2024 IL App (4th) 230648-U

NO. 4-23-0648

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED
October 7, 2024
Carla Bender
4th District Appellate
Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
Plaintiff-Appellee,	)	Circuit Court of
v.	)	Winnebago County
RAHEEM KING,	)	No. 18CF810
Defendant-Appellant.	)	
	)	Honorable
	)	Debra D. Schafer,
	)	Judge Presiding.

JUSTICE VANCIL delivered the judgment of the court.
Justices Lannerd and DeArmond concurred in the judgment.

ORDER

¶ 1 *Held*: The appellate court affirmed defendant's convictions for first degree murder, aggravated vehicular hijacking, armed robbery, and aggravated unlawful restraint, finding the trial court's failure to conduct a hearing on restraining defendant during trial did not necessitate a new trial and sufficient evidence was introduced to support the third armed robbery conviction. The court vacated one of defendant's convictions for aggravated unlawful restraint under the one-act, one-crime doctrine and modified defendant's sentence to order the sentences for aggravated unlawful restraint and aggravated vehicular hijacking be served concurrently.

¶ 2 After a bench trial, the trial court found defendant, Raheem King, guilty of three counts of first degree murder (720 ILCS 5/9-1 (West 2018)), three counts of armed robbery (*id.* § 18-2), one count of aggravated vehicular hijacking (*id.* § 18-4), and four counts of aggravated unlawful restraint (*id.* § 10-3.1). Defendant appeals, arguing (1) the court ordered him to be restrained in shackles throughout the trial without following the proper procedure, (2) his third conviction for armed robbery was not supported by adequate evidence, (3) his conviction for

aggravated vehicular hijacking and his fourth conviction for aggravated unlawful restraint violated the one-act, one-crime doctrine, and (4) the court erroneously ordered his sentences for aggravated vehicular hijacking and aggravated unlawful restraint to be served consecutively instead of concurrently.

¶ 3 We affirm defendant's convictions, except one of his convictions for aggravated unlawful restraint, which we vacate. We also modify defendant's sentence to order his sentences for aggravated unlawful restraint and aggravated vehicular hijacking be served concurrently, but after his sentences for first degree murder and armed robbery.

¶ 4 I. BACKGROUND

¶ 5 One night in April 2018, Martavies Blake, Sean Anderson, and Dai'Jon Sistrunk joined defendant on a party bus to celebrate his birthday. When defendant's girlfriend called and told him she was threatened by armed robbers at her home, defendant suspected Blake, Anderson, and Sistrunk were involved. Defendant brought a rifle on board the bus, and he shot and killed all three men. Later that month, a grand jury charged defendant with a 135-count indictment. The first 126 counts alleged defendant committed first degree murder of Blake, Anderson, and Sistrunk, with the State alleging six different theories and seven different sentencing enhancements for each killing. The State also alleged defendant committed four counts of armed robbery, one count of aggravated vehicular hijacking, and four counts of aggravated unlawful restraint.

¶ 6 At a status hearing, the trial court discussed shackling defendant during the trial. The court and defendant had the following exchange:

> "THE COURT: In terms of security, I'm obviously not going to talk about all the security measures that are going to be in place, but as far as you are concerned, [defendant], you've behaved every time you've been in court with me.

There hasn't been any issues. You know, from the outset, they were anticipating issues, and there haven't been any. I am very hopeful that that will continue to be the case throughout the trial.

As far as me addressing you, all I can do is talk to you about your particular behaviors. You are not going to have a handcuff on—you are right-handed, sir?

THE DEFENDANT: Yeah.

THE COURT: You won't have a handcuff on your right hand. I'm debating whether or not you're going to have cuffs on either hands. That's, I guess, undecided, but you won't so that you can make notes and such things when you're participating in the trial. You will still be wearing leg shackles, just so that you're aware.

There are other security measures that can be taken, which I am assuming are not going to be necessary, but will be adjusted if there's anything that you do that affects that decision. Do you understand?

THE DEFENDANT: Yes."

¶ 7 Defendant's bench trial lasted eight days. The record of the trial does not mention shackles or handcuffs. A summary of the evidence relevant to this appeal follows below.

¶ 8 Arturo Montes de Oca testified he contracted with defendant to drive a party bus for his birthday. That night, defendant and some guests boarded the bus in Rockford, Illinois, and Montes de Oca drove them toward a casino in Elgin, Illinois. On the way, defendant received a phone call, and he instructed Montes de Oca to return to Rockford because his girlfriend called and said she was just robbed. They stopped at a house party, where some of the guests got off the bus, before continuing to defendant's home. Montes de Oca testified defendant got off the bus,

and after some time passed, he returned with a rifle and yelled, " 'Everybody in this mother f*** is about to die tonight,' " and, " 'Y'all is going to tell me what happened.' " He also ordered them, " 'Y'all need to stay on the bus.' " Defendant told Montes de Oca, " 'Do what you're told and nothing is going to happen to you.' "

¶ 9 Montes de Oca testified defendant told him to drive to Springfield. Defendant gave one of the other guests a handgun and told her, " 'Watch [Montes de Oca]. Make sure he doesn't do anything funny.' " As he was driving, Montes de Oca heard a gunshot, then saw Blake stand up and defendant shoot him twice. Montes de Oca testified defendant was holding phones, and he told Montes de Oca to open the bus doors. Defendant threw the phones out the doors. Defendant then told Montes de Oca to pull over, and he got off the bus. Other passengers got off the bus soon after, and Montes de Oca called 911 and drove to a gas station. Montes de Oca testified everyone on the bus had been drinking, except him, because he was the driver. Throughout the entire encounter, Montes de Oca heard "maybe four to six shots."

