

No. 131745

IN THE

SUPREME COURT OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the Appellate Court of Illinois, No. 1-23-1936.
)	
Plaintiff-Appellee,)	There on appeal from the Circuit Court of Cook County, Illinois , No. 21 CR 07719.
-vs-)	
)	
PATRICK WADE,)	Honorable Steven G. Watkins, Judge Presiding.
)	
Defendant-Appellant.)	

REPLY BRIEF FOR DEFENDANT-APPELLANT

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ARGUMENT

An aggravating factor cannot be used to transform a single felony act into multiple felony convictions. As a result, when only one kidnaping is committed, only one aggravated kidnaping conviction may stand.

The State agrees with Patrick Wade that:

- (a) The unit of prosecution is properly before the Court.
- (b) The unit of prosecution for aggravated kidnaping is one conviction per kidnaping.
- (c) The appropriate remedy is to remand this case with directions.

In fact, there is only one argument where the State does not note its agreement: Wade's argument that the existence of multiple aggravated kidnaping convictions also violates the one-act, one-crime doctrine. (See St. Br. *generally*.) Rather than contest this argument, however, the State agrees that this Court should only reach the issue if it disagrees with the parties' unit of prosecution analysis. (St. Br. 13.)

Accordingly, consistent with his opening brief, the State's response, and his arguments below, Wade respectfully requests that this Court remand his case with directions to vacate one of his two aggravated kidnaping convictions.

A. The parties agree that the unit of prosecution for aggravated kidnaping is properly before this Court.

First, the parties agree that the unit of prosecution is “inextricably intertwined” with the one-act, one-crime issue that is properly before this Court. (Def. Br. 9-10; St. Br. 7-8.) In his petition for leave to appeal, Wade asked this Court to review “whether more than one aggravated kidnaping conviction based on different predicate felonies may [] be carved from a single kidnaping” and argued that doing so violated the one-act, one-crime doctrine. (PLA 10-16.) As this Court explained in *People v. Hartfield*, “[a] threshold question to reaching the one-act, one-crime rule is to determine the unit of prosecution of the offense at issue.” 2022 IL 126729, ¶ 67. Because the one-act, one-crime question is properly before this Court and because answering that question requires this Court to determine the unit of prosecution for aggravated kidnaping first, *Hartfield*, 2022 IL 126729, ¶ 67, the two issues are “inextricably intertwined” and it is appropriate for this Court to address the unit of prosecution for aggravated kidnaping in this case. *People v. Guy*, 2025 IL 129967, ¶ 59 (appropriate to address issue not mentioned in petition for leave to appeal when it is “inextricably intertwined” with issues raised therein); *In re Rolandis G.*, 232 Ill. 2d 13, 38 (2008) (same).

Next, the parties agree that a surplus conviction—whether it violates the unit of prosecution or the one-act, one-crime doctrine—affects the integrity of the judicial process and may be reviewed as second-prong plain error even if it was not raised in the circuit court. See Ill. S. Ct. Rule 615(a); *People v. Harvey*, 211 Ill. 2d 368, 389 (2004); *People v. Carter*, 213 Ill. 2d 295, 299-300 (2004). (St. Br. 9.)

For both reasons, consistent with the law and the parties’ briefs, the unit of prosecution for aggravated kidnaping is properly before this Court.

B. The parties agree that the unit of prosecution for aggravated kidnaping allows only one conviction per kidnaping.

Here, the parties agree that although the aggravated kidnaping statute does not expressly define the unit of prosecution, the statute’s language and structure demonstrate that aggravated kidnaping is committed only once per kidnaping. (Def. Br. 11-13; St. Br. 10-12.)

First, the statute defines aggravated kidnaping as “commit[ting] kidnaping¹ *and*” engaging in or causing one of the aggravating factors listed in subsections (1) through (8). 720 ILCS 5/10-2(a)(1)-(8) (West 2018) (emphasis added). The statute’s use of the word “and” demonstrates that each instance of the offense requires its own kidnaping *and* its own aggravating factor. 720 ILCS 5/10-2(a)(1)-(8). Absent either element there is no aggravated kidnaping. *Id.* (See also St. Br. 10.)

