2025 IL App (5th) 230500-U

NO. 5-23-0500

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Macon County.
	)	
v.	)	No. 16-CF-1501
	)	
TYREE D. JENKINS,	)	Honorable
	)	Phoebe S. Bowers,
Defendant-Appellant.	)	Judge, presiding.

JUSTICE SHOLAR delivered the judgment of the court.
Justices Cates and Moore concurred in the judgment.

ORDER

¶ 1 *Held*: Cause remanded for the limited purpose of conducting a proper and timely *Krankel* inquiry into defendant's arguments related to possibly exculpatory video evidence; defendant's conviction for domestic battery vacated for violating the one-act, one-crime rule.

¶ 2 Defendant appeals his convictions for aggravated domestic battery and domestic battery with a prior domestic battery following a jury trial in Macon County. Following the Fourth District Appellate Court's remand for a hearing pursuant to *Krankel*, the trial court denied defendant's motion for ineffective assistance of counsel. See *People v. Jenkins*, 2020 IL App (4th) 170611-U.[1] On appeal, defendant argues (1) the trial court committed reversible error by allowing the State to present the charging instruments from defendant's prior convictions to the jury as propensity

[1]Due to redistricting, defendant's appeal is now properly before the Fifth District.

evidence, (2) he was denied the effective assistance of *Krankel* counsel, and (3) the trial court erred by entering convictions for both aggravated battery and domestic battery with a prior in violation of the one-act, one-crime rule. For the following reasons, we vacate in part, modify the judgment, and remand with directions.

¶ 3 I. BACKGROUND

¶ 4 This case returns to the appellate court following appeal before our colleagues in the Fourth District Appellate Court. See *People v. Jenkins*, 2020 IL App (4th) 170611-U. In October 2016, the State charged defendant with one count each of aggravated domestic battery (count I) (720 ILCS 5/12-3.3(a) (West 2014)), domestic battery with a prior domestic battery conviction alleging bodily harm (count II) (*id.* § 12-3.2(a)(1)), and domestic battery with a prior domestic battery conviction with physical contact of an insulting or provoking nature (count III) (*id.* § 12-3.2(a)(2)). Count II was dismissed before trial.

¶ 5 In January 2017, the trial court conducted a hearing on the State's first motion *in limine* seeking to present evidence of defendant's propensity to commit domestic violence pursuant to section 115-7.4 of the Code of Criminal Procedure of 1963 (725 ILCS 5/115-7.4 (West 2016)). The State sought to introduce defendant's prior convictions, which included Macon County case No. 15-CF-877, a 2015 conviction for unlawful restraint, Macon County case No. 12-CF-219, a 2012 conviction for domestic battery with a prior domestic battery, and Macon County case No. 08-CF-1018, a 2008 conviction for aggravated battery. During the hearing, defendant objected to the admission of these prior convictions and claimed allowing the introduction of all three incidents into evidence would be unduly prejudicial. The State argued the introduction of the propensity evidence via certified copies of conviction, in lieu of live witness testimony about prior domestic violence incidents, would limit any undue prejudice. After analyzing the propensity

factors under section 115-7.4, the court determined any undue prejudice was outweighed by the probative value and granted the State's motion, approving the use of the certified copies of convictions.

¶ 6 Later that same month, the trial court heard arguments on the State's second motion *in limine* requesting to supplement its propensity evidence. Two of the previous convictions (unlawful restraint and aggravated battery) were not identified in the certified copies of conviction as offenses specifically related to domestic violence. The State suggested the court read the charging document for each conviction, which contained language either identifying the domestic relationship between the defendant and the victim (No. 12-CF-219) or identifying the victim as the same person in this case (No. 15-CF-877). The trial court ruled the State could present evidence of defendant's propensity to commit domestic violence by reading the information contained in the certified copy of the 2015 unlawful restraint and 2012 domestic battery convictions. The court also indicated it had reconsidered its previous ruling allowing the use of the 2008 conviction, concluded it was too remote in time to be admissible as propensity evidence, and declined to permit it.