¶ 10 Montes de Oca's friend, Jorge Ojeda, testified he joined Montes de Oca on the bus that night. His account echoed much of Montes de Oca's testimony. He testified, when defendant returned to the bus with the rifle, he ordered Ojeda to go to the back of the bus. Ojeda saw defendant take cell phones from Blake, Anderson, and Sistrunk and throw them out the bus doors. He claimed defendant took a gun away from Blake. Ojeda saw defendant shoot all three victims. Ojeda acknowledged he drank alcohol that night. The prosecution questioned Ojeda about his previous statements that defendant brought a handgun in addition to the rifle, but Ojeda did not remember telling the police or grand jury anything different from his testimony at trial.

¶ 11 Multiple police officers testified they were called to a gas station around 3:30 a.m., after reports of a shooting. At the gas station, they found a parked party bus with three dead bodies,

later identified as the bodies of Blake, Sistrunk, and Anderson, on board. They found a cell phone under Blake's back pocket. Also on the bus, police found cartridge cases from .223-caliber rifle ammunition. With the assistance of a canine unit, they found two broken cell phones and a handgun near where defendant exited the bus. An Illinois State Police forensic scientist testified he tested the handgun for DNA and found at least three contributors, including defendant as a major contributor and two minor contributors. A detective who interviewed Ojeda after the shooting testified Ojeda did not tell him defendant took a gun from the victims during his interview, but instead Ojeda told him defendant returned to the bus with both the rifle and the handgun. A recording of this interview was admitted into evidence.

¶ 12 After the State rested, defendant moved for a directed verdict. The trial court dismissed the count alleging the armed robbery of Justine Tillman, another guest on the bus. Tillman had not appeared for trial, and the State did not introduce evidence showing defendant took her phone. The court denied defendant's motion on the remaining counts. Regarding the count alleging the armed robbery of Blake, the court acknowledged police recovered a phone from under Blake's body, but it found Blake could have carried more than one phone with him, so, viewing the evidence in the light most favorable to the State, the court found defendant still could have robbed Blake.

¶ 13 Defendant's case began with testimony from his girlfriend, Lakeacia Kizart. On the night of the killings, she was pregnant with defendant's child, and she stayed home with her sister. Two men with guns and masks came to the house and threatened to shoot her and her sister if they did not give them what they wanted. They took Kizart's daughter's piggy bank and some cannabis and left after about 40 minutes. She called defendant and told him about the robbery. He arrived

about 45 minutes later, looked around, took his gun, and left. Later, he returned and told Kizart they needed to leave.

¶ 14 Defendant's sister, Lacreacia Simmons, testified she joined her brother for his birthday on the party bus, and she had been drinking alcohol that night. She agreed with the State's witnesses that the bus was headed toward a casino in Elgin, but it turned back to Rockford after defendant received a phone call and learned his house had been robbed. Lacreacia claimed Blake began acting suspiciously after the phone call. She testified he started keeping his head down, texting, and grabbing his side. She suspected Blake had a gun, and she told defendant this. She testified she was tired from drinking and not getting enough sleep, so she fell asleep. When she awoke, she heard defendant talking, then she heard shots, and she fled to her home.

¶ 15 Defendant's other sister, Caralyn Simmons, testified she was also on the bus that night and had been drinking. She testified she saw Blake board the bus with a bulge under his shirt, around his waistline. After defendant's phone call, Blake began focusing on his phone, and he was not talking to anyone else. She claimed, when defendant boarded the bus with the rifle, she saw Blake with a gun at his side. She testified she saw Sistrunk also had a gun, and both he and Blake drew their guns. She claimed she saw "guns flash" before defendant shot anyone.

¶ 16 The State extensively cross-examined both Lacreacia and Caralyn regarding their previous statements to the police and to the grand jury. Lacreacia denied remembering anything about her conversation with the detectives because she "was really drunk." Caralyn likewise testified she was still drunk when she spoke to detectives, and she claimed she did not remember the conversation. She further insisted she was intoxicated when she testified before the grand jury, and she claimed not to remember any of her testimony. Specifically, she claimed she did not

remember saying defendant carried two guns the night of shootings, the rifle and a " 'little black gun.' "

¶ 17 The State called multiple witnesses to rebut the testimony from defendant's sisters. First, the State called Detective Kevin Gulley. Before he took the stand, the trial court judge commented, "I will indicate for the record that I saw Detective Gulley this morning on my way into the building and on his way out of the building. We spoke. We did not discuss this case. I had no idea he was being presented today as a witness." No party objected to the witness testifying. Detective Gulley testified he participated in the interview of Caralyn after the shootings. The interview began around 4:50 p.m. When asked if Caralyn showed any signs of impairment or intoxication, Gulley responded, "[S]he was fine." He denied smelling any alcohol. Another State witness, Detective Brad Shelton, testified he also interviewed Caralyn the day of the shooting, around 4:50 p.m. He testified she did not appear intoxicated or under the influence, he did not smell any alcohol, and she "appeared very coherent." Video of Caralyn's interview was admitted into evidence. In the video, Caralyn said defendant told everyone on the bus to put their hands up, and he took phones from the shooting victims after they were dead. She did not say Blake had been acting suspiciously, nor did she say Blake, Anderson, or Sistrunk had guns.

¶ 18 The State also called attorney James Brun to testify. The trial court commented:

> "For the record, I would indicate, as I'm sure you all know, I know Mr. Brun. I was in the state's attorney's office for approximately five years, starting in 1991. He was in the office for some of that time, and I've known him since I've been an attorney here in town. Just—I know it's a rebuttal witness, but I'll just put that on the record. I don't believe that my knowledge of him would prevent me from being fair and impartial."

Neither party objected to Brun being a witness. Brun testified he worked as an attorney for the Winnebago County State's Attorney's Office. He presented Caralyn's testimony to the grand jury. Before presenting testimony, he always met with a witness to explain the procedure. Brun testified, if a witness appeared intoxicated, he would not present that person's testimony. When asked, "Do you recall any observations of [Caralyn] that would indicate to you she was intoxicated or impaired in any way?" he responded, "No. There was none."

