near his rib cage, had labored breathing, and was experiencing difficulty speaking. Burtner told Esposito that he was punched in his left side.

¶ 7 Paramedic Cory Katsibubas treated Burtner at the bank. Burtner was holding his left side in his back rib area. Burtner complained of pain in that area and also pain when taking deep breaths. Katsibubas administered oxygen and transported Burtner to the hospital. The State presented a stipulation that Burtner told Katsibubas that “he was hit from behind, and he fell.”

¶ 8 Meanwhile, a high-speed police chase of the black car, driven by codefendant Brown, had ensued. Smith and Brown crashed into another vehicle and came to a stop. They ran from the black car in opposite directions. Minutes later, police found Brown hiding underneath a vehicle in a backyard and placed him in custody. During a custodial search, police recovered over a thousand dollars from his right pocket. The A.J. Smith bank deposit bags and money were found inside the black car. Blood samples taken from the passenger's side of the black car were submitted to the Illinois State Police crime laboratory for testing. Results of that testing indicated a DNA match with Smith, and he was arrested on February 5, 2010.

¶ 9 Mary Burtner, William's wife, testified that her husband was treated and released from the hospital on the day of the robbery. When he returned home, he *1013 **179 was in a lot of pain, uncomfortable, and favoring his left side. The next day, he felt worse. The following morning, November 18, although still in a lot of pain, he went to chemotherapy for his lung cancer. At the hospital,

he was unable to walk due to his pain and needed a wheelchair. When the couple arrived home at about 3 p.m., her husband was still holding his left side and was unable to get out of the car. She assisted him into their home and to bed. He fell asleep. She checked on him, and around 8:30 p.m., she found her husband unresponsive and called 911.

¶ 10 Paramedics arrived. Burtner was unresponsive, not breathing, and had no pulse or blood pressure. Paramedics performed CPR, administered cardiac medications, and transferred him to the hospital. There were no signs of life. The State presented the death certificate indicating that Burtner was 65 years old at death.

¶ 11 An assistant chief medical examiner, Dr. Ponni Arunkumar, performed an autopsy. Burtner suffered from lung cancer, two prior heart attacks, and heart disease and had three fractured ribs on the left side of his chest wall. The rib fractures were less than three or four days old and were consistent with being punched. Dr. Arunkumar determined that the cause of death was hypertensive cardiovascular disease with, as a significant contributing factor to the heart attack, the fractured ribs due to an assault. In her opinion the cause of death was homicide.

¶ 12 The trial court found that the State failed to prove that Smith and Brown caused Burtner's death and so found them not guilty of first degree murder. The trial court, however, found that defendants “certainly” inflicted great bodily harm on Burtner and, therefore, found both men guilty of aggravated battery of a senior citizen. The trial court also found defendants guilty of robbery and aggravated battery. The aggravated battery counts were merged into the aggravated battery of a senior citizen offense. As Burtner was over the age of 60, the trial court ruled that the robbery offense was elevated from Class 2 to a Class 1 felony.

¶ 13 The trial court sentenced Smith to 12 years' imprisonment for robbery and a consecutive term of 6 years' imprisonment for aggravated battery of a senior citizen. The court expressly stated that Smith's criminal history and the nature and circumstances of the offense required consecutive sentences to protect the public from further criminal conduct by Smith.

¶ 14 Analysis

¶ 15 Smith contends only that his conviction for aggravated battery of a senior citizen should be vacated because it violates the one-act, one-crime doctrine where it is based on the same single physical act as his robbery conviction. Smith argues that the only evidence of a physical act committed against Burtner was the single punch that resulted in fractured ribs. Smith also argues that the single punch cannot serve as the basis for both the aggravated battery and the force element for the robbery.

¶ 16 The State responds that the one-act, one-crime doctrine was not violated because Smith committed two separate acts. The State asserts that the punch was one act and the taking of the deposit bags was a separate act. The State contends that the common act of the punch can serve as the basis of both offenses because there was another separate act for the robbery.

¶ 17 As a threshold matter, Smith acknowledges that he forfeited this issue for appeal as he failed to object to the multiple convictions at trial and did not raise the issue in his posttrial motion. *People v. Enoch*, 122 Ill. 2d 176, 186, 119 Ill.Dec. 265, 522 N.E.2d 1124 (1988). The parties agree, however, that our supreme court ***1014 **180** has repeatedly ruled that a one-act, one-crime violation is reviewable under the second prong of the plain error doctrine because it affects the integrity of the judicial process. *In re Samantha V.*, 234 Ill. 2d 359, 378–79, 334 Ill.Dec. 661, 917 N.E.2d 487 (2009). Hence, we will consider the issue.

¶ 18 Whether a conviction should be vacated under the one-act, one-crime doctrine is a question of law, which we review *de novo*. *People v. Johnson*, 237 Ill. 2d 81, 97, 340 Ill.Dec. 168, 927 N.E.2d 1179 (2010). Under this rule, Smith cannot be convicted of multiple offenses that are based on precisely the same single physical act, and where he is convicted of two such offenses, the conviction for the less serious offense must be vacated. *Id.* Our supreme court has defined an “act” as “any overt or outward manifestation which will support a different offense.” *People v. King*, 66 Ill. 2d 551, 566, 6 Ill.Dec. 891, 363 N.E.2d 838 (1977).

¶ 19 In clarifying the one-act, one-crime rule from *King*, the supreme court explained that a court must first

determine whether Smith's conduct consisted of a single physical act or separate acts. *People v. Rodriguez*, 169 Ill. 2d 183, 186, 214 Ill.Dec. 451, 661 N.E.2d 305 (1996). A defendant can be convicted of two offenses where a common act is part of both crimes. *Id.* at 188, 214 Ill.Dec. 451, 661 N.E.2d 305. But, where two offenses share a common act, there must be another separate act to sustain the two convictions. See *id.* at 188–89, 214 Ill.Dec. 451, 661 N.E.2d 305. “ ‘As long as there are multiple acts *as defined in King*, their interrelationship does not preclude multiple convictions * * *.’ (Emphasis added.)” *Id.* at 189, 214 Ill.Dec. 451, 661 N.E.2d 305 (quoting *People v. Myers*, 85 Ill. 2d 281, 288, 55 Ill.Dec. 389, 426 N.E.2d 535 (1981)).

¶ 20 The State charged Smith with robbery for taking money from Burtner by the use of force or by threatening the imminent use of force. 720 ILCS 5/18–1(a) (West 2008). The aggravated battery of a senior citizen offense alleged that Smith intentionally and knowingly caused great bodily harm to Burtner, a person 60 years of age or older, by striking him about the body, causing injuries. 720 ILCS 5/12–4.6(a) (West 2008).

¶ 21 The record reveals that the evidence presented at trial demonstrated that Smith committed one single physical act—a single punch to Burtner's left side. The only evidence of any act by Smith was Esposito's testimony that Burtner told her that he was punched in his left side and the State's stipulation that Burtner told paramedic Katsibubas that “he was hit from behind, and fell.” The single punch was used as the basis for the aggravated battery conviction and as the element of force for the robbery conviction. There was no evidence of any other use of force or threat of force by Smith. There was no evidence of a verbal threat. Indeed, because Burtner was punched from behind, he was likely unaware that Smith was approaching him. Based on this record, we find that Smith committed only one single physical act.

¶ 22 We note that the State asserts that the taking of the money from Burtner constituted a separate physical act for the robbery and, thus, the two convictions may stand. The State primarily relies on this court's decision in *People v. Pearson*, 331 Ill. App. 3d 312, 264 Ill.Dec. 487, 770 N.E.2d 1183 (2002), which it claims is directly on point. In *Pearson*, the defendant grabbed a woman's purse off her shoulder. *Id.* at 314, 264 Ill.Dec. 487, 770 N.E.2d 1183. A struggle ensued, and the woman was knocked to the ground. *Id.* The defendant was convicted of both robbery

and *1015 **181 aggravated battery. *Id.* at 316, 264 Ill.Dec. 487, 770 N.E.2d 1183. On appeal, this court found that the two convictions did not violate the one-act, one-crime doctrine, as the defendant committed two separate physical acts—he took the woman's purse, and he then pushed her to the ground. *Id.* at 322, 264 Ill.Dec. 487, 770 N.E.2d 1183.

¶ 23 We find the facts of this case distinguishable from *Pearson*. There, the act of grabbing the woman's purse off her shoulder was, in and of itself, a taking of property by force. *Pearson's* subsequent act of pushing the woman to the ground was a separate act. Here, however, the evidence demonstrates that Smith committed only one physical act, the punch. There was no evidence that Smith used another act of force to take the money from Burtner. There is no evidence explaining how the taking occurred. There is no evidence of a struggle over the deposit bags nor any evidence that Smith forcefully removed them from Burtner's hand. It is possible that Burtner dropped the bags after he was punched and fell to the ground, as he apparently did with the cigar box. Accordingly, *Pearson* does not apply to this case.

¶ 24 Based on this record, we find that Smith's convictions for robbery and aggravated battery of a senior citizen were both based on Smith's single physical act of punching Burtner. The two convictions therefore violate the one-act, one-crime principle and cannot stand. The aggravated battery of a senior citizen offense is a Class 2 felony and, thus, is less serious than the robbery of a senior citizen, which was elevated to Class 1.

¶ 25 We vacate the aggravated battery of a senior citizen conviction and affirm Smith's conviction and sentence for robbery.

¶ 26 Affirmed in part and vacated in part.

Presiding Justice Neville and Justice Pucinski concurred in the judgment and opinion.

All Citations

2017 IL App (1st) 151312, 89 N.E.3d 1011, 418 Ill.Dec. 177

95 N.E.3d 470 (Table)
(This disposition of a Petition for Leave to Appeal
is referenced in the North Eastern Reporter.)
Supreme Court of Illinois.

PEOPLE State of Illinois, petitioner,

v.

Stevie SMITH, respondent.

No. 123082

|

March 21, 2018

Leave to appeal, Appellate Court, First District. 1-15-
1312

Opinion

**7 Petition for Leave to Appeal Denied.

In the exercise of this Court's supervisory authority, the Appellate Court, First District, is directed to vacate its judgment in *People v. Smith*, case No. 1-15-1312 (10/17/17). The appellate court is directed to consider the effect of this Court's opinion in *People v. Coats*, 2018 IL 121926, on the issue of whether defendant's convictions for robbery and aggravated battery *471 **8 of a senior citizen violate the one-act, one-crime rule.

