Nos. 123901 & 123902 (cons.)

IN THE
SUPREME COURT OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellant, v. STEVIE SMITH, Defendant-Appellee.	)))))))))	Appeal from the Appellate Court of Illinois, First District No. 1-15-1312 There on Appeal from the Circuit Court of Cook County, Illinois No. 10 CR 4124 The Honorable Michele M. Pitman, Judge Presiding.
PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellant, v. JERRY BROWN, Defendant-Appellee.	)))))))))	Appeal from the Appellate Court of Illinois, First District No. 1-15-1311 There on Appeal from the Circuit Court of Cook County, Illinois No. 10 CR 4124 The Honorable Michele M. Pitman, Judge Presiding.

REPLY BRIEF OF PLAINTIFF-APPELLANT
PEOPLE OF THE STATE OF ILLINOIS

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ARGUMENT

As explained in the People's opening brief, defendants' convictions comport with the one-act, one-crime doctrine because punching the victim in the ribs and taking his bank bags constituted separate physical acts. *See* Peo. Br. 8-12.[1] This argument turns not on the elements of the offenses, as defendants claim, Def. Br. 8-10, but on defendants' own conduct.

Defendants do not appear to contest that Smith engaged in two discrete physical acts. They instead urge this Court to disregard the physical taking, either because it occurred after the robbery was complete, Def. Br. 5-7, or because the People took a contrary position below, Def. Br. 5. Both arguments fail.

Furthermore, a ruling in the People's favor does not require this Court to overrule any lower court precedents, much less does it "upend decades of precedent applying the one act, one crime rule based on the particular evidence and arguments in a given case." Def. Br. 13. This Court need only apply well-established law to defendants' conduct, which consisted of two separate acts.

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[1] "Peo. Br." refers to the People's opening brief; "Def. Br." refers to defendants' consolidated appellee's brief; and citations to the common law record and reports of proceedings will be to *People v. Brown*, No. 123902, and appear as "Br.C_" and "Br.R_," respectively.

A. The People's Theory Is Based on Defendants' Conduct, as Proved by Circumstantial Evidence, Not on the Elements of the Offenses.

The People's argument does not turn on the elements of the offenses, *see* Def. Br. 3, nor does it require "re-defin[ing] the offense of robbery to categorically include the carrying away of the victim's property," *see* Def. Br. 7. Rather, the People's argument is based on defendants' conduct and the common-sense inference that "it was not physically possible for Smith to acquire Burtner's bank deposit bags by punching Burtner in the ribs." Peo. Br. 10. Defendants do not appear to contest that inference; they do not assert that the bank bags ended up in Smith's hands as a result of the punch.

Although defendants fault the People for failing to specify "the alleged 'distinct act' . . . that was proved at trial with respect to the 'taking,'" Def. Br. 3, the People did not need to prove exactly how Smith acquired Burtner's bags. A witness saw Smith arrive on the scene empty-handed and carry something away with him when he fled. Br.R.ZZ77-80. Burtner's bank bags were then found in defendants' crashed getaway car. Br.R.BBB70, CCC25. This circumstantial evidence establishes that Smith engaged in a physical act to take the bank bags. *See People v. Patterson*, 217 Ill. 2d 407, 435 (2005) (conviction may rest on inferences drawn from circumstantial evidence). That separate act supports a second conviction.

B. The Physical Taking of Property Was Part of the Robbery.

Defendants next assert that the Court should disregard the taking on the theory that "a robbery is complete when the force or the threat of force has caused the victim to part with the possession of his property." Def. Br. 6. Thus, defendants argue, "Smith's escape from the scene with the bags did not establish an element of robbery." Def. Br. 7.

The starting point for the one-act, one-crime analysis, however, is a "defendant's conduct." *People v. Coats*, 2018 IL 121926, ¶ 14. Defendants are correct that a person could be convicted of robbery without taking the victim's property, *see People v. Smith*, 78 Ill. 2d 298, 303 (1980), but that was not the case here. Defendants actually did take the victim's bank bags and empty them of cash.

Moreover, defendants' claim that the physical taking occurred after the commission of the robbery misstates the law. "The commission of an armed robbery ends when force and taking, the elements which constitute the offense, have ceased." *People v. Dennis*, 181 Ill. 2d 87, 103 (1998). It seems self-evident that the "taking" is ongoing until the defendant has taken possession of the stolen property. And as this Court has noted, although the elements of robbery may be proved without a physical taking, "the act of the robbery itself has not necessarily been completed at the time the victim surrenders the property so that no further consequences will attach to the

robber's conduct subsequent to the surrender of the property." *People v. Smallwood*, 102 Ill. 2d 190, 194-95 (1984).

Regardless of whether the People could have proved robbery without it, Smith's separate act of acquiring the bank bags supports a second conviction under the one-act, one-crime doctrine.

C. The People Took No Contrary Position Below.

Defendants also mistakenly assert that "the State's argument is defeated by the contrary position it took in the trial court." Def. Br. 5. Defendants assert that "[t]he State cannot now argue for the first time on appeal that the single punch can support multiple convictions." *Id.* But the People do not rely on "the single punch" as the sole act supporting both convictions. Rather, the People rely on the second physical act — the taking of the bank bags — to support the robbery convictions. If defendants instead mean to contend that the People are precluded from relying on that second act, they are wrong: neither the charging instrument nor the prosecution's theory at trial suggested that the robbery and battery were based on a single act.