¶ 19 Detective William Donato testified he first interviewed Lacreacia around 5:42 a.m. the morning of the shooting. When he first saw her, she was intoxicated and "seemed almost unaware of her surroundings." She fell asleep in the interview room, and Donato spoke to her again after she slept for about three and a half hours. When asked about her level of intoxication, Donato testified it was "[s]till there but not to the extent that she was earlier." He testified, during her interview, she never indicated Blake acted suspiciously or had a gun. Videos of Lacreacia's police interviews were introduced into evidence.

¶ 20 Defendant testified on his own behalf. He testified he had been friends with Anderson, Blake, and Sistrunk, but he knew they were dangerous. He had seen all three carry guns, participate in armed robberies, or shoot at people before. Defendant confirmed he told Montes de Oca to turn the bus around after Kizart called him and told him she was robbed. As the night went on, defendant became increasingly suspicious that the three men had been involved in the robbery. He testified each of the three men had a gun, and he suspected they would try to rob him. He claimed after he returned to the bus with his rifle, Sistrunk and Blake first pointed their guns at him. Defendant testified he shot Blake and Sistrunk, while Anderson ran to Lacreacia and pointed a gun at her. He then shot Anderson. He denied issuing any orders or threats. He denied taking anyone's phone or throwing phones off the bus. Instead, he said, he carried three cell phones

himself, and as he fled, he "snapped" his cell phones and threw them to prevent police from finding him via GPS. He testified he took the three guns off the victims' bodies, and as he got off the bus, one of the guns fell out of his pocket. On cross-examination, defendant acknowledged Blake had been texting, and Sistrunk and Anderson had been sharing videos on social media, indicating the three men brought cell phones onto the bus.

¶ 21 The trial court questioned defendant about the precise order of events after he boarded the bus with his rifle. In response to the judge's questions, defendant reiterated he took guns off all three bodies after he shot them, and he put the guns in his pockets. He repeated his claim that he carried three cell phones, and he "snapped" his phones after he got off the bus.

¶ 22 One week after the trial, the parties returned to court to hear the verdict. After the judge called the case, the following exchange took place between defense counsel and the judge:

> "[DEFENSE COUNSEL]: Judge, I would ask [defendant], if possible, could be unchained. There's really no issue regarding his behavior. He would like to take some notes.
>
> THE COURT: You can uncuff his right hand, please."

¶ 23 The trial court began its findings by surveying the undisputed evidence. It then found Caralyn's testimony lacked credibility. Addressing defendant, the court explained:

> "The problem, of course, is that the statement that she gave to the police back in April, on April 7 of 2018 when she was still shocked and appalled at what you had done, the statement she gave to the police on April 7, 2018, combined with the testimony of Mr. Montes de Oca, the driver, and his friend, Mr. Ojeda, is far more credible."

The court then addressed the armed robbery allegations. The court explained:

> "[T]here [was] some conflicting testimony about whether and when the defendant took cell phones from the victims.
>
> The defendant admits taking firearms from each victim after death. Mr. Ojeda said that the cell phones were taken from the victims prior to them being shot. Caralyn Simmons said they were taken after the men were shot and killed, so there is conflict concerning that."

Nevertheless, the court found the evidence sufficient to find defendant committed armed robbery. The court further concluded defendant acted out of a sense of "retribution, not self-defense." The court found defendant guilty of 90 counts of first degree murder, 30 for each victim. The court also found defendant guilty of aggravated vehicular hijacking, four counts of unlawful restraint, and three counts of armed robbery.

¶ 24 After the verdict, defendant moved for a new trial and wrote letters to the trial court alleging ineffective assistance of counsel. The court conducted a hearing to inquire into defendant's allegations. Defendant argued, in part, the court's questions to him at trial and the judge's previous contact with two of the State's witnesses denied him a fair trial. Regarding the judge's conversation with the State's witness, defendant told the judge:

> "I mean, I don't know what that conversation was about. And I understand that you went on the record about it, and I wasn't even involved with it. If you talk to a person that's on the stand against me or that challenge the credibility of any of my witnesses, how am I supposed to get a fair trial? I just don't see that that was—I just—like we can't go and talk to the State's Attorney's witnesses. I can't go and talk to the State's Attorney's witnesses. So, like, how am I supposed to get a fair

trial when you can talk to witnesses before they come in court? We don't know what that conversation was about. It could have been about my case. I don't know."

Defendant hired a new attorney and amended his motion for a new trial. The trial court denied defendant's motion.

¶ 25 At sentencing, the trial court merged each set of 30 counts of murder and sentenced defendant to one term of natural life in prison for each killing. The court then sentenced defendant to 30 years in prison for each of the three remaining armed robbery counts and the aggravated vehicular hijacking count. The court found it mandatory that these sentences be served consecutively. Finally, the court sentenced defendant to five years for each count of aggravated unlawful restraint. The court ordered these sentences to be served concurrently, but after defendant's other sentences. The total sentence was three terms of natural life plus 125 years in prison.

¶ 26 This appeal followed.

¶ 27 II. ANALYSIS

¶ 28 On appeal, defendant urges us to reverse his convictions and remand for a new trial because the trial court did not conduct the required hearing before ordering him to be shackled. Alternatively, defendant asks us to remand and order the trial court to conduct the hearing it should have held before the trial. Defendant further argues the evidence did not support his third conviction for armed robbery; his conviction for aggravated vehicular hijacking and the fourth conviction for aggravated unlawful restraint violate the one-act, one-crime doctrine; and his sentences for aggravated unlawful restraint and aggravated vehicular hijacking should be served concurrently, not consecutively.

