No. 121926

IN THE

SUPREME COURT OF ILLINOIS

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

BRIEF AND ARGUMENT FORDEFENDANT-APPELLANT

MICHAEL J. PELLETIER
State Appellate Defender

PATRICIA MYSZA
Deputy Defender

SAMUEL M. HAYMAN
Assistant Appellate Defender
Office of the State Appellate Defender
First Judicial District
203 N. LaSalle St., 24th Floor
Chicago, IL 60601
(312) 814-5472
1stdistrict.eserve@osad.state.il.us

COUNSEL FOR DEFENDANT-APPELLANT

ORAL ARGUMENT REQUESTED

POINT AND AUTHORITIES Page

NATURE OF THE CASE

After a bench trial, Leshawn Coats was convicted of armed habitual criminal and armed violence and was sentenced to consecutive sentences of 7 and 15 years.

This is a direct appeal from the judgment of the court below. No issue is raised challenging the charging instrument.

ISSUE PRESENTED FOR REVIEW

Whether possession of a single handgun can constitute multiple "physical acts" sufficient to support multiple gun possession convictions under Illinois' one act, one crime doctrine.

STATEMENT OF FACTS

This Court granted leave to appeal on May 24, 2017.

Leshawn Coats was convicted at a bench trial of armed habitual criminal (AHC) and Armed Violence. Count One of the charging instrument alleged that Coats committed AHC by knowingly possessing a firearm, "to wit: .45 caliber semi-automatic handgun" after having been convicted of aggravated robbery and robbery. (C. 50) Count Two alleged that Coats committed Armed Violence by committing a felony – possession of heroin with intent to deliver – "while armed with a dangerous weapon, to wit: handgun." (C. 51) The trial court sentenced Coats to consecutive terms of seven years for AHC and 15 years for armed violence. (R. L6-7)

The State's only witness at trial was police officer Edwin Utreras. He testified that his team of six officers executed a search warrant on June 27, 2013 at a house in Chicago. (R. J8-9) When Utreras entered one of the bedrooms, he saw a man – who he identified in court as Leshawn Coats – holding a gun in his left hand and two plastic bags, one tan and one black, in his right hand. (R. J11-12) Utreras told Coats to show his hands, and Coats put the gun and bags on the windowsill.(R. J12-13, 29)

Utreras testified that he went to the windowsill and observed that the gun was a .45 caliber Llama handgun. (R. J13, 30) The contents of the plastic bags were tested and the parties stipulated that a chemist verified contents totaling 1.1 grams of cocaine and over 15 grams of heroin. (R. J37-38)

Utreras further testified that he found a state ID for Leshawn Coats, a set of keys that unlocked the bedroom door, $421 in a pair of men's pants,

and "ammunition and narcotics packaging material" in the bedroom. (R. J16) A different officer found $180 in a pair of Timberland boots in the bedroom. (R. J16)

According to Utreras, Officer Sznura read Coats his *Miranda* rights. (R. J17) Utreras claimed that at that point Coats "blurted out, You got me." (J17) He also admitted living at the apartment, because his house had burned down. (R. J17)

The parties stipulated to Coats's prior convictions for robbery and aggravated robbery, and the State rested. (R. J36)

Kadesha Joyce testified for the defense. She testified that she lived at 755 S. Kilbourn with her grandmother, father, sister, and two brothers. (R. J42-43) Leshawn Coats was her boyfriend. (R. J43)

On June 27, the police kicked in the door and entered her bedroom. She was in bed with Coats, who was sleeping. (R. J43-44, 46) He was not holding a gun nor two bags of narcotics. (R. J46) Seven or eight police entered the bedroom, handcuffed her and Coats, and took them to the living room. (R. J44) The police found no drugs or guns at first. (R. J44) About 20 or 25 minutes later, while she was still being detained in the living room, she heard police shouting "It's in the gangway." (R. J45-46) Joyce testified that the bedroom window opened up to the sidewalk of the gangway. (R. J46)

The court found Coats guilty on count 1 (AHC), count 2 (Armed Violence predicated on possession of heroin with intent to deliver), count 3 (possession of more than 15 and less than 100 grams of heroin with intent to deliver); and count 4 (possession of more than one and less than 15 grams of

heroin with intent to deliver). (R. J64) The court acquitted Coats of count 5 (possession of more than one and less than 15 grams of cocaine with intent to deliver). (R. J64)

The court merged count 3 (the charged predicate felony for Armed Violence) into count 2 (Armed Violence), and entered "no judgment" on count 4 (the lesser amount of heroin). (R. L3) The court imposed the minimum 15-year sentence on the armed violence conviction, and a seven-year sentence for AHC. (R. L6-7) The State argued that the convictions for AHC and Armed Violence were mandatory consecutive because Coats had been found guilty of a Class X violation of the Controlled Substances Act. (R. L4) The court agreed and imposed consecutive sentences. (R. L7)

On appeal, Coats argued that the State did not prove beyond a reasonable doubt that he intended to distribute the drugs he possessed. He further argued that his conviction for both Armed Violence and AHC predicated on possession of the same gun violated one act, one crime doctrine. He pointed out the split in authority between *People v. Williams*, 302 Ill. App. 3d 975 (2nd Dist. 1999) and *People v. White*, 311 Ill. App. 3d 374 (4th Dist. 2000) and urged the court to follow *Williams* in holding that the possession of a single item of contraband cannot constitute more than one "physical act" for one-act, one-crime analysis.

