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CH. 53 VERDICTS

§53-1 General Verdicts

United States Supreme Court

Griffin v. U.S., 502 U.S. 46, 112 S.Ct. 466 116 L.Ed.2d 371 (1991) Although a general verdict cannot stand where it might have been based on an unconstitutional theory of guilt, a mere lack of evidence on one of several counts does not require that a general verdict be vacated. Instead, there is a presumption that the jury convicted on a count that was supported by the evidence.

Sandstrom v. Montana, 442 U.S. 510, 99 S.Ct. 2450, 61 L.Ed.2d 39 (1979) When a case is submitted to the jury on alternative theories, the unconstitutionality of any of the theories requires that the conviction be set aside.

Illinois Supreme Court

People v. Holmes, 241 Ill.2d 509, 948 N.E.2d 617 (2011) When a defendant is charged with an offense in multiple counts based on different theories, a general verdict of guilty does not require the jury unanimous agreement that any one of the alleged means of committing the offense was proved beyond a reasonable doubt. The jury's general verdict could be based on any combination of findings with respect to the theories charged.

Defendant was charged with aggravated UUV based on the alternative allegations that the firearm he possessed was "uncased, loaded and immediately accessible" or that he possessed the firearm and had not been issued a currently valid FOID card. The jury returned a general verdict of guilty. This general verdict could not support a conviction of the lesser-included offense of misdemeanor UUV for carrying a firearm in his vehicle that was either immediately accessible or not unloaded and enclosed in a case.

The testimony at trial conflicted as to whether the gun was loaded or immediately accessible to defendant. The jury may have unanimously agreed that defendant lacked a FOID card. Or some of the jurors may have agreed on one count and not the other. Therefore, it could not be concluded from the general verdict that the jury unanimously found that the gun was loaded or immediately accessible so as to support a conviction for misdemeanor UUV.

People v. Cardona, 158 Ill.2d 403, 634 N.E.2d 720 (1994) Where a general verdict is returned on an indictment containing several counts arising from a single transaction, defendant is presumed to have been convicted on all counts for which sufficient evidence was presented. Since only one conviction of murder can be entered where only one death occurred, however, judgment and sentence are to be imposed only for the most serious offense.

Where the jury returned a general verdict on intentional, knowing and felony murder, and the State presented sufficient evidence to convict of intentional murder, that offense involves the most culpable mental state and is therefore the most serious crime. Thus, judgment should have been entered on the intentional murder count. See also, **People v. Morgan**, 197 Ill.2d 404, 758 N.E.2d 813 (2001) (same).

The jury's questions, which asked whether defendant should be convicted of murder if he was guilty of residential burglary and for an explanation of the law of accountability, did not necessarily suggest a belief that defendant was not guilty of intentional murder.

People v. Pitsonbarger, 142 Ill.2d 353, 568 N.E.2d 783 (1990) Where the evidence is sufficient to convict defendant of the crime charged in the indictment, the reviewing court will not speculate that the guilty verdict was for a crime not charged.

People v. Lymore, 25 Ill.2d 305, 185 N.E.2d 158 (1962) A general finding of guilty is presumed to be based on any good count in the indictment to which the proof is applicable. Where a general verdict is returned on an indictment containing several counts arising from a single transaction, defendant is guilty as charged in each count. Furthermore, the verdict will be sustained if the punishment imposed is one that is authorized to be inflicted for the offense charged in any one or more of the counts.

Illinois Appellate Court

People v. Filipiak, 2023 IL App (3d) 220024 The trial court committed plain error when it submitted verdict forms that did not distinguish between counts. The jury acquitted defendant of one of the counts, making it impossible to determine whether the jury acted unanimously when it found him guilty of the other.

Defendant was charged with three counts of predatory criminal sexual assault, two of which were against one victim. The State presented evidence that defendant digitally penetrated this victim twice: once while taking a shower, and once while on the couch. Regarding these two acts against this victim, two sets of identical verdicts forms were submitted to the jury. The verdict forms were not differentiated, except with parentheses indicating (“1”) and (“2”). The State never suggested to the jury at closing which of the verdict forms pertained to which of the alleged acts of penetration. Defendant was acquitted on one form, and found guilty on the other. He was found guilty of the third count against the other victim, and was accordingly given a mandatory natural life sentence.