¶ 29 A. *Boose* Hearing

¶ 30 We first address defendant's claim we should reverse all his convictions and remand for a new trial because the trial court ordered him to be shackled without conducting a *Boose* hearing. In *People v. Boose*, 66 Ill. 2d 261, 266 (1977), the supreme court explained a "defendant may be shackled when there is reason to believe that he may try to escape or that he may pose a threat to the safety of people in the courtroom or if it is necessary to maintain order during the trial." The supreme court added, "The trial judge should state for the record his reasons for allowing the defendant to remain shackled, and he should give the defendant's attorney an opportunity to present reasons why the defendant should not be shackled. These proceedings should take place outside the presence of the jury." *Id.* These requirements apply for bench trials as well as jury trials. See *In re Staley*, 67 Ill. 2d 33, 37 (1977).

¶ 31 Illinois Supreme Court Rule 430 (eff. July 1, 2010) codified the supreme court's ruling in *Boose*. This rule states as follows:

> "An accused shall not be placed in restraint of any form unless there is a manifest need for restraint to protect the security of the court, the proceedings, or to prevent escape. Persons charged with a criminal offense are presumed innocent until otherwise proven guilty and are entitled to participate in their defense as free persons before the jury or bench. Any deviation from this right shall be based on evidence specifically considered by the trial court on a case-by-case basis. The determination of whether to impose a physical restraint shall be limited to trial proceedings in which the defendant's innocence or guilt is to be determined, and does not apply to bond hearings or other instances where the defendant may be required to appear before the court prior to a trial being commenced. Once the trial judge becomes aware of restraints, prior to allowing the defendant to appear before

> the jury, he or she shall conduct a separate hearing on the record to investigate the need for such restraints." *Id.*

Rule 430 also provides factors for the court to consider when evaluating the use of restraints. *Id.* A trial court's failure to adhere to the procedures provided in *Boose* "constitutes a due process violation." *People v. Allen*, 222 Ill. 2d 340, 349 (2006). The proper interpretation of a supreme court rule is a question of law, which we review *de novo*. *People v. Suarez*, 224 Ill. 2d 37, 41-42 (2007) (citing *People v. Henderson*, 217 Ill. 2d 449, 458 (2005)).

¶ 32 Here, defendant concedes he did not preserve his argument by raising a timely objection before trial. Nevertheless, he asks us to reverse under the plain error doctrine. Illinois Supreme Court Rule 615(a) (eff. Jan. 1, 1967) states, on appeal, "[p]lain errors or defects affecting substantial rights may be noticed although they were not brought to the attention of the trial court." We will reverse for plain error only when:

> "(1) a clear or obvious error occurs and the evidence is so closely balanced that the error alone threatened to tip the scales of justice against the defendant, regardless of the seriousness of the error, or (2) a clear or obvious error occurs and that error is so serious that it affected the fairness of the defendant's trial and challenged the integrity of the judicial process, regardless of the closeness of the evidence." *People v. Piatkowski*, 225 Ill. 2d 551, 565 (2007).

¶ 33 Before considering whether either prong of plain error is satisfied, we first observe the parties do not agree on what happened at trial. Defendant insists he was shackled. At a status hearing before trial, the trial court told defendant, "You will still be wearing leg shackles, just so that you're aware." The record of the trial shows no indication the court deviated from this decision. Additionally, when defendant returned to court to hear the verdict, his attorney needed

to ask that the handcuffs be removed. Defendant contends these statements in the record sufficiently establish he was restrained during the trial.

¶ 34 The State argues the record does not confirm defendant was restrained during the trial. The trial lasted eight days, but the transcript of those proceedings does not mention shackles, handcuffs, or restraints at all. Even when defendant testified, the transcript does not indicate his mobility was limited in any way. On appeal, the "appellant has the burden to present a sufficiently complete record of the proceedings at trial to support a claim of error." *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391 (1984). Moreover, "[a]ny doubts which may arise from the incompleteness of the record will be resolved against the appellant." *Id.* at 392. The State contends defendant, as the appellant, has failed to present a sufficiently complete record to confirm he was shackled, so we should resolve any doubts against defendant and find no error.

¶ 35 Ultimately, we find any error does not provide grounds for reversal, so we need not resolve this dispute. For the following analysis, we assume defendant was shackled, although the State is correct that the record of the eight-day trial contains no references to restraints whatsoever. The State concedes that, if defendant was shackled during trial, the trial court erred by failing to conduct a proper *Boose* hearing, so we proceed with our plain error analysis. Defendant does not rely on the first prong of plain error. Instead, defendant contends the court's failure to conduct a hearing on his restraint was an error "so serious that it affected the fairness of the defendant's trial and challenged the integrity of the judicial process, regardless of the closeness of the evidence." *Piatkowski*, 225 Ill. 2d at 565.

¶ 36 First, defendant argues a trial court's failure to conduct a hearing before ordering a defendant to be restrained always constitutes second-prong plain error. In *Allen*, the supreme court rejected the view that restraining a defendant without a hearing "automatically constitutes plain

error." *Allen*, 222 Ill. 2d at 351. Defendant asks us to disregard *Allen*. But *Allen* is an Illinois Supreme Court decision, and we cannot ignore it. Instead, to determine whether the failure to conduct a *Boose* hearing warrants reversal under the second prong of plain error, we follow *Allen* in asking whether the defendant's "presumption of innocence, ability to assist his counsel, or the dignity of the proceedings was compromised." *Id.* at 353; see *People v. Bell*, 2020 IL App (4th) 170804, ¶¶ 127-130.

¶ 37 Defendant does not contend any restraints compromised his ability to assist counsel or the dignity of the proceedings. Instead, defendant argues restraint without the proper procedures compromised his presumption of innocence. Defendant claims the trial judge's comments that she knew two of the State's witnesses, Detective Gulley and Assistant State's Attorney Brun, and the judge's questions to defendant during his testimony, combined with defendant's improper shackling, demonstrated the judge had already determined he was guilty.