The appellate court found the circumstantial evidence of intent to distribute sufficient to support the conviction. *Coats*, 2017 IL App (1st) 142028-U, ¶ 22. On the one act, one crime question, the court stated:

> we find the reasoning in *White* persuasive and hold that defendant's convictions for armed habitual criminal and armed

violence were based upon separate acts. Although defendant's convictions shared the common act of possession of a gun, the armed habitual criminal conviction required the additional element of defendant's status as an offender with two prior felony convictions and armed violence required the additional act of possession of heroin with intent to deliver. Following *White*, we find each hand gun possession was a separate act and the convictions, therefore, did not result from 'precisely the same physical act.'
Id. at ¶ 27.

ARGUMENT

Possession of a single weapon is a single act, and that single act forms the essence of both Armed Violence and Armed Habitual Criminal, so Illinois' one act, one crime doctrine precludes convictions for both offenses.

For 40 years, Illinois has adhered to a commonsense principle: "[m]ultiple convictions are improper if they are based on precisely the same physical act." *People v. Miller*, 238 Ill. 23 161, 165 (2010), citing *People v. Rodriguez*, 169 Ill. 2d 183, 186 (1996), and *People v. King*, 66 Ill. 2d 551, 566 (1977).

In *King*, this Court defined "act" as "any overt or outward manifestation which will support a different offense." 66 Ill. 2d at 566. Although that definition is easily recited, its literal application has proved problematic in situations involving acts that are tangential to the offense, or crimes with a single act affecting multiple victims. This Court has variously held that (1) knowing murder and felony murder of a single person can support only one conviction because the killing is based on a shared act, even though felony murder requires the *additional* act of committing the predicate felony, see, e.g., *People v. Lego*, 116 Ill. 2d 323, 344 (1987); but (2) a single physical act can support multiple murder convictions if there are multiple victims, *People v. Shum*, 117 Ill. 2d 317, 363 (1987); (3) home invasion (entry with a gun) and aggravated criminal sexual assault (aggravated by threatening the victim with the same gun) are not based on the same act, so both convictions can stand, *People v. Rodriguez*, 169 Ill. 2d 183, 188-90

(1996); but (4) home invasion and residential burglary are based on the same physical act (unlawful entry of a residence), even though home invasion has additional acts as elements of the crime, *People v. McLaurin*, 184 Ill. 2d 58, 106 (1998).

This Court should make explicit the implicit rationale of these holdings, which can be reconciled: where a single physical act is the *crux* of more than one crime, only one conviction can stand, even if one or both of the crimes requires proof of an additional, unshared action. Where crimes share a common act, but that act is *not* the crux of one (or any) of them, then multiple convictions can stand.

Here, the crux of both Armed Violence and Armed Habitual Criminal is unlawful possession of a weapon – indeed that is the only act involved in AHC, whose other element is a status, not a physical act. Those crimes were charged, and proved, based on Leshawn Coats's possession of a single handgun. (C. 50, 51; R. J11-12) Because that single physical act constituted the crux of both crimes, only one conviction can stand consistent with the one act, one crime doctrine. This Court should vacate Leshawn Coats's conviction for Armed Habitual Criminal, the less serious offense.

This issue was forfeited in the trial court, but violations of the one act, one crime doctrine can be reviewed under the second prong of plain error because they affect the integrity of the judicial process. *In re Samantha V.*, 234 Ill. 2d 359, 379 (2009). Whether multiple punishments have been imposed for the same act is a question of law this Court reviews *de novo*. *Id.* at 369.

A. Possession of a single gun is a single physical act.

The crucial act in both Armed Violence and Armed Habitual Criminal is possession of a weapon. Possession is an act, and it would seem uncontroversial that possession of a single item is a single act. In *People v. Williams*, 302 Ill. App. 3d 975 (2d Dist. 1999), the appellate court reached exactly that conclusion. It found that convictions for unlawful use of a weapon and Armed Violence violate the one-act, one-crime doctrine because they are based on the same possession of a single weapon. *Id*. at 978. The court explained, "There is no separate act. In one instance the gun is combined with possession of a controlled substance to constitute armed violence, and in the other it is combined with the act of a convicted felon status to create a separate offense." *Id.* Thus, while the elements differed, the convictions were based upon the same physical act of gun possession. The court reversed the defendant's conviction for UUW and vacated the corresponding sentence. *Id*.

The Fourth District, also examining convictions for UUW and armed violence, disagreed with *Williams* in *People v. White*, 311 Ill. App. 3d 374 (4th Dist. 2000) but did so by erroneously conflating the "same physical act" analysis with the lesser-included offense analysis. *White* stated, "Although both offenses shared the common act of possession of a weapon, armed violence required the additional act of possession of the drugs, and [UUW] requires the additional element of a status as a felon." *Id.* at 386. *White*, however, did not conclude that possession of the gun itself could be divided

into multiple acts.

In this case, however, the appellate court went further than *White*, concluding that possession of a single gun *could* be divided into multiple acts: "Following *White*, we find each hand gun possession was a separate act and the convictions, therefore, did not result from 'precisely the same physical act.' "

It is just common sense that continuous possession of an object is a single act, unless the legislature specifically defines it otherwise. For instance, the State could not charge separate counts based on the fact that the defendant possessed a single gun for longer than a single moment. *People v. Sotelo*, 2012 IL App (2d) 101046, ¶ 5 ("Where a statute is ambiguous as to the allowable unit of prosecution, the court must adopt a construction that favors the defendant.") If a charge could be brought for the possession of a single object for each moment the defendant possessed it, then defendants would be subject to infinite charges for any act of possession. Regardless of the duration of possession, the continuous possession of a single object is a *single physical act* of possession. See *People v. Harvey*, 211 Ill. 2d 368, 390, (2004) ("overlapping acts of possession" of multiple cars within one year were not multiple acts sufficient to support convictions for both possession of a stolen motor vehicle (for possessing the individual cars), and aggravated possession of a stolen motor vehicle (for possessing four stolen cars within one year)).