¶ 7 The court also addressed the State's third *in limine* motion seeking to elicit testimony from a DCFS investigator regarding her reasons for investigating the victim's residence, which led to the charges in this case. Specifically, the State sought to have the investigator testify that she responded to an anonymous call indicating defendant was at the victim's residence because she was aware defendant was not supposed to be at the residence due to a previous domestic violence incident (which formed the basis for Macon County case No. 15-CF-877). Defendant objected, arguing, "[t]he fact that the State is going to be allowed to introduce the prior convictions and naming the defendant I think should be sufficient." The trial court agreed and denied the State's

motion, acknowledging that although the DCFS worker could testify about what she observed when she arrived at the victim's residence, "I am not going to allow you to get into that she received anonymous phone calls or that she was concerned about a prior domestic violence incident."

¶ 8 In April 2017, immediately before proceeding with jury selection, it was brought to the trial court's attention a potential conflict of interest may exist between defense counsel and the victim in this case. Defense counsel, for the first time, indicated he represented the victim in a previous matter. He believed his previous representation resulted in a *per se* conflict but that it could be waived by defendant. The State contended there was insufficient evidence before the court to determine whether the conflict could be waived. Through the court's inquiry, defense counsel testified he previously represented the victim in a 2013 Macon County criminal case but could not recall any specifics regarding the prior representation. He "vaguely" remembered the case and was only aware of what happened by reviewing the court docket. From that review, he was aware the victim's case was resolved in April 2014, and, since that time, he has had no contact with her. He (incorrectly) believed he represented defendant before, and he also believed his prior representation of the victim would not conflict with his ability to fully represent defendant. The court gave defendant the opportunity to ask defense counsel any questions about the potential conflict of interest; however, defendant declined. The trial court admonished defendant. The court found defendant waived the potential conflict of interest on the record and accepted the waiver. The matter proceeded to a jury trial.

¶ 9 At the close of the State's evidence, the State introduced the certified copies of convictions and charging documents from the 2012 and 2015 convictions as exhibit Nos. 3 and 4. The State previously suggested the trial court inform the jury defendant was convicted of those two offenses and then read the charging information for both offenses. Defense counsel voiced no objection to

this procedure. The court admitted this evidence and indicated the exhibits would not be sent back to the jury.

¶ 10 The jury subsequently returned verdicts of guilty for both aggravated domestic battery and domestic battery with a prior domestic battery conviction, and the matter was set for sentencing on June 1, 2017.

¶ 11 In May 2017, defense counsel filed a motion to continue the sentencing based, in part, upon his belief the court should conduct at least a preliminary inquiry under *Krankel* due to defendant's comments at their last meeting in preparation for sentencing. Counsel claimed defendant "told [counsel] to leave and that he did not want to meet with him again concerning the sentencing or any matter regarding this case." As a result, counsel did not believe he was adequately prepared for the sentencing hearing and believed the court should inquire further of defendant. The trial court asked defendant, "Are you in effect making a claim that [counsel] was ineffective when he was representing you?" Defendant said he asked defense counsel to do things before the trial, which defense counsel allegedly did not do, and when he confronted counsel about it, counsel began cursing at him, so defendant told counsel he did not need to come back to see defendant anymore. The court then suggested perhaps the best way to proceed was to allow defendant time to reduce his claims to writing so the court and counsel could review all of his arguments on why defendant believed his counsel was ineffective, and the court could then evaluate the merit of each claim. The defendant agreed, and the court then indicated it was continuing the matter "for a *Krankel* hearing."

¶ 12 Several weeks later, in June 2017, after having received defendant's written claims, the trial court called the matter for what it characterized as a "pre-inquiry under People versus *Krankel*." The court informed defendant it had read his claim and was providing defendant with

an opportunity to more fully explain his allegations. Defendant stated defense counsel did not represent him in a proper manner during trial, defense counsel refused to present a social media video which defendant believed was relevant to his defense, and defense counsel did not put certain witnesses on the stand. Defendant also told the court he waived the potential conflict with his attorney because he did not want to "be stuck sitting in Macon County jail another four or five months before going to trial." The court directed defendant to address each allegation contained in the list of claims and provided defendant an opportunity to explain in detail why he thought defense counsel was ineffective. As defendant addressed his claims, the court from time to time interjected questions regarding the merits of those claims. The court asked defendant to relate specific conversations with counsel, explain the relevance of certain information, elaborate on evidence or witnesses defendant wanted counsel to present at trial, and then turned to defense counsel for a response before proceeding to the next issue. Although defendant's claims were lengthy and quite detailed, we will outline only a few here in order to provide sufficient background for the analysis to follow.

