

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).

2024 IL App (3d) 240010-U

Order filed December 20, 2024

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

2024

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the Circuit Court
)	of the 18th Judicial Circuit,
)	Du Page County, Illinois,
Plaintiff-Appellee,)	
)	Appeal No. 3-24-0010
v.)	Circuit No. 22-CM-1576
)	
JOSEPH PAUL HARRIS-MILLER,)	Honorable
)	Paul A. Marchese,
Defendant-Appellant.)	Judge, Presiding.

JUSTICE PETERSON delivered the judgment of the court.
Presiding Justice McDade and Justice Hettel concurred in the judgment.

ORDER

- ¶ 1 *Held:* Defendant's convictions for resisting or obstructing a peace officer did not violate the one-act, one-crime rule.
- ¶ 2 Defendant, Joseph Paul Harris-Miller, appeals following his convictions for two counts of resisting or obstructing a peace officer. Defendant argues his convictions violate the one-act, one-crime rule because they constitute multiple punishments for a single continuing act. We affirm.

¶ 3

I. BACKGROUND

¶ 4

On October 11, 2022, the State charged defendant with two counts of resisting or obstructing a peace officer (720 ILCS 5/31-1(a) (West 2022)). On May 11, 2023, the State filed a superseding information. Count I alleged defendant resisted or obstructed when he refused to comply with orders from Officer Emily Heikes. Count II alleged defendant resisted or obstructed when he refused to place his arms behind his back and made his arms rigid.

¶ 5

On November 28, 2023, the matter proceeded to a jury trial where the following evidence was presented. Heikes testified that on October 11, 2022, she was dispatched to a residence to serve an emergency order of protection on defendant. Heikes also learned defendant had an active arrest warrant for domestic battery. Upon arriving at the residence, she asked defendant to open the front door. Defendant refused and told her that she needed to obtain a warrant. Heikes again asked him to open the door and speak with her. Defendant refused, went upstairs, opened a window, and said he would not come out, he was packing his belongings, and he was leaving. Defendant's wife, who was also the owner of the home, arrived at the residence and attempted to let Heikes inside by unlocking the front door. However, screws were placed in the doorjamb that prevented it from fully opening. Heikes saw defendant standing at the top of the stairs and told him to open the door. She then used her shoulder to push the door all the way open and entered the residence with other officers. At this point, Heikes had been at the residence for 35 to 40 minutes trying to get defendant to open the door and explaining why she was there.

¶ 6

When Heikes entered the residence, defendant went into a bedroom and locked the door. Heikes told defendant to open the door, and he refused. Another officer kicked the door open, and defendant ran inside of a closet. Heikes opened the closet door, and the officers told defendant he was under arrest and to get on the ground. Defendant did not get on the ground. The officers told

defendant to turn around, defendant did not turn around. Heikes testified that she pulled defendant out of the closet and told him to put his arms behind his back. Defendant made his arms straight and rigid. The officers moved defendant's arms and placed him under arrest. Heikes's body camera video was admitted into evidence. Defendant testified he did not have full range of motion in his right arm as a result of an injury he received from a snowboarding accident.

¶ 7 The jury found defendant guilty of both counts of resisting or obstructing a peace officer. Defendant filed a motion for a new trial, which the court denied. The matter proceeded to sentencing where the court ordered defendant to serve 7 days in jail with 57 days of credit and 12 months' probation as to each conviction. Defendant appeals.

¶ 8 II. ANALYSIS

¶ 9 On appeal, defendant argues his convictions violate the one-act, one-crime rule because they constitute multiple punishments for a single continuous act. Defendant acknowledges that he forfeited the issue for appellate review by failing to raise it before the circuit court. However, the parties agree this issue is reviewable under the second prong of the plain error doctrine because the error affects defendant's substantial rights. See *People v. Lee*, 213 Ill. 2d 218, 226 (2004). Our first step is to determine if an error occurred (*People v. Piatkowski*, 225 Ill. 2d 551, 565 (2007)), and if so, one of defendant's convictions must be vacated. See *Lee*, 213 Ill. 2d at 226.