Finally, the conclusion that possessing one item is only one act is not inconsistent with this Court's precedents holding that simultaneous possession of *multiple* items is more than one act. For example, in *People v. Almond*, 2015 IL 113817, ¶ 48, this Court held that simultaneous possession of a gun, and the ammunition inside that gun, constituted separate acts sufficient to support two convictions – one for the firearm, and one for the ammunition, both of which were unlawful for a felon (like the defendant) to possess. See also *People v. McCarter*, 339 Ill. App. 3d 876, 881 (1st Dist. 2003) (affirming convictions for three counts of UUW based on three *separately* charged firearms). That rule – possession of each item of contraband is a separate act – has no application here, where Coats was punished twice for possessing a single gun.

B. The essence of Armed Violence and AHC is unlawful gun possession; like a predicate felony for felony murder, the predicate felony for armed violence is merely an attendant circumstance, not the crucial act, and thus cannot support a separate conviction.

Since possession of a single item is a single act, the *Williams* court recognized that where the crux of two offenses is possession of that single item, that single act cannot support multiple convictions:

> There is no separate act. In one instance the gun is combined with possession of a controlled substance to constitute armed violence, and in the other it is combined with the act of a convicted felon status to create a separate offense. We hold that the one-act, one-crime rule does apply to these convictions.
> 302 Ill. App. 3d at 978.

Williams is correctly reasoned because it begins and ends its analysis by

evaluating whether the two convictions were based on the same physical act of possessing a single gun – the crux of both Armed Violence and UUW-felon. *Id.*; *Miller*, 238 Ill. 23 at165. *Williams* recognized, albeit implicitly, that where a single act is the crux of more than one offense, only one conviction can stand.

This Court has repeatedly applied that rule in an analogous circumstance that demonstrates the approach it should take in this case. It is well settled that where a defendant is convicted both of intentional or knowing murder, and felony murder (i.e. killing someone in the course of committing a forcible felony), the felony murder is considered to be the same "physical act" as the knowing murder. Thus, it cannot support a separate conviction. See, e.g., *Lego*, 116 Ill. 2d at 344 (vacating three felony murder convictions predicated on armed robbery, burglary with intent to commit theft, and burglary with intent to commit murder, leaving one conviction for intentional murder of the single victim); *People v. Mack*, 105 Ill. 2d 103, 136-37 (1984) (relying on one act, one crime principles to hold that although the State proved three counts of murder (intentional murder, knowing murder, and felony murder predicated on armed robbery), "there was only one man murdered, and therefore there can be but one conviction."); *People v. Szabo*, 94 Ill. 2d 327, 350 (1983) (same holding). That conclusion is mandated even though, as with Armed Violence, the underlying felony necessarily entails some sort of action by the defendant aside from the *crucial* act of killing (for murder) or possessing a gun (for Armed Violence). But because the essence or crux of murder is killing, where only one person has been killed, only one

conviction for murder can stand. Because the felony underlying felony murder is not the essence of the offense, but is merely an attendant circumstance, it is not an act sufficient to support a separate conviction.

In *People v. Lombardi*, 184 Ill. 2d 462, 472 (1998) (abrogated on other grounds by *People v. Sharpe*, 216 Ill. 2d 481 (2005)), this Court explained that the essence of Armed Violence is possession of the weapon, *not* the underlying felony. The defendants in those (consolidated) cases argued that their due process rights were violated because the increased sentence for Armed Violence was not rationally related to the punishment of the underlying felony – drug possessors, for instance, were subject to the same minimum sentence as drug traffickers. This Court rejected that challenge, finding that the seriousness of the underlying felony is irrelevant as long as the punishment for *Armed Violence* is rationally related to the purpose of *Armed Violence* – punishing the possession of a gun during *any* felony. In other words, the crux of Armed Violence is unlawful gun possession; the underlying felony is an attendant circumstance, or at least not an act that defines the offense itself. It follows then, as with felony murder, that the predicate felony is not an act sufficient to support a second gun possession conviction for possessing the same gun.

In this case, possession of a gun is the basis, or crux, or gravamen, of both **Armed** Violence and **Armed** Habitual Criminal. To use possession of a single gun as the basis of both crimes is to "carve more than one offense from a single physical act." Indeed, the single act of possession immediately completed the crime of Armed Habitual Criminal, the other elements of

which are solely based on status. The *White* court obscured that fact by eliding "acts" and "elements": "armed violence required the additional act of possession of the drugs, and unlawful possession of a weapon by a felon required the additional *element* of *status* as a felon." *White*, 311 Ill. App. 3d at 386. But a status is not an act. See, e.g., *Robinson v. California*, 370 U.S. 660, 666 (1962) (holding California law unconstitutional because it punished mere status as a drug addict, rather than acts resulting from that status); see also Model Penal Code § 1.13(2) (' "[A]ct" or "action" means a bodily movement whether voluntary or involuntary'). And while Armed Violence has a non-status element beyond possession of a gun, this Court made clear in *Lombardi* that that element is *not* the crux of the offense. As with felony murder, that additional element cannot be an act sufficient to support two convictions for possessing one gun.