¶ 13 Defendant complained about the fact counsel elected to present information in his opening statement which had been expressly excluded by the court. The State's third motion *in limine* sought to elicit testimony from DCFS worker Ali Collins to explain why she went to the victim's home after receiving information defendant was present. The State sought to bring out the existence of defendant's previous domestic incident involving the same victim and DCFS's involvement, which emanated from the incident. Defendant's counsel objected, and after a full hearing, the court sustained the objection and excluded the requested information. Defendant pointed out, during his opening statement, counsel mentioned the previously excluded information, including prior reports of domestic violence at the residence, resulting in a sidebar conference at

the State's request. Defendant contended counsel never explained what occurred at sidebar even after his inquiry and did not explain why he decided to mention the same information to which counsel had objected and argued successfully to exclude at a previous hearing. The court then turned to counsel for his response and counsel noted (albeit incorrectly), "we had filed a motion *in limine* with regard to certain statements I think Ali Collins had made, arguments, and that was indeed, I think restricted." He then went on to explain, "in our theory of the case, it was an important element that DCFS was involved in the case," and that DCFS's threat to remove the victim's children was why the victim changed her version of how her injuries occurred from a fight with three girls to a fight with defendant.

¶ 14 The trial court then directed defendant to the next allegation in his list, which related to the conflict of interest counsel raised on the day of trial immediately before jury selection was to begin. According to defendant, counsel had been aware of this for months; however, he kept telling defendant it was the State who was voicing some concern or objection to his continued representation of defendant. Defendant indicated on the day of trial, his attorney brought this to the court's attention and the prosecutor "clearly stated, she didn't have a problem with—or she never mentioned anything about, um, the conflict of interest." According to defendant, "right before that when he had—before we had the hearing, he just told me to waive it." Defendant expressed his dissatisfaction with what he perceived as counsel's attitude about his case and said when he waived the conflict, "I waived it because I was under the impression—he did tell me if I waived, it could be another four or five months before I could get in trial again." The court did not seek counsel's response at that time, but instead, it began asking defendant about the court's inquiry of defendant at the hearing on the waiver, asking defendant to confirm whether the court's representations were correct.

¶ 15 The inquiry then turned to the existence of a video, which defendant contended had been available for some time, "depicting me and the victim—it was showing me and the victim at the hospital and two girls at the hospital sitting somewhere recording both of us. And they were openly talking about what they had did [*sic*] to this victim." The court then permitted counsel to respond to both the conflict and video issues. Counsel acknowledged previous conversations about the conflict with defendant, characterizing it as a "potential conflict." He did not recall telling defendant, "it's gonna be two or three months if you don't waive it," calling that a "non-issue" at the time. Counsel said he and his investigator viewed the video, contended they could not "properly lay a foundation for the video," and that it "didn't lend anything to complete our theory of the case."

¶ 16 Defendant's other concerns extended to specific questions asked or areas of inquiry he had asked counsel to pursue, such as the "theory" of the case, witnesses to be called, and telephone records or text messages to be obtained. In each instance, the trial court asked defendant to explain his objections in detail and then sought counsel's response. Frequently, when given the opportunity, defendant disagreed with some of the factual assertions of counsel, and they disagreed over whether certain issues had, in fact, been brought to counsel's attention. After hearing defendant's claims and defense counsel's responses the court stated:

> "There are many statements made in the written motion, as well as here in court today. All of the statements that I have heard and that I have read deal with [defense counsel's] trial strategy. He talks about the theory of the case. And many times in his responses, his decision whether to make objections or have certain witnesses testify or bring certain evidence in to—to the jury, [*sic*] there are questions of trial strategy, which is why you have a lawyer appointed for you, or hire a lawyer."

The court then stated, "I'm going to deny the claim of [*sic*] [defendant's] claim of ineffective assistance of counsel."

¶ 17 In July 2017, the trial court heard defendant's motion for a new trial or for judgment notwithstanding the verdict in advance of sentencing. In his posttrial motion, defendant argued the State failed to prove him guilty beyond a reasonable doubt, the court erred in allowing the reading of the informations as part of the presentation of propensity evidence, and the court erred by allowing the DCFS worker to testify about previous DCFS involvement restricting defendant's contact with the victim. The court denied the motion and the matter proceeded to sentencing.