¶ 38 We do not find the lack of a hearing on defendant's restraint compromised his presumption of innocence. Defendant waived his right to a jury trial and opted for a bench trial. The judge who presided over the trial and acted as factfinder was the same judge who ordered defendant restrained and had presided over previous hearings where defendant appeared in custody. The trial judge was well aware defendant was incarcerated before trial, and defendant did not object to this judge acting as factfinder based on this knowledge. No one, including the judge, mentioned shackles at all during the trial, and defendant does not cite any comments the judge made after the trial that indicate any restraints influenced her decision, so we do not believe defendant's appearance in shackles at the trial would have affected the judge's impartiality. This finding is supported by the general presumption that the trial court knows and follows the law. *In re Jonathon C.B.*, 2011 IL 107750, ¶ 72.

¶ 39 Neither the trial court's comments about knowing two witnesses for the State nor her questioning of defendant persuade us otherwise. Defendant fails to clearly articulate how either the questions or comments relate to his restraints. More importantly, in defendant's brief, he does not accuse the trial judge of any unprofessional or unethical behavior, and we do not find any basis for such an accusation. He does not allege any conflict of interest. He does not allege her questions were impermissible. Instead, defendant claims only that the court's comments and questions led him to believe she was not impartial. We do not agree with defendant's assessment, nor do we find any connection between these comments or questions and defendant's restraints. Regardless, defendant's subjective belief that the court was biased does not demonstrate his presumption of innocence was compromised.

¶ 40 Apart from plain error, defendant also contends his attorney's failure to object to the restraints and preserve the issue for appeal constituted ineffective assistance of counsel. Criminal defendants have the right to effective assistance of counsel. U.S. Const., amends. VI, XIV; Ill. Const. 1970, art. I, § 8; *Strickland v. Washington*, 466 U.S. 668, 690-91 (1984); *People v. Albanese*, 104 Ill. 2d 504, 525 (1984). To show he was denied effective assistance of counsel, a defendant must demonstrate "(1) his counsel's performance was deficient in that it fell below an objective standard of reasonableness, and (2) the deficient performance prejudiced the defendant in that, but for counsel's deficient performance, there is a reasonable probability that the result of the proceeding would have been different." *People v. Houston*, 226 Ill. 2d 135, 144 (2007). "When a claim of ineffective assistance of counsel was not raised at the trial court, this court's review is *de novo*." *People v. Sturgeon*, 2019 IL App (4th) 170035, ¶ 85. "Because a claim of ineffective assistance is precluded if a defendant fails to satisfy one of the prongs, a court may resolve a claim

by reaching only the prejudice prong." *People v. Gilker*, 2023 IL App (4th) 220914, ¶ 85 (citing *People v. Hall*, 194 Ill. 2d 305, 337-38 (2000)).

¶ 41 Here, we do not find defendant was prejudiced by his attorney's failure to object to his restraint. Defendant does not argue that shackles impeded his ability to participate in the trial or communicate with his attorney. Instead, he again argues his presumption of innocence was compromised. We disagree, as explained above.

¶ 42 Moreover, the evidence against defendant was overwhelming. Defendant did not dispute he shot and killed three men with a rifle. He claimed he acted in self-defense, but the testimony of Montes de Oca and Ojeda strongly disproved this, as did Caralyn's statements before trial. Moreover, the only cartridge cases police recovered were from a .223-caliber rifle, indicating defendant was the only person on the bus who fired any shots. We find defendant's account unbelievable. Defendant claimed Blake and Sistrunk pointed their guns at him first, then Anderson pointed his gun at defendant's sister, but defendant was able to shoot all three men before they discharged a single shot from their handguns. Moreover, although defendant claimed all three cell phones recovered were his, he also admitted Blake was texting and all three shooting victims used their cell phones to record videos. Defendant's account does not explain why police did not recover cell phones from Anderson's and Sistrunk's bodies if all the cell phones they recovered were his. Any effect defendant's shackles might have had on the factfinder was trivial compared to the overwhelming evidence of defendant's guilt. We find no prejudice, so we find no ineffective assistance of counsel.

¶ 43 Because we find neither plain error nor ineffective assistance counsel, we deny defendant's request for a new trial and deny his request that we remand for a retrospective *Boose* hearing.

¶ 44 B. Armed Robbery

¶ 45 Next, defendant argues the State did not introduce sufficient evidence to prove he committed the armed robbery of Blake. When a defendant challenges the sufficiency of the evidence, "the relevant question on appeal is whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *Hall*, 194 Ill. 2d at 330. "In conducting this inquiry, the reviewing court must not retry the defendant." *People v. Cunningham*, 212 Ill. 2d 274, 279 (2004). "Determining the credibility of witnesses and the weight to be given to their testimony is a function reserved primarily for the trier of fact, who in this case was the trial judge, and a court of review will not normally substitute its own judgment in that regard." *People v. Locascio*, 106 Ill. 2d 529, 537 (1985).

¶ 46 Here, the trial court, acting as finder of fact, found defendant robbed Blake. We note the court stated defendant "admit[ted] taking firearms from each victim after death." The indictment alleged defendant took "a phone" from Blake, and, on appeal, the State does not rely on any claim that defendant stole a gun from Blake. We therefore do not base our conclusion on any evidence defendant took a gun from Blake.

¶ 47 Regarding the phone, the trial court acknowledged

> "conflicting testimony about whether and when the defendant took cell phones from the victims.
>
> *** Mr. Ojeda said that the cell phones were taken from the victims prior to them being shot. Caralyn Simmons said they were taken after the men were shot and killed, so there is conflict concerning that."

Nevertheless, the court still found defendant guilty of three counts of armed robbery, including the armed robbery of Blake.