There is a line of cases holding that a single gun can form *part* of the offense for more than one conviction. For example, in *People v. Rodriguez*, 169 Ill. 2d 183, 188-90 (1996), this Court upheld convictions for home invasion and aggravated criminal sexual assault, where the brandishing of a gun was an element of both crimes. This Court explained that "[a]lthough both offenses shared the common act of defendant threatening the victim with a gun, a person can be guilty of two offenses when a common act is part of both offenses." Both the aggravated criminal sexual assault – where "defendant committed an act of sexual penetration and displayed or threatened the victim with a gun" – and the home invasion – where "defendant unlawfully entered the victim's dwelling and threatened her with the imminent use of

force while armed with a gun" – had *essential* acts that were totally distinct from the gun. In other words, the essence of the two offenses – sexual assault and home invasion – had nothing to do with possessing or brandishing a gun. The gun was merely an attendant circumstance. Thus, this Court recognized in *Rodriguez* that it makes little sense to say sexual assault or home invasion can be "based" on threatening the victim of a gun – that act is only tangentially related to the crucial act constituting either offense: sexual contact and unlawful entry of a home, respectively. See also *People v. Bouchee*, 2011 IL App (2d) 090542, ¶ 15 (noting that the gravamen of home invasion is distinct from the gravamen of sexual assault, therefore allowing separate convictions even where sexual assault is a predicate for home invasion).

Soon after *Rodriguez*, in *People v. McLaurin*, this Court vacated a conviction for residential burglary, where the defendant had also been convicted of home invasion for entering the same dwelling. 184 Ill. 2d 58, 106 (1998). This Court explained that "the offenses of home invasion and residential burglary have been carved from the same physical act of defendant's entering the dwelling of [the victim]. Therefore, we vacate the conviction for the offense of residential burglary and the sentence of a term of 15 years imposed thereon." *Id.*

McLaurin recognized that the essence of both home invasion and burglary is the unlawful entry of a dwelling. That shared act precludes multiple convictions. That easily-applied rule, implicit in this Court's precedents, reconciles all of these cases. Felony murder, even though it

involves acts separate from knowing murder, cannot support a separate conviction because the essence of both felony and knowing murder is the shared act of killing of an individual. Cf. *Lego*, 116 Ill. 2d at 344; see also *People v. Jackson,* 2016 IL App (1st) 133823, ¶¶ 50-67 (essence of vehicular hijacking is the taking of a vehicle, so only one conviction can lie if a single vehicle is taken in the presence of multiple victims). The single physical act of firing a gun, however, *can* support two convictions if two people are killed, for the same reason – the essence of murder is killing an individual, and the defendant killed two people. See *People v. Shum*, 117 Ill. 2d 317, 363 (1987) ("there were two distinct victims [a pregnant woman and her unborn child] of the defendant's single action. . . In Illinois it is well settled that separate victims require separate convictions and sentences"). The essences of home invasion and sex assault are different, so a shared act does not preclude two convictions, *Rodriguez*, 169 Ill. 2d at 188-90; the essence of home invasion and burglary is the same, so if the crucial act is shared, only home invasion can stand, *McLaurin*, 184 Ill. 2d at 106.

C. This Court should adopt a clear rule prohibiting multiple convictions where the crux of the convictions is possession of a single item.

This Court has previously dispelled any confusion surrounding the relationship between multiple forms of murder and one act, one crime doctrine by announcing a clear, intuitive rule: one victim, one murder. An analogous rule should apply here: one gun, one gun possession crime. The crux of Armed Violence and Armed Habitual Criminal is the unlawful

possession of a gun. When only one gun is possessed, only one conviction should obtain.

A clear rule is particularly necessary in possession cases. "Possessory offenses, like those at issue here, have always posed a special problem under the single-act component of the one-act, one-crime rule." *People v. Lindsey*, 324 Ill. App. 3d 193, 204-06 (4th Dist. 2001) (Cook, J., specially concurring in part and dissenting in part). Possession poses problems because there the circumstances supporting an inference of possession are often not "physical acts" at all, especially in constructive possession cases. See, e.g., *People v. Givens*, 237 Ill. 2d 311, 336 (2010) (circumstantial evidence was sufficient to show that defendant had constructive possession of cocaine on a nightstand in bedroom she shared with her fiance). That distinguishes the act of possession from crimes like battery, where the multiple physical acts involved in, for example, multiple stabs with the same knife, can support multiple convictions if they are charged separately. See *People v. Crespo*, 203 Ill. 2d 335, 344 (2001).

Leshawn Coats was convicted of two gun possession crimes for possessing one gun. This Court should clarify our state's one act, one crime doctrine by vacating Coats' conviction for Armed Habitual Criminal and by making explicit what is implicit in its one act, one crime jurisprudence: where a single act forms the crux of more than one offense, only the most serious conviction can stand.

CONCLUSION

For the foregoing reasons, Leshawn Coats, defendant-appellant, respectfully requests that this Court vacate his conviction for Armed Habitual Criminal, which is based on the same physical act as his Armed Violence conviction.

Respectfully submitted,

PATRICIA MYSZA
Deputy Defender

SAMUEL M. HAYMAN
Assistant Appellate Defender
Office of the State Appellate Defender
First Judicial District
203 N. LaSalle St., 24th Floor
Chicago, IL 60601
(312) 814-5472
1stdistrict.eserve@osad.state.il.us

COUNSEL FOR DEFENDANT-APPELLANT

CERTIFICATE OF COMPLIANCE

I, Samuel M. Hayman, certify that this brief conforms to the requirements of Supreme Court Rule 341(a) and (b). The length of this brief, excluding pages containing the Rule 341(d) cover, the Rule 341(h)(1) statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342(a) is 17 pages.