The appellate court could not reasonably ascertain the jury’s intention from the verdicts and record. It was possible that only some members of the jury believed defendant committed the “couch” count, while others believed defendant committed the “shower” act. Thus, there was no evidence that either verdict was unanimous. The State argued that the jury presumably understood that each verdict was for a specific offense and knew they needed to be unanimous in rendering a verdict as to a specific offense, but the jury was never instructed on the need for unanimity.

The court reversed the guilty verdict at issue, and remanded for resentencing on the remaining third count.

People v. Hill, 2014 IL App (2d) 120506 The defendant is presumed to have been convicted of the least serious offense where the jury returns a general verdict after the trial court denies a defense request for specific verdicts on multiple counts of first degree murder which carry sentencing and “one-act, one-crime” ramifications. (**People v. Smith**, 233 Ill. 2d 1, 906 N.E.2d 529 (2009)). Thus, where the jury returned a general verdict after the trial court refused a request for specific verdict forms, and a consecutive sentence would be required for the predicate of felony murder if the conviction was for intentional or knowing murder, the trial court must vacate the conviction for the predicate of felony murder.

The court noted that **Smith** has been limited to situations in which the trial court

refuses a defense request for separate verdict forms. Thus, the failure to request separate verdicts cannot form the basis for a finding of ineffective assistance.

Defendant's convictions for first degree murder and aggravated arson were affirmed.

People v. Reed, 405 Ill.App.3d 279, 938 N.E.2d 199 (1st Dist. 2010) Where a general verdict is delivered for a defendant charged with murder in multiple counts alleging intentional, knowing, and felony murder, the conviction is presumed to be for the most serious offense - intentional murder. Under **People v. Smith**, 233 Ill.2d 1, 906 N.E.2d 529 (2009), however, a general verdict form cannot be presumed to be a finding of intentional murder when the trial court refused a request for separate verdict forms, there was a basis in the evidence for the request, and there are sentencing ramifications of convictions on separate counts. Under such circumstances, the appropriate remedy is to interpret the general verdict as a conviction for felony murder.

Here, defendant was charged with two counts of felony murder based on the predicate felonies of armed robbery and residential burglary. Because the trial court refused a request for specific verdict forms, the general verdict must be interpreted as a verdict on felony murder. Furthermore, because a defendant may not be convicted of both felony murder and the underlying predicate, defendant's convictions for armed robbery and residential burglary were reversed.

People v. Slywka, 365 Ill.App.3d 34, 847 N.E.2d 780 (1st Dist. 2006) The "one good count" rule sustained defendant's conviction for first degree murder, although collateral estoppel precluded a conviction on one theory with which defendant was charged. Although the "one good count" rule does not apply where the general verdict was tainted by a "legally deficient" count, application of the collateral estoppel doctrine to an intentional murder charge involves not a legally defective count or instruction, but merely an alternative charging method that was factually barred in this case. Because the jury's general verdict of guilt was not "tainted" by the charge on which collateral estoppel applied, the "one good count" rule could be applied.

People v. Dibble, 317 Ill.App.3d 252, 739 N.E.2d 578 (5th Dist. 2000) A general verdict is improper where the conviction may have been based on an unconstitutional theory of law. Where there is merely a failure of proof on one of the theories on which a general verdict rests, however, the verdict is presumed to have been based on a theory for which the evidence was sufficient.

People v. Scott, 243 Ill.App.3d 167, 612 N.E.2d 7 (1st Dist. 1993) Defendant was charged with three counts of delivery of PCP, each involving a different undercover officer. The trial court modified the State's tendered instructions so that the jury received only one "guilty" and one "not guilty" verdict (instead of "guilty" and "not guilty" verdicts on each count).

The failure to submit separate verdict forms was plain error that denied defendant his Illinois constitutional right to a unanimous verdict. Under the circumstances of this case, it was plausible that not all twelve jurors believed defendant was guilty of the same count of delivery.