All Citations

95 N.E.3d 470 (Table), 420 Ill.Dec. 7

End of Document

© 2019 Thomson Reuters. No claim to original U.S. Government Works.

2018 IL App (1st) 151312-B
Appellate Court of Illinois, First District,
Second Division.

The PEOPLE of the State of
Illinois, Plaintiff–Appellee,

v.

Stevie SMITH, Defendant–Appellant.

No. 1–15–1312

Opinion filed June 14, 2018

Rehearing denied July 13, 2018

Synopsis

Background: Following bench trial, defendant was convicted in the Circuit Court, Cook County, Michele M. Pitman, J., of robbery and aggravated battery of a senior citizen. Defendant appealed, and the Appellate Court affirmed in part and vacated in part, 2017 IL App (1st) 151312, 418 Ill.Dec. 177, 89 N.E.3d 1011. The Supreme Court entered a supervisory order denying defendant's petition for leave to appeal and directing the Appellate Court to vacate its initial judgment, and consider issue of whether defendant's convictions for robbery and aggravated battery of a senior citizen violate the one-act, one-crime rule.

The Appellate Court, Hyman, J., held that defendant's two convictions violated “one-act, one-crime” rule.

Affirmed in part and vacated in part.

*275 Appeal from the Circuit Court of Cook County. No. 10 CR 4124, Honorable Michele M. Pitman, Judge, presiding.

Attorneys and Law Firms

Christopher Cronson and Brett Cronson, of Cronson & Cronson, Ltd., of Waukegan, for appellant.

Kimberly M. Foxx, State’s Attorney, of Chicago (Alan J. Spellberg and Marci Jacobs, Assistant State’s Attorneys, of counsel), for the People.

OPINION

JUSTICE HYMAN delivered the judgment of the court, with opinion.

**925 ¶ 1 The Illinois Supreme Court entered a supervisory order denying defendant Stevie Smith's petition for leave to appeal and directing this court to vacate its initial judgment (*276 **926 *People v. Smith*, 2017 IL App (1st) 151312, 418 Ill.Dec. 177, 89 N.E.3d 1011). *People v. Smith*, No. 123082 (Ill. Mar. 21, 2018) (supervisory order). The supervisory order instructed us to consider the effect of *People v. Coats*, 2018 IL 121926, 423 Ill.Dec. 13, 104 N.E.3d 1102, on the issue of whether defendant's convictions for robbery and aggravated battery of a senior citizen violate the one-act, one-crime rule. After reconsidering the issue, we again vacate the aggravated battery of a senior citizen conviction and hold that the convictions violate the one-act, one-crime rule, as the basis for both convictions—robbery and aggravated battery of a senior citizen—was Smith's single physical act of punching the victim.

¶ 2 Background

¶ 3 Smith and codefendant Jerry Brown were tried on charges of first degree murder, aggravated battery of a senior citizen, robbery, and aggravated battery.

¶ 4 At trial, Deborah Halloran testified that William Burtner served as the commander of the Veterans of Foreign Wars (VFW) post in Midlothian, where she worked as bar manager. At about 9:30 a.m. on November 16, 2009, Burtner and Halloran prepared money for deposit into accounts the VFW maintained at the local A.J. Smith Bank. Deposits for three accounts were placed into three bank deposit bags. An additional amount was placed inside a cigar box so Burtner could open a new account. Burtner left the VFW post with the three deposit bags and the cigar box and drove to the bank.

¶ 5 A teller at the A.J. Smith Bank, Connie Weimar, testified that at about 10:15 a.m., she looked out the window and saw Burtner walking toward the bank carrying bank deposit bags. As Burtner approached the entrance, he passed behind a wall, and Weimar lost

sight of him. Weimar next saw a man wearing a hooded sweatshirt walking quickly past the front of the bank towards Burtner. The hood covered the man's head, and Weimar could not see his face. Nothing was in the man's hands. The man disappeared from Weimar's sight for "a matter of seconds." When she next saw him, he was carrying something, had turned around, and was running to the adjacent Wendy's parking lot. He got into the front passenger seat of a black car that then took off. Weimar yelled, "Call 911." Two bank employees brought Burtner inside the bank and sat him down in a chair. Later, the man wearing the hooded sweatshirt was determined to be Smith.

¶ 6 Bank employee Tamara Esposito heard her supervisor yell, "Call 911, I believe somebody was just robbed." Esposito went to the front door and saw Burtner on the ground. Esposito and a security guard helped Burtner. He asked Esposito to retrieve a cigar box from the ground, which contained money and checks. Esposito saw a black sports car speeding out of the Wendy's parking lot. Esposito and the security guard brought Burtner inside the bank. Burtner was slightly bent over and holding his left side near his rib cage, had labored breathing, and was experiencing difficulty speaking. Burtner told Esposito that he was punched in his left side.

¶ 7 A paramedic treated Burtner at the bank. According to the paramedic, Burtner was holding his left side in his back rib area. Burtner complained of pain in that area and also pain when taking deep breaths. The paramedic administered oxygen and transported Burtner to the hospital. The State presented a stipulation that Burtner told the paramedic that "he was hit from behind, and he fell."

¶ 8 Meanwhile, a high-speed police chase of the black car, driven by codefendant Brown, had ensued. Smith and Brown crashed into another automobile and came to a stop. They ran from in opposite directions. Minutes later, police found Brown *277 **927 hiding underneath a car and placed him in custody. During a custodial search, police recovered over a thousand dollars from his right pocket. The A.J. Smith bank deposit bags and money were found inside the black car. The Illinois State Police crime laboratory tested blood samples taken from the passenger's side of the black car. Results of that testing indicated a DNA match with Smith, and he was arrested on February 5, 2010.

¶ 9 Mary Burtner, William's wife, testified that her husband was treated and released from the hospital on the day of the robbery. When he returned home, he was suffering pain, uncomfortable, and favoring his left side. The next day, he felt worse. The following morning, November 18, although still in a lot of pain, he went to chemotherapy for his lung cancer. At the hospital, he couldn't walk due to the pain and needed a wheelchair. When the couple arrived home at about 3 p.m., her husband was still holding his left side and was unable to get out of the car. She assisted him into their home and to bed. He fell asleep. She checked on him, and around 8:30 p.m., she found her husband unresponsive.

¶ 10 Paramedics arrived and performed CPR, administered cardiac medications, and transferred Burtner to the hospital. There were no signs of life. The State presented the death certificate indicating that Burtner was 65 years old.

¶ 11 An assistant chief medical examiner, Dr. Ponni Arunkumar, performed an autopsy. Burtner had lung cancer, two prior heart attacks, and heart disease, and there were three fractured ribs on the left side of his chest wall. The rib fractures, less than three or four days old, were consistent with being punched. Dr. Arunkumar determined that the cause of death was hypertensive cardiovascular disease, with the fractured ribs due to an assault as a significant contributing factor to a heart attack. In her opinion the cause of death was homicide.

¶ 12 The trial court found that the State failed to prove that Smith and Brown caused Burtner's death and so entered a not guilty on the charge of first degree murder. The trial court, however, found that defendants "certainly" inflicted great bodily harm on Burtner and found both men guilty of aggravated battery of a senior citizen. The trial court also found defendants guilty of robbery and aggravated battery. The aggravated battery counts were merged into the aggravated battery of a senior citizen offense. As Burtner was over the age of 60, the trial court elevated the robbery offense from a Class 2 to a Class 1 felony.

¶ 13 The trial court sentenced Smith to 12 years' imprisonment for robbery and a consecutive term of 6 years' imprisonment for aggravated battery of a senior citizen. The court expressly stated that Smith's criminal

history and the nature and circumstances of the offense required consecutive sentences to protect the public from further criminal conduct by Smith.

¶ 14 Analysis

¶ 15 Smith contends that his conviction for aggravated battery of a senior citizen should be vacated because it violates the one-act, one-crime rule, as it is based on the same single physical act as his robbery conviction. Smith argues that the only evidence of a physical act committed against Burtner was the single punch that resulted in fractured ribs. Smith also argues that the single punch cannot serve as the basis for both the aggravated battery and the force element for the robbery.

¶ 16 The State responds that Smith committed two separate acts. The State asserts that the punch was one act and the taking of the deposit bags was a separate *278 **928 act. The State contends that the common act of the punch can serve as the basis of both offenses because there was another separate act for the robbery.

¶ 17 Following remand by our supreme court, the State filed a supplemental brief addressing *Coats*. Defendant responded to the State's argument in his emergency motion for bond pending appeal, which we will consider as his response. The State replied to that argument in responding to defendant's motion for bond. Both parties maintain that their original arguments are supported by *Coats*.

¶ 18 As a threshold matter, Smith acknowledges that he forfeited this issue for appeal, as he failed to object to the multiple convictions at trial and did not raise the issue in his posttrial motion. *People v. Enoch*, 122 Ill. 2d 176, 186, 119 Ill.Dec. 265, 522 N.E.2d 1124 (1988). The parties agree, however, that a one-act, one-crime violation is reviewable under the second prong of the plain error doctrine because it affects the integrity of the judicial process. *In re Samantha V.*, 234 Ill. 2d 359, 378–79, 334 Ill.Dec. 661, 917 N.E.2d 487 (2009).

¶ 19 Whether a conviction should be vacated under the one-act, one-crime rule presents a question of law, which we review *de novo*. *People v. Johnson*, 237 Ill. 2d 81, 97, 340 Ill.Dec. 168, 927 N.E.2d 1179 (2010). Under this rule, Smith cannot be convicted of multiple offenses that are

based on precisely the same single physical act, and where he is convicted of two offenses, the conviction for the less serious offense must be vacated. *Id.* Our supreme court has defined an “act” as “any overt or outward manifestation which will support a different offense.” *People v. King*, 66 Ill. 2d 551, 566, 6 Ill.Dec. 891, 363 N.E.2d 838 (1977).