¶ 18 At the sentencing hearing, the court sentenced defendant to 12 years on the aggravated domestic battery conviction (sentenced under Class X sentencing pursuant to section 5-4.5-95(b) of the Unified Code of Corrections (730 ILCS 5/5-4.5-95(b) (West 2016)) and 3 years for the domestic battery with a prior domestic battery conviction, to run concurrently. In August 2017, defendant asked the trial court to reconsider its sentence, contending the court abused its discretion by sentencing him to an excessive term of years. Defendant contended his sentence was enhanced because of his prior convictions and the fact that he must serve 85% of any sentence imposed, and therefore 12 years was excessive. Defendant also asked the court to consider the credibility of the witnesses and the facts of the case in imposing a lesser sentence. The State noted his prior criminal history, his history with this victim, and the serious nature of the injuries inflicted. The trial court denied defendant's motion. Defendant timely appealed.

¶ 19 Before the Fourth District in *Jenkins*, 2020 IL App (4th) 170611-U, defendant argued that the trial court erred by (1) allowing the State to introduce charging documents of defendant's prior convictions as propensity evidence, (2) failing to appoint replacement counsel on his postplea complaint about trial counsel's performance pursuant to *Krankel*, (3) entering convictions for

aggravated battery and domestic battery in violation of the one-act, one-crime rule, and (4) not allowing defendant to rescind a *per se* conflict of interest waiver with his attorney after trial. The Fourth District determined that the trial court erred by failing to appoint separate counsel after conducting a *Krankel* hearing and remanded the matter for the appointment of new counsel to represent defendant on the merits of his posttrial claim that his defense counsel was ineffective. See *id.* ¶ 43. Specifically, the Fourth District noted that there were "clear factual disputes relevant to an issue as sensitive as a conflict waiver, along with issues relating to a possibly exculpatory video." *Id.* ¶ 39.

¶ 20 Following remand, defendant waited for a little over two and a half years before the trial court held a *Krankel* hearing as directed by the Fourth District. Defendant's *Krankel* counsel did not file an amended posttrial motion or any other pleadings. The trial court held a hearing on December 8, 2022, and *Krankel* counsel called trial counsel, Mr. Wheeler, to testify.

¶ 21 Wheeler testified that he represented defendant. Wheeler recalled filing a motion *in limine* related to testimony from a DCFS investigator, arguing that the investigator could not testify about why she was at the defendant's home. The trial court granted the motion *in limine*. Wheeler did not recall opening the door to argument related to the DCFS investigator during defendant's trial. Wheeler also testified that he disclosed a conflict with regard to his prior representation of B.P. Defendant waived the conflict. On cross-examination, Wheeler testified that there was a conversation on the record between the court and defendant about the conflict. Defendant did not testify. Following argument from the parties, the trial court took the matter under advisement.

¶ 22 On December 9, 2022, issued its written ruling denying defendant's claims. The order addressed defendant's argument related to the DCFS worker and defendant's argument about the conflict waiver.

¶ 23 This timely appeal followed.

¶ 24 II. ANALYSIS

¶ 25 On appeal, defendant argues that (1) the trial court committed reversible error by allowing the State to present the charging instruments from defendant's prior convictions to the jury as propensity evidence, (2) he was denied the effective assistance of *Krankel* counsel, and (3) the trial court erred by entering convictions for both aggravated battery and domestic battery with a prior in violation of the one-act, one-crime rule. For the following reasons, we vacate in part, modify the judgment, and remand with directions.

¶ 26 First, we consider defendant's argument that he was denied the effective assistance of *Krankel* counsel. We decline to find counsel ineffective but agree that defendant is entitled to a new *Krankel* hearing, where the attorneys and the trial court failed to conduct an inquiry into defendant's claims related to possibly exculpatory video, in direct violation of the Fourth District's order. See *Jenkins*, 2020 IL App (4th) 170611-U, ¶ 39.

¶ 27 A *pro se* posttrial claim alleging ineffective assistance of counsel is governed by the common-law procedure developed by our supreme court in *Krankel* and refined by its progeny. *People v. Roddis*, 2020 IL 124352, ¶ 34. "The procedure encourages the trial court to fully address these claims and thereby narrow the issues to be addressed on appeal." *Id.* Under the supreme court's procedures, the circuit court does not automatically appoint counsel when a defendant presents a *pro se* posttrial claim alleging ineffective assistance of counsel. *Id.* ¶ 35. Rather, the court first examines the factual basis of the defendant's claim. *Id.* It does so by conducting some type of inquiry into the underlying factual basis of the defendant's *pro se* ineffective assistance of counsel claim. *People v. Ayres*, 2017 IL 120071, ¶ 11. "Specifically, the trial court must conduct an adequate inquiry ***, that is, inquiry sufficient to determine the factual basis of the claim."