People v. Harper, 251 Ill.App.3d 801, 623 N.E.2d 775 (4th Dist. 1993) Defendant, who was charged with aggravated criminal sexual abuse for having sexual intercourse with a 14-year-old girl, told police that both oral sex and intercourse had occurred. However, at trial he denied having any sexual contact with the complainant and claimed that police had fabricated the statement. The jury instructions required that the State establish "sexual

penetration," which was defined as "any contact, however slight, between the sex organ of one person and the sex organ of another person, including but not limited to cunnilingus, fellatio, or anal penetration." Defendant claimed that the instructions were improper because the jury could convict him even if it did not unanimously agree concerning the type of penetration that had occurred.

The jury is required to reach a unanimous conclusion only as to a defendant's ultimate guilt or innocence. Thus, where a general verdict is returned on an offense which can be committed in various ways, unanimity as to the means of commission is unnecessary. See also, **People v. Rand**, 291 Ill.App.3d 431, 683 N.E.2d 1243 (1st Dist. 1997).

People v. Lloyd, 93 Ill.App.3d 1018, 418 N.E.2d 131 (1st Dist. 1981) A defendant will be deemed guilty of each count when a general verdict of guilty is returned.

§53-2

Inconsistent Verdicts

United States Supreme Court

U.S. v. Powell, 469 U.S. 57, 105 S.Ct. 471, 83 L.Ed.2d 461 (1984) Legally inconsistent verdicts may stand as they may be the result of nothing more than juror lenity. Such verdicts do not show that the jury was not convinced of defendant's guilt, but rather that the jurors exercised a power to which they had no right.

Harris v. Rivera, 454 U.S. 339, 102 S.Ct. 460, 70 L.Ed.2d 530 (1981) Apparent inconsistent verdicts regarding co-defendants at a bench trial did not give rise to an inference of irregularity that required reversal. The "well-established presumption that the judge adhered to basic rules of procedure" was not overcome.

Standefer v. U.S., 447 U.S. 10, 100 S.Ct. 1999, 64 L.Ed.2d 689 (1980) A defendant may be convicted of a federal offense though the principal has been acquitted. Neither double jeopardy nor due process prohibit the trial of an accomplice because another jury has determined that the principal was not guilty.

Illinois Supreme Court

People v. Price & Rose, 221 Ill.2d 182, 850 N.E.2d 199 (2006) Verdicts convicting defendants of theft by: (1) exerting unauthorized control over property with intent to permanently deprive, and (2) obtaining control over property under circumstances which would lead one to believe that the property was stolen, were not legally inconsistent.

Legally inconsistent verdicts occur where, although the offenses arise from the same set of facts, the verdicts find that an essential element of each crime has been found to exist and not to exist. Because the theft counts did not contain inconsistent elements, and both offenses could have applied to the defendants' conduct, the verdicts were not legally inconsistent.

People v. Jones, 207 Ill.2d 122, 797 N.E.2d 640 (2003) Neither legal nor logical consistency in verdicts is required. "Thus, defendants in Illinois can no longer challenge convictions on the sole basis that they are legally inconsistent with acquittals on other charges."

People v. McCoy, 207 Ill.2d 352, 799 N.E.2d 269 (2003) The rule that a criminal defendant

may not challenge a conviction because it is legally inconsistent with an acquittal on another charge should be applied to bench trials. The trial court's actions in convicting of two counts of aggravated criminal sexual assault while acquitting of several other charges might "reflect sound judicial management given the repetitive multiple counts of the 15-count information." **People v. Pelt**, 207 Ill.2d 434, 800 N.E.2d 1193 (2003) Defendant was not entitled to have his conviction for aggravated battery of a child vacated because it was legally inconsistent with the finding of not guilty for knowing murder.

People v. Porter, 168 Ill.2d 201, 659 N.E.2d 915 (1995) A trial court has a duty to reject inconsistent guilty verdicts and to instruct the jury to resolve the inconsistency. Here, the jury convicted defendant of two counts of first degree murder and two counts of second degree murder, all involving a single victim. The judge erred in entering judgment on one of the four verdicts and should have required the jury to deliberate further to resolve the inconsistency.