¶ 20 In clarifying the one-act, one-crime rule from *King*, the supreme court explained that a court must first determine whether a defendant's conduct consisted of a single physical act or separate acts. *People v. Rodriguez*, 169 Ill. 2d 183, 186, 214 Ill.Dec. 451, 661 N.E.2d 305 (1996). A defendant can be convicted of two offenses where a common act is part of both crimes. *Id.* at 188, 214 Ill.Dec. 451, 661 N.E.2d 305. But where two offenses share a common act, there must be another separate act to sustain the two convictions. See *id.* at 188–89, 214 Ill.Dec. 451, 661 N.E.2d 305. “ ‘As long as there are multiple acts *as defined in King*, their interrelationship does not preclude multiple convictions * * *.’ (Emphasis added.)” *Id.* at 189, 214 Ill.Dec. 451, 661 N.E.2d 305 (quoting *People v. Myers*, 85 Ill. 2d 281, 288, 55 Ill.Dec. 389, 426 N.E.2d 535 (1981)).

¶ 21 The State charged Smith with robbery for taking money from Burtner by the use of force or by threatening the imminent use of force. 720 ILCS 5/18–1(a) (West 2008). The aggravated battery of a senior citizen offense alleged that Smith intentionally and knowingly caused great bodily harm to Burtner, a person 60 years of age or older, by striking him about the body, causing injuries. *Id.* § 12–4.6(a).

¶ 22 The evidence presented at trial demonstrates that Smith committed one single physical act—a single punch to Burtner's left side. The only evidence of any act by Smith was Esposito's testimony that Burtner told her that he was punched in his left side and the State's stipulation that Burtner told a paramedic that “he was hit from behind, and fell.” The single punch was used as the basis for the aggravated battery conviction and as the element of force for the robbery conviction. There was no evidence of any other use of force or threat of force by Smith. There *279 **929 was no evidence of a verbal threat. Indeed, because Burtner was punched from behind, he was likely unaware that Smith was approaching him. Based on this record, we find that Smith committed a single physical act.

¶ 23 The State asserts that the taking of the money from Burtner constituted a separate physical act for the robbery

and, thus, the two convictions should stand. The State primarily relies on *People v. Pearson*, 331 Ill. App. 3d 312, 264 Ill.Dec. 487, 770 N.E.2d 1183 (2002), which it claims is directly on point. In *Pearson*, the defendant grabbed a woman's purse off her shoulder. *Id.* at 314, 264 Ill.Dec. 487, 770 N.E.2d 1183. A struggle ensued, knocking the woman to the ground. *Id.* The defendant was convicted of both robbery and aggravated battery. *Id.* at 316, 264 Ill.Dec. 487, 770 N.E.2d 1183. On appeal, we concluded that the two convictions did not violate the one-act, one-crime rule, as the defendant committed two separate physical acts: he took the woman's purse, and then he pushed her to the ground. *Id.* at 322, 264 Ill.Dec. 487, 770 N.E.2d 1183.

¶ 24 We find the facts here distinguishable from *Pearson*. There, the act of grabbing the woman's purse off her shoulder was, in and of itself, a taking of property by force. *Pearson's* subsequent act of pushing the woman to the ground was a separate act. Here, however, the evidence demonstrates that Smith committed only one physical act, the punch. There was no evidence that Smith used another act of force to take the money from Burtner. There is no evidence explaining how the taking occurred. There is no evidence of a struggle over the deposit bags. There is no evidence that Smith forcefully removed the deposit bags from Burtner's hand. It is possible that Burtner dropped the bags after he was punched and fell to the ground, as he apparently did with the cigar box. Accordingly, *Pearson* does not apply.

¶ 25 Based on this record, we find that Smith's convictions for robbery and aggravated battery of a senior citizen were both based on Smith's single physical act of punching Burtner. The two convictions violate the one-act, one-crime rule and cannot stand. The aggravated battery of a senior citizen offense is a Class 2 felony and, thus, less serious than the robbery of a senior citizen, which was elevated to Class 1. Accordingly, we vacate Smith's conviction for aggravated battery of a senior citizen.

¶ 26 We find that our supreme court's opinion in *Coats* does not change our disposition. In *Coats*, the defendant was convicted of several offenses, including being an armed habitual criminal and armed violence. *Coats*, 2018 IL 121926, ¶ 1, 423 Ill.Dec. 13, 104 N.E.3d 1102. The evidence showed that Coats was found holding a handgun in one hand and two bags of drugs in the other. *Id.* ¶¶ 3–4. On appeal, Coats argued that his convictions for

being an armed habitual criminal and armed violence violated the one-act, one-crime rule because they were both predicated on the same physical act of possessing the handgun. *Id.* ¶ 14. The supreme court found that, although the two offenses shared the common act of possession of the handgun, the armed violence conviction involved a second separate act: possession of the drugs. *Id.* ¶ 17. The court further found that since possession of the handgun was only part of the conduct that formed the basis for the armed violence conviction, the two offenses were not carved from precisely the same physical act. *Id.* Thus, the court concluded, the two acts did not violate the one-act, one-crime rule. *Id.* ¶ 32.

¶ 27 In making its ruling, the supreme court rejected Coats's argument that the *King* analysis implicitly required a determination *280 **930 of whether the offenses shared a “crucial” act. *Id.* ¶ 18. Coats claimed that if the two offenses shared a common act that formed the “crux” or “essence” of the crime, multiple convictions could not stand. *Id.* In rejecting the defendant's construction of *King*, the court stated that it had never applied the one-act, one-crime rule in this manner. *Id.* ¶¶ 18–19.

¶ 28 Unlike *Coats*, here, the evidence showed that the defendant committed only one physical act—Smith's single punch to Burtner's left side. No evidence indicates a second separate act or how the taking of the deposit bags occurred. In addition, we reject the State's argument, raised in its supplemental brief, that this court's analysis “implicitly hints at a ‘crux’ of the crime type of finding” because the force element was crucial to both offenses. We made no “crux” or “essence” of the crime finding. Simply stated, no evidence of a separate physical act exists to support a second conviction.

¶ 29 We vacate the aggravated battery of a senior citizen conviction and affirm Smith's conviction and sentence for robbery of a senior citizen.

¶ 30 Affirmed in part and vacated in part.

Justices Neville and Pucinski concurred in the judgment and opinion.

111 N.E.3d 967 (Table)
(This disposition of a Petition for Leave to Appeal
is referenced in the North Eastern Reporter.)
Supreme Court of Illinois.

PEOPLE State of Illinois, Petitioner,
v.
Stevie SMITH, Respondent.

No. 123901
|
November 28, 2018

Leave to appeal, Appellate Court, First District.
1-15-1312

Opinion

Petition for Leave to Appeal Allowed.

This case is consolidated with Case No. 123902.

Neville, J. took no part.

All Citations

111 N.E.3d 967 (Table), 425 Ill.Dec. 159

2017 IL App (1st) 151311-U

UNPUBLISHED OPINION. CHECK COURT RULES BEFORE CITING.

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).
Appellate Court of Illinois,
First District,
Second Division.

The PEOPLE of the State of
Illinois, Plaintiff–Appellee,

v.

Jerry BROWN, Defendant–Appellant.

No. 1–15–1311

|

Order filed October 17, 2017

Appeal from the Circuit Court of Cook County. No. 10 CR 4124, Honorable Michele M. Pitman, Judge, presiding.

ORDER

JUSTICE HYMAN delivered the judgment of the court.

*1 ¶ 1 *Held:* Defendant's conviction for aggravated battery of a senior citizen vacated under the one-act, one-crime doctrine where it was based on the same single physical act as his robbery conviction.

¶ 2 Following simultaneous but severed bench trials, defendant Jerry Brown and codefendant Stevie Smith were convicted of robbery and aggravated battery of a senior citizen. Brown was sentenced to consecutive prison terms of 15 years and 7 years. On appeal, Brown contends that his conviction for aggravated battery of a senior citizen should be vacated because it violates the one-act, one-crime doctrine where it is based on the same single physical act as his robbery conviction. Alternatively, Brown argues that the aggravated battery of a senior citizen conviction should be reduced to aggravated battery on a public way because the evidence did not prove that defendants caused great bodily harm to the victim.

Codefendant Smith separately appealed. See *People v. Smith*, 2017 IL APP (1st) 151312.

¶ 3 Based on this record, we find that Brown committed only one single physical act. A single punch was used as the basis for the aggravated battery conviction, and as the element of force for the robbery conviction, and there was no evidence of any other use of force, threat of force or verbal threat. We vacate the aggravated battery of a senior citizen conviction under the one-act, one-crime doctrine and affirm Brown's conviction and sentence for robbery.

¶ 4 Background

¶ 5 Brown and Smith were tried on charges of first degree murder, aggravated battery of a senior citizen, robbery, and aggravated battery. At trial, Deborah Halloran testified that William Burtner was the commander of the Veterans of Foreign Wars (VFW) post in Midlothian, where she was employed as the bar manager. About 9:30 a.m. on November 16, 2009, Burtner and Halloran prepared money for deposit into four accounts the VFW maintained at A.J. Smith Bank. Deposits for three accounts were placed into three separate bank deposit bags. An additional amount was placed inside a cigar box for Burtner to open a new account. Burtner left the VFW post with the three deposit bags and the cigar box, and drove to the bank to make the deposits.

¶ 6 A teller at A.J. Smith Bank, Connie Weimar, testified that about 10:15 a.m. that day, she looked out the window and saw Burtner walking towards the bank carrying bank deposit bags in his hand. As Burtner approached the entrance, he passed behind a wall and Weimar lost sight of him. Next, Weimar saw a man wearing a hooded sweatshirt walking fast past the front of the bank towards Burtner. The hood covered the man's head, and Weimar could not see his face. The man was not carrying anything in his hands. The man disappeared from Weimar's sight for “a matter of seconds.” When next she saw him, he was carrying something in his hands, had turned around, and was running to the adjacent Wendy's parking lot. He entered the front passenger seat of a black car. The car headed north. Weimar yelled “Call 911.” Two bank employees brought Burtner inside the bank and sat him down in a chair. Later, the man wearing the hooded sweatshirt was determined to be Smith.

*2 ¶ 7 Tamara Esposito was working at the bank when her supervisor yelled “Call 911, I believe somebody was just robbed.” Esposito went to the front door and saw Burtner on the ground outside. Esposito and a security guard went outside and helped Burtner, who asked Esposito to retrieve a cigar box from the ground which contained money and checks. Esposito saw a black sports car speeding out of the Wendy's parking lot. Esposito and the security guard brought Burtner inside the bank and sat him down in a chair. Burtner was slightly bent over and holding his left side near his rib cage. His breathing was labored, and he was having difficulty speaking. Burtner told Esposito that he was punched in his left side.