/s/Samuel M. Hayman
SAMUEL M. HAYMAN
Assistant Appellate Defender

No. 121926

IN THE

SUPREME COURT OF ILLINOIS

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

NOTICE AND PROOF OF SERVICE

TO: Lisa Madigan, Attorney General, 100 W. Randolph St., Chicago, IL 60601, mglick@atg.state.il.us cc: twhatley-conner@atg.state.il.us, jescobar@atg.state.il.us, lbendik@atg.state.il.us, chulfachor@atg.state.il.us, kdoersch@atg.state.il.us

Leshawn Coats, Register No. B58275, Danville Correctional Center, 3820 East Main Street, Danville, IL 61834

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. An electronic copy of the Brief and Argument in the above-entitled cause was submitted to the Clerk of the above Court for filing on July 26, 2017. On that same date, we electronically served the Attorney General of Illinois and mailed one copy to the defendant-appellant in an envelope deposited in a U.S. mail box in Chicago, Illinois, with proper postage prepaid. The original and twelve copies of the Brief and Argument will be sent to the Clerk of the above Court upon receipt of the electronically submitted filed stamped motion.

/s/Moses Kim
LEGAL SECRETARY
Office of the State Appellate Defender
203 N. LaSalle St., 24th Floor
Chicago, IL 60601
(312) 814-5472
Service via email is accepted at
1stdistrict.eserve@osad.state.il.us

APPENDIX TO THE BRIEF

Leshawn Coats No. 121926

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Notice of Appeal (Rev. 11/07/03) CCCR 0603

TO THE _____ COURT OF ILLINOIS
IN THE CIRCUIT COURT OF COOK COUNTY
CRIMINAL BUREAU

PEOPLE OF THE STATE OF ILLINOIS

v.

LESHAWN COATS

Case No. 13CR1493-01
Trial Judge VINCENT GAUGHAN
Court Reporter
Attorney RICHARD C. DICKINSON
Appeal Check Date
Appeal Bond

CLERK OF THE CIRCUIT COURT OF COOK COUNTY, IL
2014 JUN 12 PM 2:21
FILED

NOTICE OF APPEAL

An appeal is taken from the order or judgment described below:

Appellant's Name: LESHAWN COATS
Appellant's Address: IDOC
Appellant's Attorney: RICHARD C. DICKINSON
Address: 2618 W. FARGO AV, CHICAGO, IL 60645
Offense: ARMED VIOLENCE & Armed Habitual Criminal, 720
Judgment: Guilty of Armed Violence and Armed Habitual
on a Bench Trial
Date: 5/14/14
Sentence: 15yrs Armed Violence & 7yrs. Armed Habitual
Date Notice Filed: 6/11/14

Leshawn Coats Appellant

VERIFIED PETITION FOR REPORT OF PROCEEDINGS AND COMMON LAW RECORD

Under Supreme Court Rules 605-608 Appellant requests the Court to order; (1) the Official Court Reporter to transcribe an original and the copy of the proceedings, file the original with the Clerk and deliver the copy to the Appellant, or upon Appellant's written request to the Appellant's attorney of record, and (2) the Clerk to prepare the Record on Appeal.

The Appellant, being duly sworn, states that at the time of his/her conviction, s/he was and s/he now is unable to pay for the Record or an appellate lawyer.

Leshawn Coats Appellant

SUBSCRIBED and SWORN TO before me this 11th day of June, 2014

Notary Public

ORDER

T IS ORDERED; 1. State Appellate Defender
ppointed as counsel on appeal, and 2. the Record and Report of Proceedings be furnished to appellant without fees.

May 14, 2014 June 11, 2014

ATE: _____ ENTER: Vincent M Gaughan 1553
Judge Judge's No.

acknowledge receipt: _____

A-3

2016 IL App (1st) 142028-U

THIRD DIVISION
January 18, 2017

No. 1-14-2028

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 13 CR 14193
	)	
LESHAWN COATS,	)	Honorable
	)	Vincent M. Gaughan,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE COBBS delivered the judgment of the court.
Justices Lavin and Pucinski concurred in the judgment.

O R D E R

¶ 1 *Held*: Defendant's convictions are affirmed where the evidence was sufficient to prove him guilty beyond a reasonable doubt and the one-act, one-crime doctrine did not prohibit multiple convictions.

¶ 2 Following a bench trial, defendant Leshawn Coats was convicted of armed habitual criminal (720 ILCS 5/24-1.7(a) (West 2012)), armed violence (720 ILCS 5/33A-2(a) (West 2012)), and two counts of possession of a controlled substance (heroin) with intent to deliver (720 ILCS 570/401(a)(1)(A), 401(c)(1) (West 2012)). He was sentenced to consecutive sentences of 7 years' imprisonment on the armed habitual criminal count and 15 years'

imprisonment on the armed violence count. Defendant argues on appeal the evidence was insufficient to prove him guilty beyond a reasonable doubt and that the armed habitual criminal conviction should be vacated because it violates the one-act, one-crime doctrine. We affirm.

¶ 3 Defendant was charged by indictment with one count of armed habitual criminal, one count of armed violence predicated on commission of felony possession of a controlled substance with intent to deliver (between 15 and 100 grams of heroin), and three counts of possession of a controlled substance with intent to deliver (between 15 and 100 grams of heroin, between 1 to 15 grams of heroin, and between 1 to 15 grams of cocaine). The following evidence was adduced at trial.