Defendants' reliance on *People v. Crespo*, 203 Ill. 2d 335 (2001), to support their argument, Def. Br. 5, is misplaced. Crespo stabbed his victim three times and was convicted of both armed violence and aggravated battery. This Court acknowledged that each stab wound could support a separate conviction but declined to parse Crespo's acts in that way on appeal

because the charging instrument and the State's arguments at trial treated the stab wounds in the aggregate. *Crespo*, 203 Ill. 2d at 342-43. Both the armed violence and aggravated battery counts referenced the entire course of Crespo's conduct and charged him "with the same conduct under different theories of criminal culpability." *Id.* at 342.

Here, by contrast, the People charged defendants with two distinct acts: (1) causing bodily harm by striking Burtner, A2; and (2) "[taking] United States Currency" through the use or threat of force, A3. The latter robbery charge did not mention the punch that defendants now claim was the sole basis for that conviction. *Id.* The separate charges properly "informed [each] defendant that the State intended to charge him with multiple offenses." *People v. Marston*, 353 Ill. App. 3d 513, 520 (2d Dist. 2004).

Defendants' claim that the prosecutor's closing argument suggested otherwise also fails. The prosecutor repeatedly referred to the battery and robbery as separate acts. *See* Br.R.MMM14 ("They're going to make sure that they're going to get away with this. They just don't grab the bags. . . . Stevie Smith . . . punched him just to make sure he could get away with the crime."); Br.R.MMM21 ("Once Mr. Burtner was robbed and he was struck, he was doomed, he was done."). The portion of the argument that defendants quote, Def. Br. 5, addressed the murder charge. The prosecutor asked, "[I]s it fair to these defendants to go down for murder for the robbery?" Br.R.MMM38. The prosecutor posited that defendants would maintain,

"They were just trying to rob him. They were just trying to take his bags and run. They gave him one shot, one shot, one punch to drop him to the ground." Br.R.MMM38-39. He then rebutted that attempt at minimization. Br.R.MMM39. The quoted language does not suggest that the battery and the robbery were a single physical act.

To be sure, the People relied on the punch both as the basis for the aggravated battery conviction and as proof of the use of force for robbery. That was proper. *See Coats*, 2018 IL 121926, ¶ 15 (defendant may be convicted of two offenses that share a "common act" even if it constitutes the "only act" underlying one of the offenses). Therefore, references in closing argument to a single punch to support elements of both offenses do not preclude the People from treating the robbery and battery as separate acts on appeal.

D. Predicating the Robbery on the Physical Act of Taking Does Not Call into Question any Lower Court Precedents.

Finally, holding that the battery and robbery involved separate physical acts would not "require this Court to overrule" any lower court precedents, as defendants maintain, Def. Br. 9. The only case cited by defendants that analyzed whether convictions for robbery and battery comported with the one-act, one-crime doctrine found that they did. *People v. Pearson*, 331 Ill. App. 3d 312, 322 (1st Dist. 2002) (cited at Def. Br. 10) ("We conclude that the act of taking the purse and the act of pushing the victim to the ground were overt outward manifestations that support the offenses of

robbery and aggravated battery."). Reaching the same result here would affirm *Pearson*'s holding, not "nullify [its] reasoning," Def. Br. 10.

The appellate court did not reach a contrary result in *People v. Harvey*, 366 Ill. App. 3d 119 (1st Dist. 2006). Defendants erroneously state that the court found that the physical taking of property "did not supply an additional 'act' that would bar the application of the one-act, one-crime rule," Def. Br. 9, but the parties in that case agreed that a one-act, one-crime violation had occurred, and the appellate court vacated one of the defendant's convictions without analyzing the issue, 366 Ill. App. 3d at 122. It is not even clear whether a separate taking occurred in that case.

The two remaining cases that defendants claim will be "vitiate[d]" or "nullif[ied]," Def. Br. 9-10, evaluated whether convictions for unlawful restraint should be vacated under the one act, one crime doctrine. *See People v. Daniel*, 2014 IL App (1st) 121171 (cited at Def. Br. 9); *People v. Williams*, 143 Ill. App. 3d 658 (1st Dist. 1986) (cited at Def. Br. 10). Those cases pose a distinct issue: because almost "'every offense against the person necessarily involves a degree of restraint,'" a defendant cannot be convicted separately of unlawful restraint unless "the restraint was 'independent' of the physical act underlying the other offense." *Daniel*, 2014 IL App (1st) 121171, ¶ 51 (quoting *People v. Kuykendall*, 108 Ill. App. 3d 708, 710 (4th Dist. 1982)). *Daniel* vacated an unlawful restraint conviction because the restraint was inherent in the robbery. *Id.* ¶ 55. That holding would not be undermined by

a recognition that the battery and the taking at issue here involved separate physical acts.

In short, defendants have not cited a single case inconsistent with the result the People request here. This Court need only reiterate its long-standing rule that a separate physical act supports a separate conviction and hold that the appellate court's contrary conclusion was error.

CONCLUSION

This Court should reverse the appellate court's judgments in part and reinstate defendants' convictions and sentences for aggravated battery of a senior citizen. If this Court grants the People's requested relief, it should remand Brown's case to the appellate court for consideration of the remaining issue that Brown raised on appeal.

March 29, 2019

Respectfully submitted,

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RULE 341(c) CERTIFICATE

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

/s/ Erin M. O'Connell
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CERTIFICATE OF FILING AND SERVICE

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct. On March 29, 2019, the foregoing **Reply Brief of Plaintiff-Appellant People of the State of Illinois** was filed with the Clerk of the Supreme Court of Illinois using the court's electronic filing system, which served notice on the e-mail addresses listed below:

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

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