¶ 8 Paramedics treated Burtner at the bank. Burtner was holding his left side in his back rib area. Burtner complained of pain in that area, and also experienced pain when taking deep breaths. He was administered oxygen and transported to the hospital. The State presented a stipulation that Burtner told a paramedic that “he was hit from behind, and he fell.”

¶ 9 Meanwhile, a high-speed police chase of the black car, driven by Brown, had ensued. Brown and Smith crashed into another vehicle and came to a stop. They ran from the black car in opposite directions. Minutes later, police found Brown hiding underneath a vehicle in a backyard and placed him in custody. During a custodial search, police recovered cash from his right pocket. The A.J. Smith bank deposit bags and money were found inside the car. Blood samples taken from the passenger's side of the black car were submitted to the Illinois State Police crime laboratory for testing. Results of that testing indicated a DNA match with Smith, and he was arrested on February 5, 2010.

¶ 10 Mary Burtner, William's wife, testified that her husband was treated and released from the hospital on the day of the robbery. When he returned home, he was in a lot of pain, uncomfortable, and favoring his left side. The next day, he felt worse. The following morning, November 18, although still in a lot of pain, he went to his chemotherapy appointment for treatment of his lung cancer. At the hospital, he was unable to walk due to his pain and needed a wheelchair. When the couple arrived home about 3 p.m., Burtner was still holding his left side and was unable to get out of the car. Mary assisted him into their home, and into bed. Burtner fell asleep and Mary checked on him. About 8:30 p.m., she found Burtner unresponsive and called 911.

¶ 11 Paramedics arrived at the home, Burtner was unresponsive, not breathing, and had no pulse or blood pressure. Paramedics performed CPR, administered cardiac medications, and transferred Burtner to the hospital. There were no signs of life. The State presented Burtner's death certificate indicating that he was 65 years old at the time of his death.

¶ 12 Assistant chief medical examiner, Dr. Ponni Arunkumar, performed an autopsy on Burtner and found that he suffered from lung cancer, two prior heart attacks, and heart disease. She further found that Burtner had three fractured ribs on the left side of his chest wall. The rib fractures were less than three or four days old, and were consistent with being punched. Dr. Arunkumar determined that Burtner's cause of death was hypertensive cardiovascular disease, and the fractured ribs, which were due to an assault, constituted a significant contributing factor of Burtner suffering a heart attack. In her opinion Burtner's cause of death was homicide.

¶ 13 The trial court found that the State failed to prove that defendants caused Burtner's death, and found them not guilty of first degree murder. The trial court, however, found that defendants “certainly” inflicted great bodily harm on Burtner, and found them guilty of aggravated battery of a senior citizen. The court also found defendants guilty of robbery and aggravated battery. The aggravated battery counts were merged into the aggravated battery of a senior citizen offense. As Burtner was over the age of 60, the trial court ruled that the robbery offense was elevated from Class 2 to a Class 1 felony.

*3 ¶ 14 The trial court sentenced Brown to 15 years' imprisonment for robbery, and a consecutive term of 7 years' imprisonment for aggravated battery of a senior citizen. Brown was convicted as an accomplice. The trial court expressly stated that, based on Brown's criminal history and character, and the nature and circumstances of the offense, consecutive sentences were required to protect the public from further criminal conduct by Brown.

¶ 15 Analysis

¶ 16 On appeal, Brown first contends that his conviction for aggravated battery of a senior citizen should be

vacated because it violates the one-act, one-crime doctrine where it is based on the same single physical act as his robbery conviction. Brown argues that the only evidence of a physical act committed against Burtner was the single punch by Smith. Brown further argues that the single punch cannot serve as the basis for both the aggravated battery, and the force element for the robbery.

¶ 17 The State responds that the one-act, one-crime doctrine was not violated as Smith committed two separate acts. The State asserts that the punch was one act, and the taking of the deposit bags was a separate act. The State argues that the common act of the punch can serve as the basis of both offenses because there was another separate act for the robbery.

¶ 18 As a threshold matter, Brown acknowledges that he forfeited this issue for appeal because he failed to object to the multiple convictions at trial and did not raise the issue in his posttrial motion. *People v. Enoch*, 122 Ill. 2d 176, 186 (1988). The parties agree, however, that our supreme court has repeatedly found that a one-act, one-crime violation is reviewable under the second prong of the plain error doctrine because it affects the integrity of the judicial process. *In re Samantha V.*, 234 Ill. 2d 359, 378–79 (2009). Accordingly, we will consider the issue.

¶ 19 Whether a conviction should be vacated under the one-act, one-crime doctrine is a question of law which we review *de novo*. *People v. Johnson*, 237 Ill. 2d 81, 97 (2010). Under this rule, Brown cannot be convicted of multiple offenses that are based on precisely the same single physical act, and where he is convicted of two such offenses, the conviction for the less serious offense must be vacated. *Id.* Our supreme court has defined an “act” as “any overt or outward manifestation which will support a different offense.” *People v. King*, 66 Ill. 2d 551, 566 (1977).

¶ 20 In clarifying the one-act, one-crime rule from *King*, the supreme court explained that a court must first determine whether Brown's conduct consisted of a single physical act or separate acts. *People v. Rodriguez*, 169 Ill. 2d 183, 186 (1996). A defendant can be convicted of two offenses where a common act is part of both crimes. *Id.* at 188. But, where two offenses share a common act, there must be another separate act to sustain the two convictions. See *id.* at 188–89. “ ‘As long as there are multiple acts *as defined in King*, their interrelationship

does not preclude multiple convictions ***.’ (Emphasis added.)” *Id.* at 189 (quoting *People v. Myers*, 85 Ill. 2d 281, 288 (1981)).

¶ 21 The State charged Brown with robbery for taking money from Burtner by the use of force or by threatening the imminent use of force. 720 ILCS 5/18–1(a) (West 2008). The aggravated battery of a senior citizen offense alleged that defendants intentionally and knowingly caused great bodily harm to Burtner, a person 60 years of age or older, by striking him about the body, causing injuries. 720 ILCS 5/12–4.6(a) (West 2008).

*4 ¶ 22 The record reveals that the evidence presented at trial demonstrated that defendants committed one single physical act—a single punch by codefendant Smith to Burtner's left side. The only evidence of any act by defendants was Esposito's testimony that Burtner told her that he was punched in his left side, and the State's stipulation that Burtner told a paramedic that “he was hit from behind, and fell.” The single punch was used as the basis for the aggravated battery conviction, and as the element of force for the robbery conviction. There was no evidence of any other use of force or threat of force by defendants. There was no evidence of a verbal threat. Indeed, as Burtner was punched from behind, he was likely unaware that Smith was approaching him. Based on this record, we find that defendants committed only one single physical act.

¶ 23 The State asserts that the taking of the money from Burtner constituted a separate physical act for the robbery, and thus, the two convictions may stand. The State primarily relies on this court's decision in *People v. Pearson*, 331 Ill. App. 3d 312 (2002), which it claims is directly on point. In *Pearson*, the defendant grabbed a woman's purse off her shoulder. *Id.* at 314. A struggle ensued and the woman was knocked to the ground. *Id.* The defendant was convicted of both robbery and aggravated battery. *Id.* at 316. On appeal, this court found that the two convictions did not violate the one-act, one-crime doctrine because the defendant committed two separate physical acts—he took the woman's purse, and he then pushed her to the ground. *Id.* at 322.

¶ 24 We find the facts here distinguishable from *Pearson*. In *Pearson*, the act of grabbing the woman's purse off her shoulder was, in and of itself, a taking of property by force. *Pearson's* subsequent act of pushing the woman

to the ground was a separate act. Here, however, the evidence demonstrates that defendants committed only one physical act, Smith's punch. There was no evidence that defendants used another act of force to take the money from Burtner. There is no evidence explaining how the taking occurred. There is no evidence of a struggle over the deposit bags, nor any evidence that defendants forcefully removed them from Burtner's hand. It is possible that Burtner dropped the bags after he was punched and fell to the ground, as he apparently did with the cigar box. Consequently, *Pearson* does not apply to this case.

¶ 25 Based on this record, we find that Brown's convictions for robbery and aggravated battery of a senior citizen were both grounded on the single physical act of codefendant Smith punching Burtner. The two convictions violate the one-act, one-crime principle and cannot stand. The aggravated battery of a senior citizen offense is a Class 2 felony, and thus, is less serious than the robbery of a senior citizen, which was elevated to Class 1. Accordingly,

we vacate Brown's conviction for aggravated battery of a senior citizen.

¶ 26 Because we have vacated Brown's conviction for aggravated battery of a senior citizen, we need not consider his alternative argument that the conviction be reduced to aggravated battery on a public way.

¶ 27 We vacate the aggravated battery of a senior citizen conviction, and affirm Brown's conviction and sentence for robbery.

¶ 28 Affirmed in part and vacated in part.

Presiding Justice Neville and Justice Pucinski concurred in the judgment.

All Citations

Not Reported in N.E.3d, 2017 IL App (1st) 151311-U, 2017 WL 4764914

95 N.E.3d 499 (Table)
(This disposition of a Petition for Leave to Appeal
is referenced in the North Eastern Reporter.)
Supreme Court of Illinois.

PEOPLE State of Illinois, petitioner,

v.

Jerry BROWN, respondent.

No. 123080

|

March 21, 2018

Leave to appeal, Appellate Court, First District. 1–15–
1311

Opinion

Petition for Leave to Appeal Denied.

In the exercise of this Court's supervisory authority, the Appellate Court, First District, is directed to vacate its judgment in *People v. Brown*, case No. 1–15–1311 (10/17/17). The appellate court is directed to consider the effect of this Court's opinion in *People v. Coats*, 2018 IL 121926, on the issue of whether defendant's convictions for robbery and aggravated battery of a senior citizen violate the one-act, one-crime rule.

All Citations

95 N.E.3d 499 (Table), 420 Ill.Dec. 36

End of Document

© 2019 Thomson Reuters. No claim to original U.S. Government Works.

2018 IL App (1st) 151311-B
Appellate Court of Illinois, First District,
Second Division.

The PEOPLE of the State of
Illinois, Plaintiff–Appellee,

v.

Jerry BROWN, Defendant–Appellant.