¶ 4 Chicago police officer Edwin Utreras testified that, on June 27, 2013, around 8:25 a.m., he was working on a team executing a search warrant at 755 South Kilbourn in Chicago. He and his team knocked on the building's basement door and, when no one answered, forced entry into the basement apartment. Inside, after detaining four individuals, Utreras and his team approached a locked, rear room. After knocking, Utreras heard movement inside the room but no one answered the door. Utreras' partner, Officer Sznura, forced entry into the room. Utreras observed a woman, subsequently identified as Kadesha Joyce, on the bed. He also saw a man, identified in court as defendant, who was holding a hand gun in his left hand and two bags in his right hand and placing them on the window ledge. Utreras was 10 to 15 feet from the ledge and noticed one plastic bag was black and the other was tan.

¶ 5 Officer Sznura detained defendant and Utreras recovered from the window ledge a 45-caliber Llamma hand gun loaded with nine live rounds of ammunition as well as both bags. Inside the tan bag was a clear bag containing 53 Ziplock bags of suspect crack cocaine and one

"knotted bag" containing suspect crack cocaine. Inside the black bag was a clear plastic bag containing 92 Ziplock bags of suspect heroin. Utreras also retrieved a clear Ziplock bag containing nine Ziplock bags of suspect heroin and a green Ziplock bag containing suspect cannabis from inside a small refrigerator in the bedroom. In a pair of men's pants located in the bedroom, Utreras found a set of keys that opened the bedroom door, a state ID with defendant's name and picture, and $421 in United States Currency. The state ID listed a different address than that being searched. Another of Utreras' partners, Officer Zinchuk, recovered $180 from a pair of tan boots found in the bedroom. The officers also found ammunition and narcotics packaging materials, including both small and sandwich-sized Ziplock bags, in the bedroom.

¶ 6 Defendant was placed into custody and read his *Miranda* rights by Officer Sznura. After he was read his rights, defendant stated "you got me." He further stated he lived at the address with his girlfriend because his house at 21st and Millard had burned down.

¶ 7 Officer Troutman photographed the recovered items and inventoried them at the police station. Utreras identified photographs depicting the bedroom, the recovered 45-caliber firearm, the black and tan bags, and the bags recovered from the refrigerator. He further identified the set of keys and the state ID with defendant's name and picture found in the men's pants.

¶ 8 The parties stipulated that defendant had an aggravated robbery conviction in case number 02 CR 25742 under the name Danny Harris and a robbery conviction in case number 94 CR 05155 under the name Arthur Hortan.

¶ 9 The parties further stipulated that Maureen Bommarito, a forensic chemist at the Illinois State Police Crime Lab, would testify that six of the nine bags of suspect heroin found in the refrigerator were tested and had a positive result of 1.2 grams of heroin, "out of a total weight of

1.2 grams." She would further testify that 12 of the 54 bags of suspect crack cocaine that defendant was holding were tested and had a positive result of 1.1 grams of cocaine, out of a total weight of 4.6 grams. She analyzed 73 of the 92 bags of suspect heroine defendant was holding, which tested positive for 15.2 grams of heroin, out of a total of 19.2 grams.

¶ 10 Defense witness Kadesha Joyce testified that, on June 27, 2013, she lived at 755 South Kilbourn with her grandmother, father, sister, and two brothers. She was in her bedroom with defendant, her boyfriend, when police kicked in the door to the bedroom. Seven or eight police officers entered, handcuffed defendant and Joyce, and brought them to the living room. Joyce testified that 20 to 25 minutes after the police entered her bedroom, she heard them say "it's in the gangway." She stated that her bedroom has two windows, one of which opens to the sidewalk outside. When the police entered the bedroom, defendant was sleeping next to her, he was not holding a gun or narcotics at the window. After hearing the police say "it's in the gangway," Joyce got into an argument with a police officer. She was arrested and taken to jail.

¶ 11 The trial court found defendant guilty of armed habitual criminal, armed violence, and both counts possession of a controlled substance (heroin) with intent to deliver. It found him not guilty of possession of a controlled substance (cocaine) with intent to deliver.

¶ 12 The trial court denied defendant's written motion for a new trial or for judgment of acquittal and proceeded to sentencing. It sentenced defendant to 7 years' imprisonment on the armed habitual criminal conviction and 15 years' imprisonment on the armed violence conviction, to be served consecutively. The court merged possession of a controlled substance with intent to deliver (between 15 and 100 grams of heroin) count into the armed violence count. It stated "no judgment" would be entered on the other possession of a controlled substance with

intent to deliver (between 1 and 15 grams of heroin) count. Defendant filed a timely notice of appeal.

¶ 13 On appeal, defendant argues the evidence was insufficient to find him guilty of possession of a controlled substance with intent to deliver (between 15 and 100 grams of heroin), the predicate offense for the armed violence conviction. Specifically, he argues because the State failed to prove his intent to deliver the heroin, we should reduce his conviction to simple possession and remand for resentencing on the armed violence conviction, to be served concurrently with his sentence for armed habitual criminal. He further argues his conviction for armed habitual criminal must be vacated because it violates the one-act, one-crime doctrine.

¶ 14 When challenging the sufficiency of the evidence, the standard of review is whether after viewing the evidence in the light most favorable to the State, any rational trier of fact could have found the essential elements of the offense proven beyond a reasonable doubt. *People v. Brown,* 2013 IL 114196, ¶ 48. "A reviewing court will not substitute its judgment for that of the trier of fact on issues involving the weight of evidence or the credibility of witnesses." *People v. Siguenza-Brito,* 235 Ill. 2d 213, 224-25 (2009). In a bench trial, the trial judge, as trier of fact, has the responsibility to determine the credibility of witnesses, weigh the evidence and any inferences derived therefrom, and resolve any conflicts in the evidence. *People v. Slim*, 127 Ill. 2d 302, 307 (1989). A conviction will not be reversed unless "the evidence is so improbable, unsatisfactory, or inconclusive that it creates a reasonable doubt of the defendant's guilt." *In re Q.P.*, 2015 IL 118569, ¶ 24.