¶ 48 Defendant contends the evidence did not support the trial court's findings. The evidence at trial showed, when police searched the area where defendant exited the bus, they found two broken phones. They found a third phone under Blake's back pocket. Defendant argues the third phone under Blake's body demonstrates defendant did not actually take the phone from Blake, so the evidence did not prove beyond a reasonable doubt he committed three armed robberies, and he asks us to reverse his conviction.

¶ 49 Viewing the evidence in the light most favorable to the prosecution, we find it was sufficient for a rational trier of fact to conclude defendant took a phone from Blake. *Hall*, 194 Ill. 2d at 330. Ojeda clearly testified he saw defendant take phones from all three murder victims. Caralyn told police he took phones from the dead men. Montes de Oca testified he saw defendant take "multiple" phones from the victims. The cell phone under Blake's pocket does not necessarily refute the eyewitness testimony. The trial court correctly observed Blake could have carried more than one cell phone. Although police found only two phones where defendant exited the bus, a rational trier of fact could have concluded there was another phone, but police did not find it. Our task is not to "retry the defendant" (*Cunningham*, 212 Ill. 2d at 279), and assessing the weight of the eyewitness testimony and statements was the trial court's responsibility. *Locascio*, 106 Ill. 2d at 537. We are not persuaded to set aside the trial court's findings.

¶ 50 C. One-Act, One-Crime

¶ 51 Citing the one-act, one-crime doctrine, defendant asks us to vacate his fourth conviction and sentence for aggravated unlawful restraint, claiming it was based on the same physical act as his conviction for aggravated vehicular hijacking. "[A] criminal defendant may not

be convicted of multiple offenses when those offenses are all based on precisely the same physical act." *People v. Coats*, 2018 IL 121926, ¶ 11. "[I]f a defendant is convicted of two offenses based upon the same single physical act, the conviction for the less serious offense must be vacated." *People v. Johnson*, 237 Ill. 2d 81, 97 (2010). The first step in applying this rule is to determine whether "the defendant's conduct consisted of a single physical act or separate acts." *Coats*, 2018 IL 121926, ¶ 12. An "act" is "any overt or outward manifestation which will support a different offense." *People v. King*, 66 Ill. 2d 551, 566 (1977).

¶ 52 Defendant acknowledges he did not preserve this issue for review. Nevertheless, violations of the one-act, one-crime doctrine constitute second-prong plain error. *People v. Harvey*, 211 Ill. 2d 368, 389 (2004). Application of the one-act, one-crime doctrine is a question of law, which we review *de novo*. *Coats*, 2018 IL 121926, ¶ 12.

¶ 53 Defendant's argument concerns his conviction for the aggravated unlawful restraint of Montes de Oca, the bus driver, and his conviction for aggravated vehicular hijacking. Section 18-3 of the Criminal Code of 2012 states, "A person commits vehicular hijacking when he or she knowingly takes a motor vehicle from the person or the immediate presence of another by the use of force or by threatening the imminent use of force." 720 ILCS 5/18-3(a) (West 2018). A vehicular hijacking committed by a person armed with a firearm is aggravated vehicular hijacking. *Id.* § 18-4(a)(4). Section 10-3 of the Criminal Code of 2012 states, "A person commits the offense of unlawful restraint when he or she knowingly without legal authority detains another." *Id.* § 10-3. Aggravated unlawful restraint is unlawful restraint committed with a deadly weapon. *Id.* § 10-3.1.

¶ 54 Here, count 131 of the indictment alleged defendant committed aggravated vehicular hijacking because,

> "while carrying a firearm on his person or about his person, [he] knowingly took a motor vehicle, a white Ford[ ] F450 2001 bus license plate 305 l8LY from the person of or immediate presence of Arturo Montes-DeOca by the use of force or threatening the imminent use of force."

Count 132 of the indictment alleged he committed aggravated unlawful restraint because, "without legal authority, and while using a deadly weapon, [he] knowingly detained Arturo Montes-DeOca in that while armed with a firearm he ordered him to drive the bus."

¶ 55 Defendant contends both of these charges and the ensuing convictions were based on the same outward act—ordering Montes de Oca, the bus driver, to drive the bus while defendant was armed with a firearm. Specifically, Montes de Oca testified defendant, armed with a rifle, told him to "drive to Springfield." In doing so, defendant both detained Montes de Oca and took control of the bus. The trial court's factual findings did not explain what distinguished these convictions. Defendant argues no basis to distinguish the convictions exists, so we should vacate his conviction for aggravated unlawful restraint, which is the less serious offense.

¶ 56 Defendant relies on *People v. McWilliams*, 2015 IL App (1st) 130913. There, the defendant was found guilty of two counts of armed robbery and two counts of aggravated unlawful restraint after he and his accomplices held a couple at gunpoint, took their property, and ordered them to get on the ground and stay there while counting to 50. *Id.* ¶¶ 5-6, 9. The appellate court vacated the convictions for aggravated unlawful restraint, finding they resulted from the same act as the convictions for armed robbery. *Id.* ¶¶ 19-22. The court explained, when the defendant and his accomplices ordered the victims "to stay on the ground, they did not restrain the couple anew, but merely continued to restrain them. At no point did [the victims] become unrestrained and become restrained again." *Id.* ¶ 20. Without any "additional threat," the unlawful restraint "was a

single, continuous act inherent in the armed robbery." *Id.* Defendant argues the same reasoning applies here, where he posed a single threat to Montes de Oca that comprised both the aggravated vehicular hijacking and the aggravated unlawful restraint.