People v. Spears, 112 Ill.2d 396, 493 N.E.2d 1030 (1986) Defendant was found guilty of attempt murder, armed violence based on aggravated battery and reckless conduct against one person, and armed violence based on aggravated battery and reckless conduct against a second person. The verdicts were legally and logically inconsistent since the jury "in effect" found that defendant acted recklessly (reckless conduct), intentionally (attempted murder) and knowingly (armed violence based on aggravated battery). Reversal was required. See also, **People v. Fornear**, 176 Ill.2d 523, 680 N.E.2d 1383 (1997) (Spears remains the law in Illinois - recklessness and knowledge are "mutually inconsistent" mental states; furthermore, the State may not assert on appeal a theory to explain inconsistent verdicts where at trial it asserted a conflicting theory of the case); **People v. Mitchell**, 238 Ill.App.3d 1055, 605 N.E.2d 1055 (2d Dist. 1992) (convictions for attempt murder and reckless conduct were inconsistent where the State's evidence, the jury instructions and the charges all failed to distinguish between defendant's intent when he fired certain shots and when he fired others.)

People v. Dawson, 60 Ill.2d 278, 326 N.E.2d 755 (1975) Verdicts finding defendant guilty of armed robbery and not guilty of felony murder, arising out of the same incident, were not inconsistent. A jury may acquit of one or more counts in a multi-count indictment because it believes that the counts on which it convicted will provide sufficient punishment.

People v. Hairston, 46 Ill.2d 348, 263 N.E.2d 840 (1970) There is no inconsistency in verdicts of acquittal and conviction concerning crimes arising from the same facts but composed of different elements. Verdicts need not be logically consistent.

Illinois Appellate Court

People v. Stroud, 2023 IL App (2d) 220306 As a matter of plain error, guilty verdicts for both child endangerment and involuntary manslaughter were legally inconsistent. The mental state for child endangerment is knowledge, and the mental state for involuntary manslaughter is recklessness. Here, both charges were predicated on the same conduct, specifically defendant's failure to administer necessary medication to her son, a heart transplant recipient, and to bring the child to necessary medical appointments, thereby proximately causing his death.

By convicting defendant of both offenses, the jury necessarily found that defendant acted with both recklessness and knowledge, mental states which are mutually inconsistent.

The court rejected the State's argument that defendant's mental state changed over time where, at trial, its theory was that the entirety of defendant's conduct formed the basis for both counts. And, while that conduct occurred over the course of more than a year, the jury could not have apportioned various instances among the two mental states where the allegations in the indictment failed to apportion the conduct accordingly. The inconsistent verdicts could not stand. Defendant's convictions were reversed, and the matter was remanded for a new trial.

People v. Davidson, 2023 IL App (2d) 220140 Guilty verdicts for both voluntary manslaughter and child endangerment were legally inconsistent, requiring remand for a new trial.

Defendant was found guilty of two counts of child endangerment ([720 ILCS 5/12C-5](#)), and one count of involuntary manslaughter. The charges stemmed from the death of defendant's six year-old stepdaughter, K.R., who overdosed on olanzapine, a medication prescribed to her mother, defendant's wife. The manslaughter charge (Count 1), and one of the child endangerment charges (Count 2), were based on providing K.R. with olanzapine. The remaining child endangerment charge (Count 3) was based on allowing her access to olanzapine. Defendant argued that manslaughter requires a showing of recklessness, while child endangerment requires a showing of knowledge, making them legally inconsistent.

Legally inconsistent verdicts occur when an essential element of each crime would have to both exist and not exist, even though the offenses arise out of the same set of facts. Here, Counts 1 and 2 alleged the same conduct, but with different mental states – the mental state of knowledge does not include the mental state of recklessness. Thus, defendant could only have had one of these mental states at the time he provided the olanzapine, and could not have committed both crimes.