¶ 15 To sustain the conviction of possession of a controlled substance with intent to deliver, the State had to prove: (1) defendant knew of the narcotics, (2) the narcotics were in defendant's

immediate possession or control, and (3) defendant intended to deliver the narcotics. 720 ILCS 570/401 (West 2012); *People v. Robinson,* 167 Ill. 2d 397, 407 (1995). Defendant argues the State failed to prove the third element: that he intended to deliver the heroin.

¶ 16 "Because direct evidence of intent to deliver is rare, such intent must usually be proven by circumstantial evidence." *Robinson,* 167 Ill. 2d at 408. Our supreme court has noted several factors that may be considered in finding intent, including: whether the quantity of controlled substance in a defendant's possession is too large for personal use, the possession of weapons, the manner in which the substance is packaged, the possession of large amounts of cash, the high purity of the drug recovered, the possession of drug paraphernalia, and the possession of police scanners, beepers, or cellular telephones. *Id.* However, these factors are not exhaustive (*People v. Bush,* 214 Ill. 2d 318, 327 (2005)) and there is no "hard and fast" rule to be applied given the different types of controlled substances and "the infinite number of factual scenarios." *Robinson,* 167 Ill. 2d at 414.

¶ 17 Defendant argues the State failed to prove his intent to deliver the heroin as the 15-20 grams of heroin recovered was consistent with personal use. The quantity of a controlled substance alone can be sufficient to prove intent where the amount cannot be viewed solely for personal use. *Id.* at 410-11. But, "[a]s the quantity of controlled substance in the defendant's possession decreases, the need for additional circumstantial evidence of intent to deliver to support a conviction increases." *Id.* at 413. Defendant argues there is insufficient additional circumstantial evidence here. We disagree.

¶ 18 Viewing the evidence in the light most favorable to the State, the circumstantial evidence sufficiently shows defendant's intent to deliver heroin. First, the court may consider the way in

which a controlled substance was packaged and, in certain circumstances, the packaging alone may be sufficient to demonstrate intent to deliver. *Id.* at 414. Here, defendant was arrested in possession of 92 small bags of heroin contained in one bag and an additional 9 bags of heroin found inside a refrigerator. Given the sheer number of individual bags, it is entirely reasonable to infer that the heroin was intended for delivery rather than for personal use. See *People v. Clark,* 406 Ill. App. 3d 622, 631 (noting that 24 individual packets of heroin found on the defendant was "an amount and packaging technique highly indicative of one's intent to deliver rather than to personally consume").

¶ 19 Further, Officer Utreras testified that he recovered additional "narcotics packaging material," including small and sandwich-sized bags. While defendant challenges this as "cursory and unenlightening," the trial court could reasonably infer that the bags' presence was further indicia of defendant's intent to deliver. *Robinson,* 167 Ill. 2d at 414.

¶ 20 Officer Utreras also testified that he found a loaded 45-caliber gun and additional ammunition in the bedroom. Further, $421 was recovered from a pair of men's pants and $180 from a pair of boots found in the same room as the drugs. Our supreme court has directed that the presence of a firearm and large amounts of cash are specific factors indicative of intent to deliver. *Id.* at 408. Although defendant argues the amount of money was not an unreasonable amount to carry and that his possession of a gun could have been for other reasons such as his need to defend himself, given the totality of circumstances, the trial court could have found these factors were circumstantial evidence of intent to deliver.

¶ 21 Finally, defendant argues that no scale was recovered and the State failed to show how a "drug dealer would be able to accurately package minuscule amounts of drugs in these ziplock

bags without a scale." The absence of a scale would go to the weight of the evidence, which is for the trier of fact, here the trial court, to determine. *People v. Siguenza-Brito,* 235 Ill. 2d 213, 224 (2009). Further, the heroin was already packaged into 92 Ziplock bags and, there was, therefore, no need for defendant to possess a scale. See *People v. White,* 221 Ill. 2d 1, 20 (2006) ("we note that since the cocaine was already packaged for sale, there was no need for defendant to carry cutting agents or a scale"), *abrogated on other grounds, People v. Luedemann,* 221 Ill. 2d 530 (2006).

¶ 22 The sufficiency of the evidence to prove intent to deliver "must be determined on a case-by-case basis." *Robinson,* 167 Ill. 2d at 412-13. Here, where defendant was found in possession of 92 small bags of heroin contained in one bag, an additional 9 bags of heroin inside a refrigerator, a loaded gun with additional ammunition, $601 in cash, and narcotics packaging materials, the evidence supports the court's finding that the State proved defendant's intent to deliver the heroin beyond a reasonable doubt. Accordingly, defendant's conviction for armed violence predicated on his conviction for possession of a controlled substance with intent to deliver (between 15 and 100 grams of heroin) is affirmed.

¶ 23 Defendant next contends that his conviction for armed habitual criminal should be vacated because, in violation of the one-act, one-crime doctrine, it is predicated on the same physical act as his armed violence conviction, namely possessing a hand gun. Although defendant did not raise this claim in the trial court, "forfeited one-act, one-crime arguments are properly reviewed under the second prong of the plain-error rule because they implicate the integrity of the judicial process." *People v. Nunez,* 236 Ill. 2d 488, 493 (2010).