¶ 57 In response, the State observes Montes de Oca's presence on the bus was not required for defendant to commit vehicular hijacking. A person commits vehicular hijacking when he "knowingly takes a motor vehicle from the person or the immediate presence of another by the use of force or by threatening the imminent use of force." 720 ILCS 5/18-3(a) (West 2018). This does not require the victim to remain in the vehicle. The State contends defendant committed separate acts by taking control of the bus and demanding Montes de Oca stay on the bus, and these separate acts distinguish this case from *McWilliams*.

¶ 58 We agree with defendant. Although the State is correct that, considered abstractly, taking control of a vehicle is distinct from restraining the driver's movement, here, defendant took control of the vehicle by controlling the driver through the threat of violence. Defendant actually accomplished the vehicular hijacking by unlawfully restraining Montes de Oca. The State has demonstrated only that vehicular hijacking and unlawful restraint have at least one different element. Just as the defendant in *McWilliams* "made no additional threat" to restrain the victims, here, the State has not shown what separate physical acts defendant committed to provide a basis for two convictions. *McWilliams*, 2015 IL App (1st) 130913, ¶ 20. We find defendant's convictions for both aggravated vehicular hijacking and aggravated unlawful restraint of Montes de Oca violate the one-act, one-crime doctrine, so we vacate his conviction and sentence for the fourth count of aggravated unlawful restraint.

¶ 59 D. Concurrent Sentences

¶ 60 Finally, defendant asks us to modify the trial court's judgment and order his sentence for aggravated vehicular hijacking be served at the same time as his sentences for aggravated unlawful restraint. The court sentenced defendant to natural life in prison for each murder, plus 30 years in prison for each of the three remaining armed robberies. The court ordered these sentences be served consecutively, and defendant does not challenge this order. However, the court also sentenced defendant to 30 years for aggravated vehicular hijacking and to 5 years for each count of aggravated unlawful restraint. The court ordered the aggravated vehicular hijacking sentence to be served separately from the other sentences, and the court ordered the aggravated unlawful restraint sentences to be served concurrently, but after all the other sentences. Defendant's total sentences amounted to three terms of natural life plus 125 years. Defendant argues consecutive sentencing was not proper for his aggravated vehicular hijacking sentence, so he should serve his sentences for aggravated unlawful restraint at the same time as his sentence for aggravated vehicular hijacking.

¶ 61 Defendant did not properly preserve this issue for review. Nevertheless, "impermissible or illegal sentences may be attacked on appeal as plainly erroneous even though no post-sentencing motion was filed." *People v. Whitney*, 297 Ill. App. 3d 965, 967 (1998), *aff'd*, 188 Ill. 2d 91 (1999). "[A] trial court's mistaken belief that consecutive sentences are required constitutes plain error under the second prong." *People v. Lashley*, 2016 IL App (1st) 133401, ¶ 68.

¶ 62 Section 5-8-4 of the Unified Code of Corrections governs concurrent and consecutive terms of imprisonment. It provides:

> "(a) Concurrent terms; multiple or additional sentences. When an Illinois court (i) imposes multiple sentences of imprisonment on a defendant at the same

time or (ii) imposes a sentence of imprisonment on a defendant who is already subject to a sentence of imprisonment imposed by an Illinois court, a court of another state, or a federal court, then the sentences shall run concurrently unless otherwise determined by the Illinois court under this Section." 730 ILCS 5/5-8-4(a) (West 2020).

This section also states the trial court "may impose consecutive sentences" if,

> "having regard to the nature and circumstances of the offense and the history and character of the defendant, it is the opinion of the court that consecutive sentences are required to protect the public from further criminal conduct by the defendant, the basis for which the court shall set forth in the record." *Id.* § 5-8-4(c)(1).

The court here did not make any findings regarding the need to "protect the public from further criminal conduct by the defendant" under subsection (c) of section 5-8-4 (*id.*), and, on appeal, the State relies exclusively on the mandatory consecutive sentences provision in subsection (d) (*id.* § 5-8-4(d)), so we limit our consideration to mandatory consecutive sentences.

¶ 63 Subsection (d)(1) of section 5-8-4 states the trial court "shall impose consecutive sentences" if "[o]ne of the offenses for which the defendant was convicted was first degree murder or a Class X or Class 1 felony and the defendant inflicted severe bodily injury." *Id.* § 5-8-4(d)(1). Here, one of the offenses for which defendant was convicted was first degree murder, so those murder convictions triggered mandatorily consecutive sentencing. But the parties disagree on the correct interpretation of subsection (d). The proper interpretation of a statute is a question of law, which we review *de novo*. *People v. Elliott*, 2014 IL 115308, ¶ 11. Our task when interpreting a statute "is to ascertain and give effect to the legislature's intent, keeping in mind that the best and

most reliable indicator of that intent is the statutory language itself, given its plain and ordinary meaning." *Id.*

¶ 64 The State contends once a single conviction for first degree murder triggers the application of the statute, all of a defendant's sentences must be served consecutively, regardless of the crime, and none of those sentences can be served at the same time as any other sentence. Under the State's interpretation, defendant must serve three successive life sentences, then three successive 30-year terms for armed robbery, then a 30-year term for aggravated vehicular hijacking, then three successive 5-year terms for aggravated unlawful restraint.

¶ 65 Defendant disagrees, contending only a sentence that triggers consecutive sentencing must be served independently of all other sentences, and all other nontriggering sentences must be served after the triggering sentence, but concurrently. Stated differently, defendant argues this provision means only that a triggering sentence cannot be served at the same time as any other sentence.

¶ 66 To reiterate, the text states the trial court "shall impose consecutive sentences" if "[o]ne of the offenses for which the defendant was convicted was first degree murder or a Class X or Class 1 felony and the defendant inflicted severe bodily injury." 730 ILCS 5/5-8-4 (d)(1) (West 2020). Although this text says the court "shall impose consecutive sentences" (*id.*), it does not say which sentences shall be consecutive. This text could mean all the sentences the court imposes must be consecutive, or it could mean only that defendant's other sentences must be served after the sentences for first degree murder or another triggering offense. The text is ambiguous.