When a reviewing court finds inconsistent verdicts, it must remand for a new trial on all charges “related thereto.” Thus, while Count 3 may not have been legally inconsistent, reversal was nevertheless required.

People v. Bush, 2022 IL App (3d) 190283 Defendant asserted that his reckless discharge and second degree murder convictions were legally inconsistent with his felony murder conviction. Verdicts are legally inconsistent when an essential element of each crime must, by the very nature of the verdicts, have been found to exist and to not exist, even though the offenses arise out the same set of facts. Courts have found verdicts to be legally inconsistent in situations where: (1) the offenses involved mutually inconsistent mental states and the jury found that both mental states existed; or (2) the jury determined that a single murder was both mitigated for the purpose of a second degree murder charge and unmitigated for the purpose of a first degree murder charge. If a trial court finds verdicts to be inconsistent, it must give additional instructions and send the jury back for further deliberations to resolve the inconsistency. If the trial court fails to do so, the inconsistent verdicts must be reversed and the case remanded for a new trial on those charges.

Here, defendant first alleged that the reckless discharge conviction confirmed that he had a reckless mental state at the time of the shooting, as opposed to the knowing mental state attributed to aggravated battery with a firearm and felony murder. The Appellate Court agreed that reckless discharge is inconsistent with aggravated battery with a firearm. The record showed the parties intended the reckless discharge instruction to be a lesser-included offense of aggravated battery, but the instructions were incorrect in that they failed to inform the jury of this fact. Thus, the convictions were vacated and the court ordered a new trial.

The reckless discharge conviction was not legally inconsistent with felony murder, however, as the offenses involved two different victims.

Nor was the second degree murder conviction inconsistent with the felony murder conviction. As the court held in [People v. Lefler, 2016 IL App \(3d\) 140293](#), guilty verdicts of both second degree and felony murder are not legally inconsistent. The factors that apply to mitigate first degree murder down to second degree murder are not applicable to a felony murder charge.

[People v. Allen, 2022 IL App \(1st\) 190158](#) The Appellate Court rejected the defendant's allegation of inconsistent verdicts. Defendant was found guilty of murder but not guilty of the firearm enhancement for personally discharging a firearm causing death. Based on the State's theory of the case and the facts elicited at trial, defendant could only be guilty of murder if he was the one who shot and killed the victims.

Nevertheless, this discrepancy does not invalidate the verdict. The Illinois Supreme Court has held that defendants cannot challenge convictions solely because they are legally inconsistent with acquittals on other charges. [People v. Jones, 207 Ill. 2d 122, 133-34 \(2003\)](#), citing [United States v. Powell, 469 U.S. 57, 62-67 \(1984\)](#). These cases cited several reasons why inconsistent verdicts do not necessarily mean that the jury believed defendant was innocent, including lenity. Furthermore, the sentencing enhancement special interrogatory relates only to the issue of sentence enhancement and not to the issue of defendant's underlying guilt or innocence of the criminal charges against him.

[People v. Cruz, 2021 IL App \(1st\) 190132](#) A guilty verdict as to one count of aggravated battery based on causing great bodily harm (stabbing) was not inconsistent with an acquittal on a second count of aggravated battery based on causing bodily harm with a "deadly weapon." The jury may have believed the State failed to prove the knife in this case – a four inch pocketknife – was a deadly weapon. In any event, inconsistent verdicts is not generally a basis for reversal on appeal.

[People v. Boyd, 2021 IL App \(1st\) 182584](#) Under Illinois law, legally inconsistent verdicts rendered at a jury trial require a new trial. A judge cannot simply enter judgment on one of the inconsistent verdicts to "cure" the inconsistency because such action would usurp the jury's independent function. Here, however, defendant was found guilty at a bench trial, and the trial court essentially corrected its own judgment by imposing sentence only on the charge of armed robbery with a firearm and merging the charge of armed robbery with a dangerous weapon. By operation of law, the merging of a judicial finding of guilty operates to vacate that finding.