No. 1–15–1311

Opinion filed June 14, 2018

Rehearing denied July 13, 2018

Synopsis

Background: Defendant was convicted in the Circuit Court, Cook County, No. 10 CR 4124, Michele M. Pitman, J., of robbery and aggravated battery of a senior citizen. Defendant appealed. The Appellate Court, Hyman, J., affirmed in part and vacated in part. Defendant filed petition for leave to appeal. The Supreme Court denied the petition and entered supervisory order directing Appellate Court to vacate its order and consider the effect of *People v. Coats*, 2018 IL 121926, 423 Ill.Dec. 13, 104 N.E.3d 1102, on the issue of whether defendant's convictions violated the one-act, one-crime rule.

The Appellate Court, Hyman, J., held that use of defendant's single punch to support convictions for both robbery and aggravated battery of a senior citizen violated one-act, one-crime rule.

Affirmed in part and vacated in part.

***920** Appeal from the Circuit Court of Cook County. No. 10 CR 4124, Honorable Michele M. Pitman, Judge, presiding.

Attorneys and Law Firms

James E. Chadd, Patricia Mysza, and Christopher Kopacz, of State Appellate Defender's Office, of Chicago, for appellant.

Kimberly M. Foxx, State's Attorney, of Chicago (Alan J. Spellberg, Mary P. Needham, and Marci Jacobs, Assistant State's Attorneys, of counsel), for the People.

OPINION

JUSTICE HYMAN delivered the judgment of the court, with opinion.

****201 ¶ 1** We vacate defendant Jerry Brown's conviction for aggravated battery of a senior citizen under the one-act, one-crime rule because we conclude that a single punch was used as the basis for the aggravated battery conviction, and as the element of force for the robbery conviction, without evidence of other use of force, threat of force, or verbal threat.

¶ 2 This case comes before us again (*People v. Brown*, 2017 IL App (1st) 151311-U, 2017 WL 4764914), after the Illinois Supreme Court denied Brown's petition for leave to appeal and entered a supervisory order directing us to vacate the order and consider the effect of *People v. Coats*, 2018 IL 121926, 423 Ill.Dec. 13, 104 N.E.3d 1102, on the issue of whether Brown's convictions for robbery and aggravated battery of a senior citizen violate the one-act, one-crime rule. *People v. Brown*, No. 123080 (Ill. Mar. 21, 2018) (supervisory order).

¶ 3 Background

¶ 4 Brown and Stevie Smith were tried on charges of first degree murder, aggravated battery of a senior citizen, robbery, and aggravated battery. At trial, Deborah Halloran testified that she managed the bar at the Veterans of Foreign Wars (VFW) post in Midlothian, where William Burtner served as the commander. At about 9:30 a.m. on November 16, 2009, Burtner and Halloran prepared money for deposit into four accounts the VFW maintained at A.J. Smith Bank. Three bank deposit bags held deposits for three separate accounts. An additional amount was placed inside a cigar box for Burtner to open a new account. Burtner left the VFW post with the three deposit bags and the cigar box and drove to the bank.

***921 **202 ¶ 5** A teller at A.J. Smith Bank, Connie Weimar, testified that, at about 10:15 a.m., she looked

out the window and saw Burtner walking toward the bank carrying bank deposit bags in his hand. As Burtner approached the entrance, he passed behind a wall, and Weimar lost sight of him. Next, Weimar saw a man wearing a hooded sweatshirt quickly walking past the front of the bank toward Burtner. The hood covered the man's head, and Weimar could not see his face. The man had nothing in his hands. The man disappeared from Weimar's sight for "a matter of seconds." When next she saw him, the man held something in his hands, had turned around, and was running to the adjacent Wendy's parking lot. There, he entered the front passenger seat of a black car, which drove off, headed north. Weimar yelled, "Call 911." Two bank employees brought Burtner inside the bank and sat him down in a chair. Later, Smith was determined to be the man wearing the hooded sweatshirt.

¶ 6 Tamara Esposito heard her supervisor yell, "Call 911, I believe somebody was just robbed." Esposito went to the front door and saw Burtner on the ground outside. Esposito and a security guard helped Burtner, who asked Esposito to retrieve a cigar box, which contained money and checks. Esposito saw a black sports car speeding out of the Wendy's parking lot. Esposito and the security guard brought Burtner inside and sat him down in a chair. Burtner was slightly bent over and holding his left side near his rib cage. His breathing was labored, and he had difficulty speaking. Burtner told Esposito that he was punched in his left side.

¶ 7 Paramedics treated Burtner at the bank. Burtner was holding his left side in his back rib area. Burtner complained of pain in that area and also experienced pain when taking deep breaths. Paramedics transported Burtner to the hospital. The State presented a stipulation that Burtner told a paramedic that "he was hit from behind, and he fell."

¶ 8 Meanwhile, a high-speed police chase of the black car, driven by Brown, had ensued. Brown and Smith crashed into another automobile and came to a stop. They ran in opposite directions. Minutes later, police found Brown hiding underneath a car in a backyard and placed him in custody. During a custodial search, police recovered cash from his right pocket. The A.J. Smith bank deposit bags and money were found inside the car. The Illinois State Police crime laboratory tested blood samples taken from the passenger's side of the black car. The results indicated

a DNA match with Smith. He was arrested on February 5, 2010.

¶ 9 Mary Burtner, William's wife, testified that her husband was treated and released from the hospital on the day of the robbery. When he returned home, he was in a lot of pain, uncomfortable, and favoring his left side. The next day, he felt worse. The following morning, November 18, although still in a lot of pain, he went to his chemotherapy appointment for treatment of lung cancer. At the hospital, he couldn't walk due to his pain and needed a wheelchair. When the couple arrived home at about 3 p.m., Burtner was still holding his left side and was unable to get out of the car. Mary assisted him into their home and into bed. Burtner fell asleep, and Mary checked on him. At about 8:30 p.m., she found her husband unresponsive and called 911.

¶ 10 When paramedics arrived, Burtner was unresponsive, was not breathing, and had no pulse or blood pressure. Paramedics performed CPR, administered cardiac medications, and transferred him to the hospital. There were no signs of life. The State presented Burtner's death certificate indicating that he was 65 years old.

*922 **203 ¶ 11 An assistant chief medical examiner, Dr. Ponni Arunkumar, performed an autopsy on Burtner. He determined that Burtner suffered from lung cancer, two prior heart attacks, and heart disease. She found that Burtner had three fractured ribs on the left side of his chest wall. The rib fractures had occurred less than three or four days earlier and were consistent with being punched. Dr. Arunkumar concluded that Burtner's cause of death was hypertensive cardiovascular disease. The fractured ribs, which were due to an assault, constituted a significant contributing factor of Burtner suffering a heart attack. In her opinion, Burtner's cause of death was homicide.

¶ 12 The trial court held that the State failed to prove that defendants caused Burtner's death, and concluded that defendants were not guilty of first degree murder. The trial court, however, found that defendants "certainly" inflicted great bodily harm on Burtner and pronounced them guilty of aggravated battery of a senior citizen. The court also found defendants guilty of robbery and aggravated battery. The aggravated battery counts were merged into the aggravated battery of a senior citizen offense. As Burtner was over the age of 60, the trial court

elevated the robbery offense from Class 2 to a Class 1 felony.

¶ 13 The trial court sentenced Brown to 15 years' imprisonment for robbery and a consecutive term of 7 years' imprisonment for aggravated battery of a senior citizen. Brown was convicted as an accomplice. The trial court expressly stated that, based on Brown's criminal history and character and the nature and circumstances of the offense, consecutive sentences were required to protect the public from further criminal conduct by Brown.

¶ 14 Analysis

¶ 15 Brown contends that his conviction for aggravated battery of a senior citizen should be vacated as in violation of the one-act, one-crime rule because it is based on the same single physical act as his robbery conviction. Brown argues that the only evidence of a physical act was Smith's single punch. Brown further argues that the single punch cannot serve as the basis for both the aggravated battery and the force element for the robbery.

¶ 16 The State responds that Smith committed two separate acts. The State asserts that the punch was one act and the taking of the deposit bags was a separate act. The State argues that the common act of the punch can serve as the basis of both offenses because there was another separate act for the robbery.

¶ 17 After remand by the supreme court, we allowed the parties to file supplemental briefs. Both parties maintain that their original arguments are supported by *Coats*.

¶ 18 As a threshold matter, Brown acknowledges that he forfeited this issue for appeal because he failed to object to the multiple convictions at trial and did not raise the issue in his posttrial motion. *People v. Enoch*, 122 Ill. 2d 176, 186, 119 Ill.Dec. 265, 522 N.E.2d 1124 (1988). The parties agree, however, that our supreme court repeatedly has found a one-act, one-crime violation reviewable under the second prong of the plain error doctrine, as it affects the integrity of the judicial process. *In re Samantha V.*, 234 Ill. 2d 359, 378–79, 334 Ill.Dec. 661, 917 N.E.2d 487 (2009). So we will consider the issue.

¶ 19 Whether a conviction should be vacated under the one-act, one-crime rule presents a question of law, which

we review *de novo*. *People v. Johnson*, 237 Ill. 2d 81, 97, 340 Ill.Dec. 168, 927 N.E.2d 1179 (2010). Under this rule, Brown cannot be convicted of multiple offenses that are based on precisely the same single physical *923 **204 act, and where convicted of two offenses, the conviction for the less serious offense must be vacated. *Id.* The supreme court has defined an “act” as “any overt or outward manifestation which will support a different offense.” *People v. King*, 66 Ill. 2d 551, 566, 6 Ill.Dec. 891, 363 N.E.2d 838 (1977).

¶ 20 In clarifying *King's* one-act, one-crime rule, the supreme court explained that a court must first determine whether the defendant's conduct consisted of a single physical act or separate acts. *People v. Rodriguez*, 169 Ill. 2d 183, 186, 214 Ill.Dec. 451, 661 N.E.2d 305 (1996). A defendant can be convicted of two offenses where a common act is part of both crimes. *Id.* at 188, 214 Ill.Dec. 451, 661 N.E.2d 305. But where two offenses share a common act, there must be another separate act to sustain the two convictions. See *id.* at 188–89, 214 Ill.Dec. 451, 661 N.E.2d 305. “ ‘As long as there are multiple acts *as defined in King*, their interrelationship does not preclude multiple convictions * * *.’ (Emphasis added.)” *Id.* at 189, 214 Ill.Dec. 451, 661 N.E.2d 305 (quoting *People v. Myers*, 85 Ill. 2d 281, 288, 55 Ill.Dec. 389, 426 N.E.2d 535 (1981)).