¶ 10 Under the one-act, one-crime rule, a defendant may not be convicted of multiple offenses arising out of precisely the same physical act. *People v. Coats*, 2018 IL 121926, ¶ 11. In determining whether there is a violation of this rule, we first ascertain whether defendant's conduct consisted of a single physical act or separate acts. *Id.* ¶ 12. If we find defendant committed multiple acts, we must determine whether either offense is a lesser-included offense. *Id.* An "act" is defined as "any overt or outward manifestation which will support a different offense." *People v. King*, 66

Ill. 2d 551, 566 (1977). This issue presents a question of law, which we review *de novo*. *People v. Cook*, 2021 IL App (3d) 190243, ¶ 31.

¶ 11 Here, defendant argues the State relied on the same ongoing act to support both charges. Specifically, as to count I, the State argued that defendant disobeyed orders of the officers in several ways. Count II was based on his refusal to place his arms behind his back and making his arms rigid.

¶ 12 The following factors are relevant to determine whether charges arise from the same act:

“(1) whether the defendant’s actions were interposed by an intervening event; (2) the time interval between the successive parts of the defendant’s conduct; (3) the identity of the victim; (4) the similarity of the acts performed; (5) whether the conduct occurred in the same location; and (6) the prosecutorial intent, as shown by the wording of the charging instruments.” *People v. Sienkiewicz*, 208 Ill. 2d 1, 7 (2003).

However, our supreme court has cautioned against heavily relying on these factors and advocates the application of the *King* doctrine as the guiding principle on this issue. *Id.* at 8.

¶ 13 We conclude defendant’s convictions derived from at least two separate acts. First, defendant disobeyed Heikes’s commands in several instances, which were charged under count I. For example, he (1) fled into a bedroom and locked the door, (2) fled into a closet and closed the door on the officers, (3) refused to open three different doors when told to do so (over a span of 35 to 40 minutes), and (4) refused an order to turn around, get on the ground, and place his hands behind his back. Some of the actions took place after defendant was told he was under arrest. These actions were in defiance or obstruction with no direct force or contact involved. See *People v. Synnott*, 349 Ill. App. 3d 223, 225-29 (2004) (concluding the defendant obstructed a peace officer

by repeatedly disobeying the police officer's order to exit his vehicle). Second, defendant held his arms straight and rigid to avoid being handcuffed, which was the allegation in count II. This act constitutes a physical act of resistance or obstruction. See *People v. Haynes*, 408 Ill. App. 3d 684, 689-90 (2011) ("A person resists arrest when he or she commits a physical act of resistance or obstruction, that is, a physical act that impedes, hinders, interrupts, prevents or delays the performance of the officer's duties, such as going limp, forcefully resisting arrest, or physically helping another party to avoid arrest."). Although defendant disobeyed some orders close in time to when he held his arms rigid to avoid being handcuffed, the facts nonetheless demonstrate defendant committed separate acts sufficient to support two charges of resisting or obstructing a peace officer. See *King*, 66 Ill. 2d at 566. Further, our review of the charging instruments and jury instructions demonstrates the State intended to charge defendant's conduct as two separate acts. For these reasons, defendant's convictions were based on separate acts and do not violate the one-act, one crime rule.

¶ 14 As a final matter, we note the State relies on *People v. Bicknell*, 2011 IL App (4th) 100503-U, as persuasive authority. Although Illinois Supreme Court Rule 23(e) (eff. Feb. 1, 2023) provides that unpublished orders entered on or after January 1, 2021, may be cited for persuasive purposes, *Bicknell* is an unpublished order that was entered on November 29, 2011. Thus, it is improper for the State to cite and rely on it. We admonish counsel to comply with Rule 23 in future filings before this court.

¶ 15 III. CONCLUSION

¶ 16 The judgment of the circuit court of Du Page County is affirmed.

¶ 17 Affirmed.