2025 IL App (2d) 240602-U
No. 2-24-0602
Order filed September 15, 2025

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. REBECCA WISE, Defendant-Appellant.	))))))))))	Appeal from the Circuit Court of Kane County. No. 22-CF-2191 Honorable Alice C. Tracy, Judge, Presiding.

JUSTICE MULLEN delivered the judgment of the court.
Presiding Justice Kennedy and Justice Jorgensen concurred in the judgment.

ORDER

¶ 1 *Held*: The record shows that the trial court sentenced defendant for both aggravated domestic battery and aggravated battery. Therefore, the court must have entered judgments of convictions of both offenses. Since those convictions violate the one-act, one-crime rule, we modify the judgment to reflect only a conviction of aggravated domestic battery, the more serious offense.

¶ 2 In this appeal, defendant, Rebecca Wise, argues that the trial court improperly entered multiple convictions based on a single physical act. The State concedes that only one conviction was permissible. However, the State contends that, in fact, the trial court entered only one conviction. We agree with defendant and modify the judgment accordingly.

¶ 3 I. BACKGROUND

¶ 4 Defendant was charged in a five-count indictment with one count of aggravated domestic battery (720 ILCS 5/12-3.2(a)(1), 12-3.3(a) (West 2020)) (count I), two counts of aggravated battery (*id.* §§ 12-3(a)(1), 12-3(a)(2), 12-3.05(d)(1)) (counts II and III), and two counts of domestic battery (*id.* § 12-3.2(a)(1), (a)(2)) (counts IV and V). The case was tried before a jury on counts I through III. Count I alleged that defendant committed aggravated domestic battery by "knowingly caus[ing] great bodily harm to Diane Wise, a family or household member of *** defendant, in that *** defendant struck and/or kicked Diane Wise on or about the body causing the eye of Diane Wise to be fractured." Count II alleged that defendant committed aggravated battery by "knowingly caus[ing] bodily harm to Diane Wise, by striking and/or kicking Diane Wise on or about the body, knowing Diane Wise was 60 years of age or older." Count III alleged that defendant committed aggravated battery by "knowingly ma[king] physical contact of an insulting or provoking nature with Diane Wise by striking Diane Wise on or about the body, knowing Diane Wise was 60 years of age or older." Aggravated domestic battery is a Class 2 felony. *Id.* § 12-3.3(b). Aggravated battery is a Class 3 felony. *Id.* § 12-3.05(h). The jury found defendant guilty of all three counts.

¶ 5 At defendant's sentencing hearing, after receiving corrections to the presentence investigation report, the trial court recited the potential sentences for both aggravated domestic battery and aggravated battery. The court explained, *inter alia*, that aggravated domestic battery was punishable by a prison term ranging from 3 to 7 years or a probation term of up to 48 months, which must include the condition that the defendant serve a term of not less than 60 days' incarceration. See *id.* § 12-3.3(b); 730 ILCS 5/5-4.5-35(d) (West 2020). The court further explained:

> "And the aggravated battery, victim over 60, that is punishable—all of those Class 3's are punishable by up to 30 months[']probation or conditional discharge, one to three years in prison, ***."

¶ 6 During the sentencing hearing, the State and the defense argued about available sentences for all three counts. The State asserted that the statutory aggravating factor set forth in section 5-5-3.2(a)(8) of the Unified Code of Corrections (730 ILCS 5/5-5-3.2(a)(8) (West 2020)) (which the State referred to as "Factor No. 8") applied. Under section 5-5-3.2(a)(8), the trial court may consider, as an aggravating factor, that "the defendant committed the offense against a person 60 years of age or older." *Id.* Defense counsel responded:

> "Factor No. 8, when [the prosecutor] talked about how *** the [c]ourt can consider the fact that the victim is age 60-plus, Judge, the [c]ourt is not permitted to consider that as a factor of aggravation *with respect to Counts 2 and 3 specifically*. Because it is an element of the offense for which she was convicted, the [c]ourt cannot also consider it as a factor in aggravation." (Emphasis added.)

When discussing the factors in aggravation and mitigation, the trial court specifically stated that it agreed with defense counsel's position on the applicability of the aggravating factor that the victim was 60 years of age or older. The court then sentenced defendant to 36 months' probation and 60 days in jail, with credit for 60 days served presentence. The court did not specify to which offense or offenses the sentence applied.

¶ 7 The trial court entered a mostly preprinted form written "JUDGMENT ORDER (JGMTO)." The order recited that a jury found defendant guilty of aggravated domestic battery *and* aggravated battery. Underneath the handwritten entry of the crimes, a box labeled "Lesser/Incl" was not checked. Beneath that a box was checked next to: "Judgment entered on

conviction and sentence." In preprinted text, the order then stated: "UPON THE DEFENDANT'S PLEA/VERDICT OF GUILTY THE FOLLOWING SENTENCE IS HEREBY IMPOSED." A box marked "Probation" was checked and "36 [months]" was written in the line opposite the box. Further, the order specified a sentence of 60 days in jail, with credit for time served. The sentence did not differentiate among the offenses. This appeal followed.

¶ 8 II. ANALYSIS

¶ 9 Defendant argues that she was improperly convicted of three crimes—one count of aggravated domestic battery and two counts of aggravated battery—in violation of the one-act, one-crime rule, which provides that "a defendant may not be convicted of multiple offenses that are based upon precisely the same single physical act" (*People v. Johnson*, 237 Ill. 2d 81, 97 (2010)). Defendant concedes that she failed to raise the issue in the trial court and therefore forfeited appellate review. See *People v. Enoch*, 122 Ill. 2d 176, 186 (1988). However, she correctly notes that, notwithstanding forfeiture, a violation of the one-act, one-crime rule is reviewable under the plain error doctrine. See *People v. Coats*, 2018 IL 121926, ¶ 10 ("[O]ne-act, one-crime violations fall within the second prong of the plain error doctrine as an obvious error so serious that it challenges the integrity of the judicial process.").