¶ 21 The State charged Brown with robbery for taking money from Burtner by the use of force or by threatening the imminent use of force. 720 ILCS 5/18–1(a) (West 2008). The aggravated battery of a senior citizen offense alleged that defendants intentionally and knowingly caused great bodily harm to Burtner, a person of 60 or more years of age, by striking him about the body, causing injuries. *Id.* § 12–4.6(a).

¶ 22 The evidence presented at trial demonstrates that defendants committed one single physical act—a single punch by codefendant Smith to Burtner's left side. The only evidence of any act by defendants was Esposito's testimony that Burtner told her that he was punched in his left side and the State's stipulation that Burtner told a paramedic that “he was hit from behind, and fell.” This single punch became the basis for the aggravated battery conviction and an element of force for the robbery conviction. There was no evidence of defendants' use of force or threat of force. There was no other evidence of a verbal threat. Indeed, as Burtner was punched from behind, he likely had no awareness of Smith approaching

him. Based on this record, we find that defendants committed only one single physical act.

¶ 23 The State asserts that the taking of the money constituted a separate physical act for the robbery and, thus, the two convictions should stand. The State primarily relies on *People v. Pearson*, 331 Ill. App. 3d 312, 264 Ill.Dec. 487, 770 N.E.2d 1183 (2002), which it claims is directly on point. In *Pearson*, the defendant grabbed a woman's purse off her shoulder. *Id.* at 314, 264 Ill.Dec. 487, 770 N.E.2d 1183. A struggle ensued, knocking the woman to the ground. *Id.* The defendant was convicted of both robbery and aggravated battery. *Id.* at 316, 264 Ill.Dec. 487, 770 N.E.2d 1183. On appeal, this court found that the two convictions did not violate the one-act, one-crime rule because the defendant committed two separate physical acts—he took the woman's purse, and he then pushed her to the ground. *Id.* at 322, 264 Ill.Dec. 487, 770 N.E.2d 1183.

¶ 24 We find those facts distinguishable. In *Pearson*, the act of grabbing the woman's purse off her shoulder was, in and of itself, a taking of property by force. *Pearson*'s subsequent act of pushing the woman to the ground was a separate act. Here, the evidence demonstrates that defendants committed only one physical act, Smith's punch. No evidence indicates that defendants used another act of force to take the money from Burtner. No evidence explains how the taking occurred. No evidence *924 **205 shows a struggle over the deposit bags or that defendants forcefully removed them from Burtner's hand. It is possible that Burtner dropped the bags after he was punched and fell to the ground, as he apparently did with the cigar box. Consequently, *Pearson* does not apply.

¶ 25 Based on this record, we find that Brown's convictions for robbery and aggravated battery of a senior citizen were both grounded on the single physical act of codefendant Smith punching Burtner. The two convictions violate the one-act, one-crime rule. As the aggravated battery of a senior citizen offense is a Class 2 felony and less serious than the robbery of a senior citizen, we vacate Brown's conviction for aggravated battery of a senior citizen.

¶ 26 We find that our supreme court's opinion in *Coats* does not change our disposition. In *Coats*, the defendant was convicted of several offenses, including being an armed habitual criminal and armed violence. *Coats*, 2018 IL 121926, ¶ 1, 423 Ill.Dec. 13, 104 N.E.3d 1102. The

evidence showed that Coats held a handgun in one hand, and two bags of drugs in the other. *Id.* ¶¶ 3–4. On appeal, Coats argued that his convictions for being an armed habitual criminal and armed violence violated the one-act, one-crime rule because they were both predicated on the same physical act of possessing the handgun. *Id.* ¶ 14. Although the two offenses shared the common act of possession of the handgun, the supreme court found that the armed violence conviction involved a second, separate act: possession of the drugs. *Id.* ¶ 17. The court further found that since possession of the handgun was only part of the conduct that formed the basis for the armed violence conviction, the two offenses were not carved from precisely the same physical act. *Id.* Thus, the court concluded that the two acts did not violate the one-act, one-crime rule. *Id.* ¶ 32.

¶ 27 In making this ruling, the supreme court rejected Coats's argument that the *King* analysis implicitly required a determination of whether the offenses shared a “crucial” act. *Id.* ¶ 18. Coats claimed that multiple convictions could not stand if the two offenses shared a common act forming the “crux” or “essence” of the crime. *Id.* In rejecting this construction of *King*, the court stated that it had never applied the one-act, one-crime rule in this manner. *Id.* ¶¶ 18–19.

¶ 28 Unlike *Coats*, the evidence here shows that the defendants committed only one physical act—Smith's single punch to Burtner's left side. None of the evidence indicates a second separate act, and none of the evidence indicates how the taking of the deposit bags occurred. In addition, we reject the State's argument, raised in its supplemental brief, that this court's analysis “implicitly hints at a ‘crux’ of the crime type of finding” because the force element was crucial to both offenses. We made no “crux” or “essence” of the crime finding. Simply stated, there is no evidence of a separate physical act to support a second conviction.

¶ 29 Because we have vacated Brown's conviction for aggravated battery of a senior citizen, we need not consider his alternative argument that the conviction be reduced to aggravated battery on a public way.

¶ 30 We vacate the aggravated battery of a senior citizen conviction and affirm Brown's conviction and sentence for robbery of a senior citizen.

¶ 31 Affirmed in part and vacated in part.

All Citations

2018 IL App (1st) 151311-B, 107 N.E.3d 919, 424 Ill.Dec.
200

Justices Neville and Pucinski concurred in the judgment
and opinion.

End of Document

© 2019 Thomson Reuters. No claim to original U.S. Government Works.

111 N.E.3d 983 (Table)
(This disposition of a Petition for Leave to Appeal
is referenced in the North Eastern Reporter.)
Supreme Court of Illinois.

PEOPLE State of Illinois, Petitioner,
v.
Jerry BROWN, Respondent.

No. 123902
|
November 28, 2018

Leave to appeal, Appellate Court, First District.
1-15-1311

Opinion

Petition for Leave to Appeal Allowed.

This case is consolidated with Case No. 123901.

Neville, J. took no part.

All Citations

111 N.E.3d 983 (Table), 425 Ill.Dec. 175

End of Document

© 2019 Thomson Reuters. No claim to original U.S. Government Works.

TABLE OF CONTENTS OF RECORD ON APPEAL**People v. Smith, No. 123901****Common Law Record****People v. Smith, No. 10 CR 4124 (Cook County)**

<u>Document</u>	<u>Pages</u>
Face Sheet.....	C1
Complaint for Preliminary Examination (filed Feb. 5, 2010).....	C2
Arrest Summary	C3
CABS Mugshot Report (dated Feb. 5, 2010).....	C4
Half Sheet	C5
Warrant Certification (dated Feb. 6, 2010)	C6
Order of Denial of Bail (entered Feb. 6, 2010).....	C7-8
Prisoner Data Sheet (filed Feb. 6, 2010).....	C9
Docket Sheet	C10-16
Grand Jury Indictment (filed Mar. 2, 2010).....	C17-24
Indictment Return Sheet (filed Mar. 2, 2010)	C25
Appearance (filed Mar. 16, 2010).....	C26
Petition for Hearing on Denial of Bail.....	C27-28
State's Motion for Pretrial Discovery (filed Mar. 16, 2010)	C29-30
Defendant's Motion for Discovery (filed Apr. 13, 2010)	C31-36
Order Concerning Medical Records (entered Apr. 13, 2010)	C37
Defendant's Motion to Set Bail (filed July 20, 2010).....	C38-39

Order Concerning Medical Records (entered Apr. 13, 2010)	C40
State’s Motion for Fingerprint Samples (filed Dec. 1, 2010).....	C41
Order Concerning DNA Sample (entered Dec. 1, 2010).....	C42
Orders Concerning Medical Records (entered Feb. 18, 2011).....	C43-46
State’s Answer to Defendant’s Motion for Discovery (filed Oct. 24, 2011).....	C47-52
Defendant’s Motion for Additional Discovery (filed Dec. 5, 2011).....	C53-54
State’s Response to Defendant’s Motion to Dismiss Indictment (filed Aug. 9, 2012).....	C55-58
Defendant’s Motion to Reduce Bail (filed July 8, 2012).....	C59-63
Defendants’ Joint Motion to Dismiss Count 1 of the Indictment (filed July 2, 2012).....	C64-125
Order Concerning Disclosure of Discovery (entered Mar. 29, 2013)	C126
Notice of Intent to Seek Sentence Enhancement for Robbery Count (filed Aug. 15, 2013).....	C127
Scheduling Order (entered Oct. 23, 2013)	C128
Scheduling Order (entered Nov. 18, 2013)	C129
Scheduling Order (entered Dec. 9, 2013).....	C130
Defendant’s Answer to Discovery (filed Jan. 13, 2014).....	C131-32
Order Concerning Laptop (entered Jan. 13, 2014).....	C133
Scheduling Order (entered Jan. 13, 2014).....	C134
Defendant’s Motion for Severance (filed Jan. 27, 2014).....	C135-36
People’s Supplemental Answer to Defendant’s Motion for Pretrial Discovery (filed Jan. 27, 2014).....	C137-38
Order Granting Motion for Severance (entered Jan. 27, 2014)	C139

Scheduling Order (entered Feb. 28, 2014).....	C140
Scheduling Order (entered Apr. 7, 2014).....	C141
Scheduling Order (entered Apr. 14, 2014).....	C142
Scheduling Order (entered May 7, 2014).....	C143
Scheduling Order (entered May 12, 2014).....	C144
Jury Waiver (filed May 14, 2014).....	C145
Order Commencing and Continuing Bench Trial (entered May 14, 2014)	C146
Order Commencing and Continuing Bench Trial (entered May 15, 2014)	C147
Order Commencing and Continuing Bench Trial (entered May 16, 2014)	C148
Order Commencing and Continuing Bench Trial (entered May 20, 2014)	C149
Scheduling Order (entered June 19, 2014).....	C150
Scheduling Order (entered July 17, 2014).....	C151
Scheduling Order (entered July 31, 2014).....	C152
Scheduling Order (entered Sept. 10, 2014).....	C153
Order of Continuance (entered Sept. 11, 2014)	C154
Scheduling Order (entered Sept. 18, 2014).....	C155
Scheduling Order (entered Nov. 4, 2014)	C156
Scheduling Order (entered Nov. 12, 2014)	C157
Order of Continuance (entered Jan. 22, 2015)	C158
Notice of Presentence Investigation Order (filed Feb. 24, 2015).....	C159
Presentence Investigation Report (filed Apr. 13, 2015)	C160-215
Findings on Bench Trial (entered Feb. 24, 2015).....	C216

