

NOTICE

This Order was filed under Supreme Court Rule 23 and is not precedent except in the limited circumstances allowed under Rule 23(e)(1).

2022 IL App (4th) 210162-U

NO. 4-21-0162

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED

July 26, 2022

Carla Bender

4th District Appellate
Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
Plaintiff-Appellee,)	Circuit Court of
v.)	Macon County
NATHAN C. PARNELL,)	No. 19CF809
Defendant-Appellant.)	
)	Honorable
)	Jeffrey S. Geisler,
)	Judge Presiding.

JUSTICE CAVANAGH delivered the judgment of the court.
Justices Steigmann and Zenoff concurred in the judgment.

ORDER

¶ 1 *Held*: Simultaneous convictions of attempted first degree murder and aggravated domestic battery violated the one-act, one-crime rule because those convictions were based on the same physical act of choking the victim.

¶ 2 In the circuit court of Macon County, defendant, Nathan C. Parnell, pleaded guilty to the following counts of an information: counts I and II, which charged him with aggravated criminal sexual assault (720 ILCS 5/11-1.30(a)(2) (West 2018)); count X, which charged him with attempted first degree murder (*id.* §§ 8-4(a), 9-1(a)(1)); and count XI, which charged him with aggravated domestic battery (*id.* § 12-3.3(a-5)). The court sentenced him to consecutive prison terms: 15 years for count I, 15 years for count II, 15 years for count X, and 10 years for count XI. He appeals on two grounds.

¶ 3 First, defendant argues the circuit court erred by making the sentence for count XI, aggravated domestic battery, consecutive to the sentence for count X, attempted first degree

murder. Second, defendant argues that convicting him of both count X and count XI violated the one-act, one-crime rule.

¶ 4 In our *de novo* review, we conclude that counts X and XI are based on the same physical act and that, consequently, under the one-act, one-crime rule, simultaneous convictions on those two counts cannot stand. Having so concluded, we need not address defendant’s challenge to the consecutive running of the sentences for counts X and XI. We vacate the conviction and sentence on count XI but otherwise affirm the judgment.

¶ 5 I. BACKGROUND

¶ 6 Count X charged defendant with attempted first degree murder (*id.* § 8-4(a), 9-1(a)(1)). According to count X, he “performed a substantial step toward the commission of” first degree murder in that he “choked R.L.[,] causing her not to be able to breathe and to lose consciousness.”

¶ 7 Count XI charged defendant with aggravated domestic battery (*id.* § 12-3.3(a-5)). According to count XI, he committed that offense by “strangl[ing] R.L.” “in that *** [he] used his hands to choke R.L.[,] causing her to not be able to breathe and [to] lose consciousness.”

¶ 8 In the factual basis for the guilty pleas, the prosecutor represented that if the case went to trial, the evidence would tend to show the following facts (among others):

“[Defendant] put his hands around [R.L.’s] neck and stated, ‘I am going to kill you. ***.’ She stated at that point, she started to black out and she urinated herself. *** He put his fingers inside of her and he would call her a dirty whore while he did that. He then forced his penis inside of her mouth causing her to choke.”

¶ 9 II. ANALYSIS

¶ 10 Defendant maintains that, under the one-act, one-crime rule, the conviction on count XI should be vacated because count XI is based on the same physical act as count X, namely, choking R.L. with his hands and thereby causing her to lose consciousness. See *People v. Garcia*, 179 Ill. 2d 55, 71 (1997) (holding that “[w]hen multiple convictions of greater and lesser offenses are obtained for offenses arising from a single act, a sentence should be imposed on the most serious offense and the convictions on the less serious offenses should be vacated”). We decide *de novo* whether the simultaneous convictions on counts X and XI violate the one-act, one-crime rule. See *People v. Johnson*, 237 Ill. 2d 81, 97 (2010).

¶ 11 Under that rule, it is impermissible to convict a defendant “of multiple offenses that are based upon precisely the same single physical act.” *Id.* An “act” is “any overt or outward manifestation [that] will support a different offense.” *People v. King*, 66 Ill. 2d 551, 566 (1977).

¶ 12 According to the State, two overt or outward manifestations by defendant support the convictions on both count X and count XI. The State argues, “By choking the victim with his hands and forcing his penis into her mouth to choke her, defendant committed two acts which individually supported his convictions for attempted murder and aggravated domestic battery.” Specifically, according to the State, the choking with the hands corresponded to count XI (aggravated domestic battery), and the choking with the penis corresponded to count X (attempted first degree murder).

¶ 13 The charging instrument “must indicate that the State intended to treat the conduct of [the] defendant as multiple acts in order for multiple convictions to be sustained.” *People v. Crespo*, 203 Ill. 2d 335, 345 (2001). Counts X and XI do not apprise a reasonable reader of two separate acts of choking. Rather, both counts describe a choking in which R.L. lost consciousness. Judging from the factual basis, the only time R.L. lost consciousness was when defendant choked

her with his hands around her neck. The factual basis did not say she lost consciousness when choking on the penis in her mouth.

¶ 14 Because counts X and XI were based on precisely the same physical act, the circuit court should have granted defendant's postsentencing motion to vacate the conviction on count XI, the less serious offense. See *In re T.R.*, 2019 IL App (4th) 190529, ¶ 158 (holding that "[w]hen a defendant is convicted in violation of the one-act, one-crime rule, the appellate court should vacate the conviction for the less serious crime," defined as the crime carrying the lighter statutory punishment); 720 ILCS 5/8-4(c)(1) (West 2018) (providing that "the sentence for attempt to commit first degree murder is the sentence for a Class X felony"); 720 ILCS 5/12-3.3(b) (West 2018) (providing that "[a]ggravated domestic battery is a Class 2 felony"). The guilty plea did not waive this violation of the one-act, one-crime rule. See *People v. Tate*, 2022 IL App (4th) 200320-U, ¶ 18.

¶ 15 III. CONCLUSION

¶ 16 Pursuant to the one-act, one-crime rule, we vacate the conviction and sentence on count XI, but we otherwise affirm the circuit court's judgment.

¶ 17 Affirmed in part and vacated in part.