¶ 10 Here, the charges were based on the same physical act, with other factors (namely, the age of the victim and the relationship between defendant and the victim) differentiating the charges. Therefore, multiple convictions would run afoul of the one-act, one-crime rule. The State does not dispute this. Rather, the State contends that the trial court entered only one conviction and that any appearance to the contrary is the result of clerical errors that must first be addressed in the trial court under Illinois Supreme Court Rule 472 (eff. Feb. 1, 2024).

¶ 11 Specifically, the State argues that, because the sentence imposed—36 months of probation—was authorized for aggravated domestic battery but not for aggravated battery, the trial court must have entered a judgment of conviction on the former offense alone—therefore, there is no one-act, one-crime issue. Aggravated battery is a Class 3 felony (720 ILCS 5/12-3.05(h) (West 2020)) for which a term of probation may not exceed 30 months (730 ILCS 5/5-4.5-40(d) (West 2020)), absent circumstances that are not present here. Aggravated domestic battery, on the other hand, is a Class 2 felony punishable by a maximum probation term of 48 months. See 720 ILCS 5/12-3.3(b) (West 2020); 730 ILCS 5/5-4.5-35(d) (West 2020).

¶ 12 While a conviction may stand without a sentence (see *People v. Hairston*, 86 Ill. App. 3d 295, 301 (1980)), the record is clear that the trial court imposed sentence for both aggravated domestic battery and aggravated battery—we can come to no other conclusion than that the court entered convictions of both offenses. In this respect, we stress that a 36-month term of probation for aggravated battery, though unauthorized, would be merely voidable, not void. See *People v. Castleberry*, 2015 IL 116916, ¶¶ 11, 19.

¶ 13 First, at the sentencing hearing, the trial court advised defendant of the possible sentences for both aggravated domestic battery and aggravated battery. When pronouncing sentence, the court noted that it was not considering the victim's age as an aggravating factor with respect to aggravated battery. The court thus clearly indicated that it was sentencing defendant for aggravated battery in addition to aggravated domestic battery.

¶ 14 Second, the written judgment order indicates that defendant was sentenced for both offenses. It states that the jury found defendant guilty of both aggravated domestic battery and aggravated battery. Further, it states, "Judgment entered on conviction and sentence," without qualifying which verdict(s) the court was entering a judgment of conviction upon. The next section

begins: "UPON THE DEFENDANT'S PLEA/VERDICT OF GUILTY THE FOLLOWING SENTENCE IS HEREBY IMPOSED." A box marked "Probation" is checked and "36 [months]" is written in the line opposite the box. Below that, the order specifies a jail sentence of 60 days, with credit for time served. Because the sentencing terms do not differentiate between the guilty verdicts on the two offenses, we conclude that the order reflects that the sentence was for both aggravated domestic battery and aggravated battery. See *People v. Francis*, 52 Ill. App. 3d 978, 983 (1977) (a single sentence can be entered for multiple convictions unless "it is clear that the sentence was not intended to run concurrent as to all convictions").

¶ 15 Although the trial court's oral pronouncement is the judgment of the court, the written order is evidence of the judgment. *People v. Maxey*, 2015 IL App (1st) 140036, ¶ 46. For example, in *People v. Davis*, 156 Ill. 2d 149 (1993), cited in defendant's reply brief, our supreme court examined the trial court's written judgment order to determine whether a single sentence of probation applied to the defendant's multiple convictions. The court observed: "The sentence imposed, which is also entered on the "Judgment and Sentence" form, is general; the entry does not designate that the sentence is for a particular offense or count." *Id.* at 154. *Davis* refused to conclude that the "general" sentence related only to the greater offense and found instead that the sentence pertained to both offenses. *Id.*

¶ 16 We hold that, like the sentence in *Davis*, the sentence imposed here is general. Considering the trial court's oral pronouncement and written judgment together, we conclude that the trial court deliberately entered a judgment of conviction and sentence for aggravated battery. Thus, we cannot attribute that conviction and sentence to a clerical error, and we reject the State's request that we remand this case for proceedings under Rule 472.[1]

[1]We remind the State of the United States Supreme Court's words in *Berger v. United States*, 295

¶ 17 When a trial court enters multiple convictions in violation of the one-act, one-crime doctrine, "sentence should be imposed on the more serious offense and the less serious offense should be vacated." *People v. Artis*, 232 Ill. 2d 156, 170 (2009). Because it is undisputed that the evidence supports only a single conviction, only defendant's conviction of aggravated domestic battery may stand. We exercise our power under Illinois Supreme Court Rule 615(b)(1) (eff. Jan. 1, 1967) to modify the judgment accordingly.

¶ 18 III. CONCLUSION

¶ 19 For the reasons stated, we affirm the judgment of the circuit court of Kane County as modified to reflect that defendant was convicted only of aggravated domestic battery.

¶ 20 Affirmed as modified.

U.S. 78, 88 (1935) discussing the role of the federal prosecutor but equally apt here: "The United States Attorney is the representative not of an ordinary party to a controversy, but of a sovereignty whose obligation to govern impartially is as compelling as its obligation to govern at all; and whose interest, therefore, in a criminal prosecution is not that it shall win a case, but that justice shall be done."