(Internal quotation marks omitted.) *Id*. In doing so, the court considers the merits of defendant's allegations in their entirety. *Roddis*, 2020 IL 124352, ¶ 61.

¶ 28 If the trial court determines the claim lacks merit or pertains only to matters of trial strategy, then the court need not appoint new counsel and may deny the *pro se* claim. *Id.* ¶ 35. "However, if the allegations show possible neglect of the case, new counsel should be appointed." *Id.* New counsel can then independently evaluate the defendant's claim and avoid the conflict of interest trial counsel would have in trying to justify his or her own actions contrary to the defendant's position. *Id.* ¶ 36. New counsel also represents the defendant at the hearing on the *pro se* ineffective assistance of counsel claim. *Id.*

¶ 29 Whether the trial court conducted an adequate *Krankel* inquiry into the defendant's *pro se* allegations of ineffective assistance of counsel presents a legal question that we review *de novo*. *People v. Jackson*, 2020 IL 124112, ¶ 98. When the court has properly conducted a *Krankel* inquiry and has reached a determination on the merits of the defendant's *Krankel* motion, this court will reverse that determination only if the circuit court's action was manifestly erroneous. *Id.* "Manifest error is error that is clearly evident, plain, and indisputable." *Id.*

¶ 30 In this case, the Fourth District determined that the trial court erred by failing to appoint separate counsel after conducting a *Krankel* hearing. See *Jenkins*, 2020 IL App (4th) 170611-U. The Fourth District noted that

> "once the trial court saw there were clear factual disputes relevant to an issue as sensitive as a conflict waiver, along with issues relating to a possibly exculpatory video, the decision should have been made to appoint alternate counsel. For these reasons, we believe the trial court erred by failing to appoint substitute counsel to independently investigate and present

defendant's ineffective assistance of counsel claims after it conducted its *Krankel* hearing." *Id.* ¶ 39.

¶ 31 Upon remand, almost three years later, without any explanation for the extensive delay, the trial court appointed new counsel. Finally, at the December 8, 2022, *Krankel* hearing, defendant's trial counsel testified. Trial counsel testified that he filed a motion *in limine* with regard to DCFS testimony, and the trial court granted his motion. The nature of the motion was that the DCFS investigator could not testify about why she was at defendant's home. Defense counsel testified that he spoke with defendant about a conflict with regard to his prior representation of the victim in this case, B.P. Defense counsel testified that defendant waived the conflict. On cross-examination, the State established that there was a "conversation on the record between the court and [defendant] about the conflict." Following argument from the attorneys, the court took the matter under advisement. The next day, the court entered a written order denying defendant's claim.

¶ 32 However, the Fourth District's order plainly instructed new counsel to inquire about and submit video evidence that allegedly depicted two of the three girls that B.P. originally claimed attacked her openly talking about what they had done to B.P. The trial court may not ignore a claim made in a defendant's *pro se* posttrial motion. See, *e.g.*, *Ayres*, 2017 IL 120071, ¶ 23. The law requires the trial court to conduct some type of inquiry into the underlying factual basis, if any, of a defendant's *pro se* posttrial claim of ineffective assistance of counsel. *People v. Moore*, 207 Ill. 2d 68, 79 (2003). Nothing in the record shows that any such investigation occurred in this case as it related to the allegedly exculpatory evidence. Accordingly, we must remand the cause to the trial court for the limited purpose of conducting an inquiry into the video evidence. *Id.*

¶ 33 In light of this, we need not address the substance of defendant's appeal. See *Ayres*, 2017 IL 120071, ¶ 13 ("the goal of any *Krankel* proceeding is to facilitate the trial court's full consideration of a defendant's *pro se* claim and thereby potentially limit issues on appeal"). Therefore, we need not consider the merits of whether the trial court committed reversible error by allowing the State to present the charging instruments from defendant's prior convictions to the jury as propensity evidence. Although we decline to address this issue on the merits, we caution the parties and the trial court to lay an understandable record on appeal for appellate review and to comply with the directions of our colleagues in the Fourth District.