¶ 67 We are aware of no cases analyzing this text. However, we find guidance in the supreme court's opinion in *People v. Curry*, 178 Ill. 2d 509, 537 (1997), *abrogated on other grounds by People v. Hale*, 2013 IL 113140, ¶ 20. There, the defendant argued the trial court had

erroneously ordered all his sentences be served consecutively. The supreme court considered a previous iteration of section 5-8-4 that stated as follows:

> " 'The court shall not impose consecutive sentences for offenses which were committed as part of a single course of conduct during which there was no substantial change in the nature of the criminal objective, unless, one of the offenses for which defendant was convicted was a Class X or Class 1 felony and the defendant inflicted severe bodily injury, or where the defendant was convicted of a violation of Section 12–-13 [criminal sexual assault] or 12-14 [aggravated criminal sexual assault] of the Criminal Code of 1961, in which event the court shall enter sentences to run consecutively.' " *Id.* at 519 (quoting 730 ILCS 5/5-8-4(a) (West 1992)).

The supreme court found this text did not indicate "whether consecutive sentences must be imposed for every offense arising out of the same course of criminal conduct, or whether the imposition of consecutive sentences is limited to those enumerated offenses which trigger the application of the statute." *Id.* at 524; see *People v. Williams*, 263 Ill. App. 3d 1098, 1108 (1994). Although the text itself was ambiguous, the court reasoned the legislature imposed consecutive sentences in order to "punish the commission of triggering offenses more harshly than the commission of other crimes." *Curry*, 178 Ill. 2d at 538. The court further explained, "This legislative intent would be defeated if the triggering and nontriggering offenses were treated in a like manner." *Id.* It therefore interpreted the statute to mean that "any consecutive sentences imposed for triggering offenses be served prior to, and independent of, any sentences imposed for nontriggering offenses. Sentences for multiple nontriggering offenses may be served concurrently

to one another after any consecutive sentences for triggering offenses have been discharged." *Id.* at 539.

¶ 68 Although the legislature has since amended section 5-8-4, the text currently in effect presents the same problem as the version addressed in *Curry*. While we do not find *Curry* to be controlling, we nevertheless find its reasoning useful in resolving the ambiguity in section 5-8-4. In interpreting section 5-8-4, we find, just as in *Curry*, "[s]entences for multiple nontriggering offenses may be served concurrently to one another after any consecutive sentences for triggering offenses have been discharged." *Id.*

¶ 69 We reach the same result by applying the rule of lenity. Under the rule of lenity, when a criminal statute is ambiguous, we apply the " 'more lenient interpretation' " *People v. Gaytan*, 2015 IL 116223, ¶ 39 (quoting *Kasten v. Saint-Gobain Performance Plastics Corp.*, 563 U.S. 1, 16 (2011)). Here, the more lenient result is to allow defendant to serve his sentences for nontriggering offenses concurrently.

¶ 70 Having concluded defendant's first degree murder conviction did not require all his sentences to be served independently, we next ask whether defendant's conviction for aggravated vehicular hijacking was itself a triggering offense. Returning once again to the text, subsection (d) states the trial court "shall impose consecutive sentences" if "[o]ne of the offenses for which the defendant was convicted was *** a Class X or Class 1 felony and the defendant inflicted severe bodily injury." 730 ILCS 5/5-8-4 (d) (West 2020). Defendant argues a Class X felony triggers mandatorily consecutive sentencing only if the defendant "inflicted severe bodily injury" (*id.*) in the commission of that Class X felony. Here, defendant was convicted of a Class X felony—aggravated vehicular hijacking—and he inflicted severe bodily injury by murdering three men, but

his vehicular hijacking did not cause any injury, so he argues consecutive sentencing for aggravated vehicular hijacking is improper.

¶ 71 Defendant relies on *Whitney*. There, the supreme court considered the same prior text of section 5-8-4 quoted in *Curry*. *Whitney*, 188 Ill. 2d at 95. The question on appeal was "whether the Class X or Class 1 felony must involve the infliction of severe bodily injury to the victim of that felony to trigger mandatory consecutive sentences under section 5-8-4(a)." *Id.* at 96. The court found the text of the statute to be ambiguous, so it interpreted the text in the defendant's favor. *Id.* at 98. Therefore, the court construed the statute "as requiring consecutive sentencing where the defendant has been convicted of either a Class X or Class 1 felony and where he had inflicted severe bodily injury during the commission of that felony." *Id.* at 98-99.

¶ 72 We agree with defendant. Defendant's conviction for aggravated vehicular hijacking resulted from him holding Montes de Oca at gunpoint and ordering him to drive the bus. None of the evidence at trial showed defendant inflicted severe bodily injury on Montes de Oca. Although *Whitney* involved a version of section 5-8-4 that is no longer in effect, the relevant text in section 5-8-4—"a Class X or Class 1 felony and the defendant inflicted severe bodily injury—is the same in the current iteration. Compare 730 ILCS 5/5-8-4(a) (West 1994) with 730 ILCS 5/5-8-4(d)(1) (West 2020). Just as in *Whitney*, the current text is ambiguous, so we interpret it in defendant's favor. *Whitney*, 188 Ill. 2d at 98. We therefore modify defendant's sentence to order his sentences for aggravated vehicular hijacking and aggravated unlawful restraint to be served concurrently, but after his sentences for armed robbery and first degree murder.

¶ 73 III. CONCLUSION

¶ 74 For the reasons stated, we affirm the trial court's judgment, except we vacate defendant's fourth conviction and sentence for aggravated unlawful restraint and modify his

sentences to order his aggravated unlawful restraint and aggravated vehicular hijacking sentences be served concurrently.

¶ 75 Affirmed in part as modified and vacated in part.