¶ 24 Under the one-act, one-crime doctrine, "a defendant may not be convicted of multiple offenses that are based upon precisely the same physical act." *People v. Johnson,* 237 Ill. 2d 81, 97 (2010); accord *Nunez,* 236 Ill. 2d at 494. An act refers to " 'any outward or overt manifestation which will support a different offense.' " *Nunez,* 236 Ill. 2d at 494 (quoting *People v. King,* 66 Ill. 2d 551, 566 (1977)). The court first determines whether the defendant's conduct consisted of a single physical act or separate acts. *People v. Rodriguez,* 169 Ill. 2d 183, 186 (1996). If one physical act was undertaken, then multiple convictions are improper. *Id.* Second, if the defendant committed multiple acts, the court determines whether any of the convictions are for lesser-included offenses. *Id.* Multiple convictions for lesser-included offenses are also impermissible. *Id.* However, a defendant may be found guilty of two offenses when the same act is an element of both charges. *Id.* at 188-89. We review *de novo* the application of the one-act, one-crime doctrine. *Johnson,* 237 Ill. 2d at 97.

¶ 25 Defendant argues that the Second District's decision in *People v. Williams,* 302 Ill. App. 3d 975 (1999), should control. In *Williams,* the defendant was convicted of unlawful use of a weapon by a felon and armed violence predicated on possession of a controlled substance, stemming from his arrest while in possession of a gun and cocaine. *Williams,* 302 Ill. App. 3d at 976-77. The defendant argued on appeal that his sentence for unlawful use of a weapon by a felon impermissibly violated the one-act, one-crime doctrine where both convictions arose from the same physical act. *Id.* at 977-78. In reversing the conviction for unlawful use of a weapon by a felon, the court held:

> "[T]he common act is a felon possessing a gun and drugs simultaneously. There is no separate act. In one instance the gun is combined with possession of a controlled

substance to constitute armed violence, and in the other it is combined with the act of a convicted felon status to create a separate offense. We hold that the one-act, one-crime rule does apply to these convictions." *Id.* at 978.

¶ 26 The State responds that the Fourth District's holding in *People v. White,* 311 Ill. App. 3d 374 (2000), which rejected *Williams,* should be followed. In *White,* the defendant was similarly convicted of unlawful use of a weapon by a felon and armed violence predicted on possession of a controlled substance based on his arrest while in possession of a gun and cocaine. *Id.* at 379. On appeal, the defendant argued his convictions for unlawful use of a weapon by a felon and armed violence were based on the same physical act. *Id.* at 384. The court disagreed, noting that "two separate acts do not become one solely by virtue of being proximate in time." *Id.* at 385. It found that *Williams* incorrectly held that possession of the drugs and the gun was a shared, common act prohibiting multiple convictions. *Id.* The court observed:

"Though defendant may have possessed the weapon and the drugs close in time, or even simultaneously, we conclude nevertheless that each possession was a separate act. Although both offenses shared the common act of possession of a weapon, armed violence required the additional act of possession of the drugs, and unlawful possession of a weapon by a felon required the additional element of status as a felon. Accordingly, the two offenses did not result from precisely the same physical act." *Id.* at 386.

¶ 27 We find the reasoning in *White* persuasive and hold that defendant's convictions for armed habitual criminal and armed violence were based upon separate acts. Although defendant's convictions shared the common act of possession of a gun, the armed habitual criminal conviction required the additional element of defendant's status as an offender with two prior

felony convictions and armed violence required the additional act of possession of heroin with intent to deliver. Following *White,* we find each hand gun possession was a separate act and the convictions, therefore, did not result from "precisely the same physical act." *Id.*; see also *People v. Pena,* 317 Ill. App. 3d 312, 323 (2000) (following *White*) (defendant's possession of a weapon was a common act of unlawful use of a weapon by a felon and home invasion offenses; however, as each offense required an additional act (status of being a felon and knowingly entering into an occupied dwelling, respectively), "defendant's conduct in committing the two offenses did not consist of a single act").

¶ 28 To complete our analysis of whether the one-act, one crime rule was violated, we must decide whether either offense is an included offense of the other. *White*, 311 Ill. App. 3d at 386; see *Rodriguez,* 169 Ill. 2d at 186. Our supreme court has adopted the charging instrument approach in determining whether offenses are included offenses. *Pena*, 317 Ill. App. 3d at 323. Following this approach, an offense is qualified as an included offense if it is described by the charging instrument and at minimum, sets out the main outline of the included offense. *Id.*

¶ 29 In the instant case, the indictment charging the offense of armed violence stated that the defendant,

> "while armed with a dangerous weapon, to wit: handgun, committed a felony defined by Illinois law, to wit: possession of controlled substance with intent to deliver, in that he, unlawfully and knowingly possessed with the intent to deliver otherwise than as authorized in the Illinois Controlled Substances Act of said state of Illinois then in force and effect, less than 100 gram(s) of a substance containing heroin."

Whereas, the indictment charging defendant with the offense of armed habitual criminal stated that the defendant, "knowingly or intentionally possessed a firearm, to wit: .45 caliber semi-automatic handgun, after having been convicted of aggravated robbery and robbery."
The charging instrument for the offense of armed violence does not set out an outline for having a prior conviction, as required by the charge of armed habitual criminal. Although the defendant's convictions shared the common act of possession of a gun, the charge of armed violence required the additional act of simultaneously committing a felony and the charge of armed habitual criminal required a prior conviction. Based on the charging instruments, neither charge sets out the main outline for the other offense nor can the charge of armed habitual criminal or armed violence be considered an included offense of the other. Accordingly, we find defendant's convictions for armed habitual criminal and armed violence do not violate the one-act, one-crime doctrine.

¶ 30 For the reasons set forth above, we affirm the judgment of the circuit court of Cook County.

¶ 31 Affirmed.