Defendant’s Motion for New Trial (filed Mar. 11, 2015)	C217-19
Order Denying Motion for New Trial (entered Apr. 13, 2015).....	C220
Defendant’s Motion to Reconsider Sentence (filed Apr. 22, 2015).....	C221-22
Order of Commitment and Sentence (entered Apr. 22, 2015)	C223
Notification of Final Disposition	C224
Notice of Appeal (filed Apr. 22, 2015)	C225
Notice of Notice of Appeal (filed Jan. 24, 2016).....	C226-27
Order on Sentencing (entered Apr. 22, 2015).....	C228
Clerk’s Certification (dated Feb. 24, 2015)	C229

Reports of Proceedings: Hearings

Pretrial Status (Apr. 13, 2010).....	D-1
Pretrial Status (May 14, 2010).....	E-1
Pretrial Status (May 28, 2010).....	F-1
Pretrial Status (July 16, 2010).....	G-1
Pretrial Status (July 23, 2010).....	1-h
Pretrial Status and Hearing on Motion for Bond (July 30, 2010)	H-1
Pretrial Status (Sept. 10, 2010).....	J-1
Pretrial Status (Oct. 20, 2010)	K-1
Pretrial Status (Dec. 1, 2010).....	L-1
Pretrial Status (Jan. 12, 2011).....	M-1
Pretrial Status (Feb. 18, 2011).....	N-1

Pretrial Status (Mar. 31, 2011).....	O-1
Pretrial Status (May 5, 2011).....	P-1
Pretrial Status (June 29, 2011).....	Q-1
Pretrial Status (Aug. 8, 2011).....	R-1
Pretrial Status (Sept. 19, 2011).....	S-1
Pretrial Status (Oct. 24, 2011).....	T-1
Pretrial Status (Dec. 5, 2011).....	U-1
Pretrial Status (Jan. 12, 2012).....	V-1
Pretrial Status (Feb. 27, 2012).....	W-1
Pretrial Status (Apr. 12, 2012).....	X-1
Pretrial Status (May 31, 2012).....	Y-1
Pretrial Status (July 2, 2012).....	Z-1
Pretrial Status (Aug. 9, 2012).....	AA-1
Pretrial Status and Hearing on Motion to Dismiss (Nov. 1, 2012).....	CC-1
Pretrial Status (Dec. 5, 2012).....	DD-1
Pretrial Status (Dec. 11, 2012).....	EE-1
Evidentiary Hearing on Motion to Dismiss (Jan. 31, 2013).....	FF-1
Continued Evidentiary Hearing on Motion to Dismiss (Feb. 28, 2013).....	GG-1
Pretrial Status (Mar. 29, 2013).....	HH-1
Pretrial Status (Apr. 15, 2013).....	II-1
Pretrial Status (May 31, 2013).....	JJ-1
Pretrial Status (June 26, 2013).....	KK-1

Pretrial Status (July 29, 2013).....	LL-1
Pretrial Status (Aug. 15, 2013)	MM-1
Pretrial Status (Sept. 19, 2013).....	NN-1
Pretrial Status (Oct. 24, 2013)	OO-1
Pretrial Status (Nov. 18, 2013)	PP-1
Pretrial Status (Dec. 9, 2013).....	QQ-1
Pretrial Status (Jan. 13, 2014).....	RR-1
Pretrial Status (Jan. 27, 2014).....	SS-1
Pretrial Status (Feb. 28, 2014).....	TT-1
Pretrial Status (Apr. 7, 2014).....	UU-1
Pretrial Status (Apr. 14, 2014).....	VV-1
Pretrial Status and Hearing on Motion to Admit Statements (May 7, 2014).....	WW-1
Pretrial Status and Ruling on Motion to Admit Statements (May 12, 2014)	XX-1
Jury Waiver and Bench Trial (May 14, 2014)	YY-1
Bench Trial (May 15, 2014)	ZZ-1
Bench Trial (May 16, 2014)	AAA-1
Bench Trial (May 20, 2014)	BBB-1
Bench Trial Status and Continuance (June 19, 2014)	CCC-1
Bench Trial Status and Continuance (July 17, 2014)	DDD-1
Bench Trial Status and Continuance (July 31, 2014)	EEE-1
Bench Trial Status and Continuance (Sept. 10, 2014).....	FFF-1

Hearing on Motion to Reconsider and Stipulations (Sept. 11, 2014)	GGG-1
Bench Trial Status and Continuance (Sept. 18, 2014).....	HHH-1
Bench Trial Status and Continuance (Nov. 4, 2014).....	III-1
Bench Trial Status and Continuance (Nov. 12, 2014).....	JJJ-1
Bench Trial (Jan. 22, 2015)	KKK-1
Bench Trial Closing Arguments (Jan. 23, 2015)	LLL-1
Bench Trial Findings (Feb. 24, 2015).....	MMM-1
Hearing on Post-trial Motions and Sentencing (Apr. 13, 2015).....	NNN-1
Pronouncement of Sentence (Apr. 22, 2015).....	OOO-1

Reports of Proceedings: Witnesses

	<u>DX</u>	<u>CX</u>	<u>RDX</u>	<u>RCX</u>
Dr. Ponni Arunkumar	FF-12			
Dr. Lee Christensen	FF-55	FF-69	FF-79	
Steve Zamiar	GG-19			
Mary Burtner	YY-46	YY-65		
Connie Weimar	YY-73	YY-90	YY-98	YY-100
Tamara Esposito	YY-102	YY-138		
Tom Steele	YY-147	YY-151		
Noreen Janda	YY-154			
Deborah Halloran	ZZ-5	ZZ-19	ZZ-23	ZZ-25
Ruben Pesina	ZZ-26	ZZ-41	ZZ-52 ZZ-66	ZZ-55 ZZ-69

	<u>DX</u>	<u>CX</u>	<u>RDX</u>	<u>RCX</u>
Heather Watters	ZZ-72			
Cory Katsibubas	ZZ-77	ZZ-90	ZZ-97	ZZ-100
Officer Ryan Gulli	ZZ-102	ZZ-146	ZZ-154	
Michael Galvan	AAA-5	AAA-31	AAA-53	AAA-59
Joe Croak	AAA-64	AAA-76	AAA-82	
Steve Zamiar	AAA-87	AAA-124	AAA-140	AAA-143
Daniel Delaney	BBB-5	BBB-62	BBB-80	
William Anselme	BBB-81	BBB-104	BBB-111 BBB-116	BBB-115
Katherine Sullivan	BBB-120	BBB-138	BBB-142	
Dr. Ponni Arunkumar	KKK-6	KKK-52	KKK-86	KKK-88
Dr. Lee Christensen	KKK-110	KKK-120		

People v. Brown, No. 123902**Common Law Record****People v. Brown, No. 10 CR 4124 (Cook County)**

<u>Document</u>	<u>Pages</u>
Face Sheet.....	C1
Complaint for Preliminary Examination.....	C2
Arrest Summary	C3
Mugshot Report (dated Nov. 17, 2009)	C4
Half Sheet	C5-6
Appearance and Jury Demand.....	C7
Warrant Certification (dated Nov. 18, 2009).....	C8
Defendant's Motion to Waive Bond Hearing	C9-10
Defendant's Motion for Discovery	C11-15
Notice of Missing Pages.....	C16
Defendant's Motion to Preserve Evidence	C17-18
Order to Preserve Evidence (entered Nov. 18, 2009)	C19-20
Prisoner Data Sheet (filed Nov. 18, 2009)	C21
Motion to Reset Bond (filed Nov. 20, 2009)	C22-23
Prisoner Data Sheet (filed Nov. 23, 2009)	C24
Prisoner Data Sheet (filed Nov. 25, 2009)	C25
Motion for DNA Testing Allowing Evidence to Be Consumed (filed Dec. 1, 2009)	C26-28

Defendant’s Demand for Preliminary Hearing and Trial by Jury (filed Nov. 23, 2009).....	C29
Pretrial Services Bond Risk Assessment (dated Nov. 18, 2009).....	C30
Motion to Compel DNA Samples (filed Dec. 3, 2009).....	C31
Order for DNA Samples (entered Dec. 3, 2009)	C32
Prisoner Data Sheet (filed Dec. 3, 2009).....	C33
Appearance, Notice of Representation, and Demand for Preliminary Hearing (filed Dec. 7, 2009)	C34
Prisoner Data Sheet (filed Dec. 7, 2009).....	C35
Prisoner Data Sheet (filed Dec. 14, 2009).....	C36
Grand Jury Indictment (filed Dec. 16, 2009).....	C37-43
Indictment Return Sheet (filed Dec. 29, 2009)	C44
State’s Motion for Pretrial Discovery (filed Dec. 29, 2009).....	C45-46
Docket Sheet	C47-54
True Bill Cover Sheet (filed Mar. 2, 2010).....	C55
Indictment Return Sheet (filed Mar. 16, 2010)	C56
State’s Motion for Pretrial Discovery (filed Mar. 16, 2010)	C57-58
Notice of Intent to Consume DNA Evidence (filed Apr. 14, 2010).....	C59
Orders Concerning Medical Records (entered Apr. 13, 2010).....	C60-61
Order Concerning Consumption of DNA Evidence (entered May 14, 2010).....	C62
Order Concerning DNA Sample of Defendant (entered Dec. 1, 2010)	C63
State’s Motion for Taking of Fingerprints (filed Dec. 1, 2010)	C64
State’s Motion to Allow Use of Other Crimes (filed Apr. 17, 2013).....	C65-75