¶ 34 For these reasons, we remand with instructions that within 30 days of the issuance of this mandate that this matter be reassigned to a new judge, for the trial court to conduct a hearing to address the defendant's *pro se* ineffective assistance of counsel claims, as required by *People v. Krankel*, 102 Ill. 2d 181 (1984), and to determine, based on the trial court's conclusion following the hearing, whether additional proceedings are required. If the trial court determines that the claim of ineffectiveness is spurious or pertains only to trial strategy, the trial court may deny the motion and leave standing defendant's conviction and sentence. If the trial court denies the motion, defendant may still appeal his assertion of ineffective assistance of counsel along with his other assignments of error within 30 days of the denial of his motion.

¶ 35 Finally, defendant argues that the trial court erred by entering convictions for both aggravated domestic battery and domestic battery with a prior in violation of the one-act, one-crime rule. The State confesses that defendant's conviction for domestic battery should be vacated under one-act, one-crime principles. We agree and accept the State's confession.

¶ 36 Defendant acknowledges that the issue is forfeited where there was no contemporaneous objection nor was the issue raised in his posttrial motion. He seeks review under the second prong

of plain error. We agree that defendant forfeited this claim by failing to raise this issue with the circuit court. *People v. Enoch*, 122 Ill. 2d 176, 186 (1988). However, plain errors affecting substantial rights may be reviewed on appeal. See *People v. Hicks*, 181 Ill. 2d 541, 544-45 (1998). Plain error allows a reviewing court to consider unpreserved claims of error in specific circumstances when

> "(1) a clear or obvious error occurred and the evidence is so closely balanced that the error alone threatened to tip the scales of justice against the defendant, regardless of the seriousness of the error, or (2) a clear or obvious error occurred and that error is so serious that it affected the fairness of the defendant's trial and challenged the integrity of the judicial process, regardless of the closeness of the evidence." *People v. Piatkowski*, 225 Ill. 2d 551, 565 (2007) (citing *People v. Herron*, 215 Ill. 2d 167, 186-87 (2005)).

As our supreme court has determined, an alleged one-act, one-crime violation and the potential for an excessive conviction affects the integrity of the judicial process, which satisfies the second prong of the plain-error rule. *People v. Harvey*, 211 Ill. 2d 368, 389 (2004).

¶ 37 The one-act, one-crime rule prohibits convictions for multiple offenses based on the same single physical act. *People v. Miller*, 238 Ill. 2d 161, 165 (2010); *People v. King*, 66 Ill. 2d 551, 566 (1977). Pursuant to the one-act, one-crime rule, a trial court should impose a sentence on the more serious offense and vacate the less serious offense. *People v. Smith*, 233 Ill. 2d 1, 20 (2009); *People v. Artis*, 232 Ill. 2d 156, 170 (2009). Whether a conviction violates the one-act, one-crime rule is a question of law that we review *de novo*. *People v. Robinson*, 232 Ill. 2d 98, 105 (2008); *People v. Daniels*, 187 Ill. 2d 301, 307 (1999).

¶ 38 In making that determination, the Illinois Supreme Court laid out a two-step analysis. *People v. Rodriguez*, 169 Ill. 2d 183, 186 (1996). First, this court must determine whether the

defendant's conduct consisted of a single physical act or separate acts. *Id.* If it is established that the defendant committed multiple acts, then this court moves to the second step and determines whether any of the offenses are lesser-included offenses. *Id.* If there are no lesser-included offenses, then multiple convictions are proper. *Id.*

¶ 39 Turning to the merits, defendant notes that count I of the information alleged that defendant committed the offense of aggravated domestic battery causing great bodily harm to B.P. in that he "repeatedly struck" her, resulting in B.P. sustaining a broken nose and a laceration that required stitches. Count II was dismissed on the State's motion. Count III of the information alleged that defendant committed domestic battery with a prior domestic battery conviction in that he "struck" B.P. Defendant argues that the counts allege the same act of striking B.P. The State agrees that the prosecution did not distinguish B.P.'s injuries into multiple charges of differing conduct. Therefore, the less-serious offense of domestic battery must be vacated.

¶ 40 For these reasons, we vacate defendant's conviction for domestic battery for violating the one-act, one-crime rule and modify the judgment accordingly.

¶ 41 III. CONCLUSION

¶ 42 Accordingly, the judgment of the circuit court of Macon County is vacated in part, judgment modified, and cause remanded with directions.

¶ 43 Vacated in part; judgment modified; cause remanded with directions.