Second, this conclusion is consistent with the purpose of the aggravated kidnaping statute—to punish a single kidnaping more severely when one of the listed aggravating factors is present. See *People v. Keys*, 2025 IL 130110, ¶ 84 (“The unit of prosecution analysis is controlled by what the statute seeks to prohibit.”); see also 720 ILCS 5/10-2 (punishing aggravated kidnaping as a Class X felony); 720 ILCS 5/10-1(c) (punishing kidnaping as a Class 2 felony). As the State notes, kidnaping is an “ongoing event,” *People v. Turner*, 128 Ill. 2d 540, 577 (1989), which “does not end until the victim is free,” *United States v. Godinez*, 998 F.2d 471, 473 (7th Cir. 1993), and “the presence of additional aggravating circumstances during the same predicate kidnap[ing] does not create additional

¹Consistent with Wade’s opening brief, although Sections 5/10-1 and 5/10-2 use two different spellings for the word “kidnaping,” this reply brief uses the spelling from Section 5/10-2 (the section underlying Wade’s convictions).

offenses.” (St. Br. 11.) Indeed, by definition, an aggravating factor is something that “increases the degree of liability or culpability for a criminal act.” Black’s Law Dictionary (12th ed. 2024). It does not multiply the number of offenses that were committed. Given the statute’s purpose and the definition of an aggravating factor, aggravated kidnaping is committed once per *kidnaping*, not per aggravating factor. See *Keys*, 2025 IL 130110, ¶ 84.

Third, this construction is consistent with this Court’s unit of prosecution analysis of similar statutes. See, e.g., *People v. Lavallier*, 187 Ill. 2d 464, 469 (1999) (concluding that the aggravated DUI statute permits only one conviction per instance of driving under the influence of alcohol regardless of the number of aggravating factors present because those factors “aggravate[] the underlying DUI offense” but they do not constitute “a separate offense for each [aggravating factor present]”).

Fourth, this reading protects against the injustice of allowing multiple aggravated kidnaping convictions to stand on an individual’s record when only one kidnaping occurred. See *People v. Garcia*, 241 Ill. 2d 416, 421 (2011) (courts presume the legislature did not intend absurd or unjust results). (Def. Br. 13-14.)

Finally, if this Court has any remaining doubt regarding the aggravating kidnaping statute’s construction, it should apply the rule of lenity and construe the statute in the defendant’s favor. *Hartfield*, 2022 IL 126729, ¶ 69.

In sum, the aggravated kidnaping statute allows only one conviction per kidnaping. Thus, as the State articulated, because there was only one kidnaping in this case, “the circuit court clearly erred in entering judgment on two aggravated kidnap[]ing convictions” and this case should be reversed. (St. Br. 9.)

C. If the Court disagrees with the parties' unit of prosecution analysis, it should still reverse because, in this case, multiple aggravated kidnaping convictions violate the one-act, one-crime doctrine.

The parties agree that this Court need not reach the one-act, one-crime issue if it agrees that the aggravated kidnaping statute allows only one conviction per kidnaping. (Op. Br. 14; St. Br. 13.) See also *People v. Hartfield*, 2022 IL 126729, ¶ 67 (“Only if we conclude that defendant has committed the offense four times will we move on to consideration of the one-act, one-crime rule.”).

However, should this Court disagree with the parties and find that the aggravated kidnaping statute allows more than one conviction per kidnaping, Wade reasserts that allowing multiple aggravated kidnaping convictions in this case violates the one-act, one-crime doctrine. For this issue, because the State has not responded, Wade stands on his Opening Brief. (Op. Br. 14-25.)

D. The parties agree that this case should be remanded to the circuit court with directions to vacate the less serious of Wade's two aggravated kidnaping convictions.

The parties agree on the remedy. (Op. Br. 25-26; St. Br. 13-14.) In short, because it cannot be determined which of Wade's two aggravated kidnaping convictions is the less serious offense, the appropriate remedy is to remand this case to the circuit court with directions for it to make that determination and then vacate the less serious of Wade's two aggravated kidnaping convictions. *People v. Artis*, 232 Ill. 2d at 170-71.

CONCLUSION

For the foregoing reasons, Patrick Wade, defendant-appellant, respectfully requests that this Court reverse the decision of the appellate court and remand this case to the circuit court with directions that it determine which of the two aggravated kidnaping convictions is the less serious and then vacate that conviction.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I certify that this reply brief conforms to the requirements of Rules 341(a) and (b). The length of this reply brief, excluding pages or words contained in the Rule 341(d) cover, the Rule 341(h)(1) statement of points and authorities, the Rule 341(c) certificate of compliance, and the certificate of service, is 6 pages.

/s/Brooke A. Winterhalter
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Assistant Appellate Defender

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NOTICE AND PROOF OF SERVICE

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Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct. On April 9, 2026, the Reply Brief was filed with the Clerk of the Supreme Court of Illinois using the court's electronic filing system in the above-entitled cause. Upon acceptance of the filing from this Court, persons named above with identified email addresses will be served using the court's electronic filing system and one copy is being mailed to the defendant-appellant in an envelope deposited in a U.S. mail box in Chicago, Illinois, with proper postage prepaid. Additionally, upon its acceptance by the court's electronic filing system, the undersigned will send 13 copies of the Reply Brief to the Clerk of the above Court.

/s/Lisa Corona
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