Defendant's Response to Motion to Admit Proof of Other Crimes (filed May 31, 2013)	C76-98
Defendant's Motion for Rule 402 Conference (filed July 29, 2013)	C99-121
Notice of Intent to Seek Sentence Enhancement for Robbery Count (filed Aug. 15, 2013).....	C122
Scheduling Order (entered Oct. 24, 2013)	C123
Scheduling Order (entered Nov. 18, 2013)	C124
Scheduling Order (entered Dec. 9, 2013).....	C125
Defendant's Answer to Discovery (filed Jan. 13, 2014).....	C126-27
Scheduling Order (entered Jan. 13, 2014).....	C128
People's Supplemental Answer to Defendant's Motion for Pretrial Discovery (filed Jan. 27, 2014)	C129-30
Order Granting Defendant's Motion for Severance (entered Jan. 27, 2014)	C131
Scheduling Order (entered Feb. 28, 2014).....	C132
State's Motion to Admit Non-Hearsay Statements (filed Apr. 7, 2014).....	C133-40
Scheduling Order (entered Apr. 7, 2014).....	C141
Scheduling Order (entered Apr. 14, 2014).....	C142
Scheduling Order (entered May 7, 2014).....	C143
Order to Visit Client in Courthouse (entered May 12, 2014).....	C144
Jury Waiver (filed May 14, 2014).....	C145
Order on Motion to Admit Non-Hearsay Statements (entered May 12, 2014)	C146
Order Commencing and Continuing Bench Trial (entered May 14, 2014)	C147
Order Commencing and Continuing Bench Trial (entered May 15, 2014)	C148

Order Commencing and Continuing Bench Trial (entered May 16, 2014)	C149
Order Commencing and Continuing Bench Trial (entered May 20, 2014)	C150
Scheduling Order (entered June 19, 2014).....	C151
Scheduling Order (entered July 17, 2014).....	C152
State’s Motion to Reconsider (filed July 31, 2014)	C153-55
Scheduling Order (entered July 31, 2014).....	C156
Scheduling Order (entered Sept. 10, 2014).....	C157
Order of Continuance (entered Sept. 11, 2014).....	C158
Scheduling Order (entered Sept. 18, 2014).....	C159
Scheduling Order (entered Nov. 4, 2014)	C160
Scheduling Order (entered Nov. 12, 2014)	C161
Scheduling Order (entered Jan. 22, 2015).....	C162
Order of Continuance (entered Jan. 22, 2015)	C163
Notice of Presentence Investigation Order (filed Feb. 24, 2015).....	C164
Scheduling Order (entered Feb. 24, 2015).....	C165
Findings on Bench Trial (entered Feb. 24, 2015).....	C166
Defendant’s Motion for New Trial (filed Mar. 11, 2015).....	C167-69
Letters in Support of Defendant at Sentencing (filed Apr. 13, 2015).....	C170-76
Victim Impact Statements (filed Apr. 13, 2015).....	C177-86
Presentence Investigation Report (filed Apr. 13, 2015).....	C187-252

Order Denying Motion for New Trial (entered Apr. 13, 2015).....	C253
Notification of Final Disposition	C254
Order of Commitment and Sentence (entered Apr. 22, 2015)	C255
Order to Return Seized Vehicle (entered Apr. 22, 2015).....	C257
Motion to Reconsider Sentence (filed Apr. 22, 2015).....	C258-60
Order on Sentencing (entered Apr. 22, 2015).....	C261
Notice of Appeal (filed Apr. 22, 2015)	C262
Notice of Notice of Appeal (filed Dec. 16, 2015).....	C263-64
Clerk's Certification (dated Oct. 16, 2015)	C265

Reports of Proceedings: Hearings

Pretrial Status (Apr. 13, 2010).....	C-1
Pretrial Status (May 14, 2010).....	D-1
Pretrial Status (May 28, 2010).....	E-1
Pretrial Status (July 16, 2010).....	F-1
Pretrial Status (July 23, 2010).....	G-1
Pretrial Status and Hearing on Motion for Bond (July 30, 2010)	I-1
Pretrial Status (Sept. 10, 2010).....	I-1
Pretrial Status (Oct. 20, 2010)	J-1
Pretrial Status (Dec. 1, 2010).....	L-1
Pretrial Status (Feb. 18, 2011).....	M-1
Pretrial Status (Mar. 31, 2011)	N-1

Pretrial Status (May 5, 2011).....	O-1
Pretrial Status (June 29, 2011).....	P-1
Pretrial Status (Aug. 8, 2011)	Q-1
Pretrial Status (Sept. 19, 2011).....	R-1
Pretrial Status (Oct. 24, 2011)	S-1
Pretrial Status (Dec. 5, 2011).....	T-1
Pretrial Status (Jan. 12, 2012).....	U-1
Pretrial Status (Feb. 27, 2012).....	V-1
Pretrial Status (Apr. 12, 2012).....	W-1
Pretrial Status (May 31, 2012).....	X-1
Pretrial Status (July 2, 2012).....	Y-1
Pretrial Status (Aug. 9, 2012)	Z-1
Pretrial Status (Sept. 20, 2012).....	AA-1
Pretrial Status and Hearing on Motion to Dismiss (Nov. 1, 2012).....	BB-1
Pretrial Status (Dec. 5, 2012).....	CC-1
Pretrial Status (Dec. 11, 2012).....	DD-1
Evidentiary Hearing on Motion to Dismiss (Jan. 31, 2013).....	EE-1
Continued Evidentiary Hearing on Motion to Dismiss (Feb. 28, 2013)	FF-1
Pretrial Status (Mar. 29, 2013)	GG-1
Pretrial Status (Apr. 15, 2013).....	I-1
Pretrial Status (May 31, 2013).....	II-1
Pretrial Status (June 26, 2013).....	JJ-1

Pretrial Status (July 29, 2013).....	LL-1
Pretrial Status (Aug. 15, 2013)	MM-1
Pretrial Status (Aug. 23, 2013)	NN-1
Pretrial Status (Sept. 19, 2013).....	OO-1
Pretrial Status (Oct. 24, 2013)	PP-1
Pretrial Status (Nov. 18, 2013)	QQ-1
Pretrial Status (Dec. 9, 2013).....	RR-1
Pretrial Status (Jan. 13, 2014).....	SS-1
Pretrial Status (Jan. 27, 2014).....	TT-1
Pretrial Status (Feb. 28, 2014).....	UU-1
Pretrial Status (Apr. 7, 2014).....	V-1
Pretrial Status (Apr. 14, 2014).....	WW-1
Pretrial Status and Hearing on Motion to Admit Statements (May 7, 2014).....	XX-1
Pretrial Status and Ruling on Motion to Admit Statements (May 12, 2014)	YY-1
Jury Waiver and Bench Trial (May 14, 2014)	ZZ-1
Bench Trial (May 15, 2014)	AAA-1
Bench Trial (May 16, 2014)	BBB-1
Bench Trial (May 20, 2014)	CCC-1
Bench Trial Status and Continuance (June 19, 2014)	DDD-1
Bench Trial Status and Continuance (July 17, 2014)	EEE-1
Bench Trial Status and Continuance (July 31, 2014)	FFF-1

Bench Trial Status and Continuance (Sept. 10, 2014).....	GGG-1
Hearing on Motion to Reconsider and Stipulations (Sept. 11, 2014)	HHH-1
Bench Trial Status and Continuance (Sept. 18, 2014).....	III-1
Bench Trial Status and Continuance (Nov. 4, 2014).....	JJJ-1
Bench Trial Status and Continuance (Nov. 12, 2014).....	KKK-1
Bench Trial (Jan. 22, 2015)	LLL-1
Bench Trial Closing Arguments (Jan. 23, 2015)	MMM-1
Bench Trial Findings (Feb. 24, 2015).....	NNN-1
Hearing on Post-trial Motions and Sentencing (Apr. 13, 2015).....	OOO-1
Pronouncement of Sentence (Apr. 22, 2015).....	PPP-1

Reports of Proceedings: Witnesses

	<u>DX</u>	<u>CX</u>	<u>RDX</u>	<u>RCX</u>
Dr. Ponni Arunkumar	EE-12			
Dr. Lee Christensen	EE-55	EE-69	EE-79	
Steve Zamiar	FF-19			
Mary Burtner	ZZ-46	ZZ-65		
Connie Weimar	ZZ-73	ZZ-90	ZZ-98	ZZ-100
Tamara Esposito	ZZ-102	ZZ-138		
Tom Steele	ZZ-147	ZZ-151		
Noreen Janda	ZZ-154			
Deborah Halloran	AAA-5	AAA-19	AAA-23	AAA-25

	<u>DX</u>	<u>CX</u>	<u>RDX</u>	<u>RCX</u>
Ruben Pesina	AAA-26	AAA-41	AAA-52 AAA-66	AAA-55 AAA-69
Heather Watters	AAA-72			
Cory Katsibubas	AAA-77	AAA-90	AAA-97	AAA-100
Officer Ryan Gulli	AAA-102	AAA-146	AAA-154	
Michael Galvan	BBB-5	BBB-31	BBB-53	BBB-59
Joe Croak	BBB-64	BBB-76	BBB-82	
Steve Zamiar	BBB-87	BBB-124	BBB-140	BBB-143
Daniel Delaney	CCC-5	CCC-62	CCC-80	
William Anselme	CCC-81	CCC-104	CCC-111 CCC-116	CCC-115
Katherine Sullivan	CCC-120	CCC-138	CCC-142	
Dr. Ponni Arunkumar	LLL-6	LLL-52	LLL-86	LLL-88
Dr. Lee Christensen	LLL-110	LLL-120		

CERTIFICATE 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 February 6, 2019, the foregoing **Brief and Appendix of Plaintiff-Appellant 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 on counsel in this case electronically by transmitting a copy from my e-mail address to counsel's e-mail addresses, listed below:

Patricia G. Mysza
Deputy Defender
Office of the State Appellate Defender,
First Judicial District
203 North LaSalle Avenue, 24th Floor
Chicago, Illinois 60601
1stdistrict.eserve@osad.state.il.us
Counsel for Jerry Brown

Christopher Cronson
Cronson & Cronson, Ltd.
211 Washington Street
Waukegan, Illinois 60085
chrischronson@gmail.com
Counsel for Stevie Smith

Alan Spellberg
Supervisor, Criminal Appeals Division
State's Attorney of Cook County
2650 South California Avenue
Chicago, Illinois 60608
eserve.criminalappeals@cookcountyil.gov

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

/s/ Erin M. O'Connell
ERIN M. O'CONNELL