[People v. Washington, 2019 IL App \(1st\) 161742](#) Defendant was charged with attempt murder and aggravated battery with a firearm, both based upon shooting the complainant a single time. The trial court allowed defendant's request for instructions on the lesser-included offense of reckless conduct. The court erred, however in instructing the jury on reckless conduct as a lesser-included offense of both attempt murder and aggravated battery, leading the jury to return verdicts of guilty on legally inconsistent offenses of reckless conduct (as a lesser-included offense of attempt murder) and aggravated battery. Instead, the court should have used IPI 2.01Q and 26.01Q and instructed the jury that it could find defendant guilty of only a single offense because all of the charges were based on a single act and each included an inconsistent mental state: attempt murder (intent to kill), aggravated

battery (knowledge), and reckless conduct (recklessness). The Appellate Court reversed and remanded for a new trial.

People v. Ealy, 2019 IL App (1st) 161575 The jury's convicting defendant of first degree murder but declining to find the firearm enhancement was not an inconsistency requiring reversal. While the findings are irreconcilable given that the victim's death was the result of a gunshot wound, the inconsistency could be the product of juror lenity or compromise, and cannot be used to undermine the conviction. See **People v. Jones, 207 Ill. 2d 122 (2003)** (convictions cannot be challenged on the sole basis that they are legally inconsistent with acquittals on other charges). Here, while there was conflicting evidence as to whether defendant or his co-defendant was the actual shooter, there was sufficient proof of defendant's guilt either as the principal or as an accomplice.

People v. Lefler, 2016 IL App (3d) 140293 Jury verdicts are legally inconsistent when the offenses arise out of the same set of facts and a jury finds that an essential element of the offense both exists and does not exist.

The victim caught defendant breaking into his car and during an ensuing struggle, defendant stabbed the victim, killing him. At trial defendant argued that he was acting in self-defense when he stabbed the victim. The jury found defendant guilty of both felony murder and second degree murder.

The Appellate Court held that the verdicts for felony murder and second degree murder were not legally inconsistent. A defendant commits first degree murder if he kills another and he: (1) intends to kill or do great bodily harm; (2) knows that his acts create a strong probability of death or great bodily harm; or (3) is attempting or committing a forcible felony. **720 ILCS 5/9-1.**

Second degree murder is a mitigated form of first degree murder, but only as to the first two forms of first degree murder. The jury first determines that defendant killed another with intent or knowledge and then determines whether mitigating factors exist that would reduce the offense to second degree murder. But second degree murder does not apply to the third form of first degree murder, felony murder. **720 ILCS 5/9-2.**

The jury clearly found that mitigating factors existed and properly returned a verdict reducing first degree murder based on intent or knowledge to second degree murder. But since second degree murder does not apply to felony murder, the jury's finding of mitigation was not legally inconsistent with a guilty verdict as to felony murder.

Defendant's conviction for felony murder was affirmed.

People v. Peoples, 2015 IL App (1st) 121717 The State charged defendant with first degree murder and a firearm enhancement alleging that he personally discharged a firearm that proximately caused death. Six witnesses testified at trial that the fatal shots were fired from a white van. Three of those witnesses identified defendant as being one of the men in the van and of those three, two testified that defendant fired a gun. The State charged defendant as the principal and argued that he personally fired the fatal shots. The State never argued or pursued a theory at trial that defendant was accountable for the shooting and did not request accountability instructions.

During deliberations, the jury sent a note asking whether someone can be guilty of murder and "not pull the trigger." The note further stated that "we are struggling with the concept of a guilty verdict but not having enough evidence that shows or proves [defendant] was the shooter." Over defendant's objection, the court answered the jury's question: "Dear Jury, the answer is Yes." Five minutes later the jury found defendant guilty of first degree

murder, but acquitted him of the firearm enhancement.

The Appellate Court held that the trial court's response to the jury's question was incorrect. Under the facts of this case, where the State never pursued a theory of accountability at trial, it was improper to instruct the jury that it could convict on a theory of accountability. The Court also found that the error was not harmless beyond a reasonable doubt. There was a serious risk that defendant was convicted on a theory never presented to the jury and which defendant never had a chance to contest.

Although the guilty verdict on first degree murder conflicted with the acquittal of the firearm enhancement, legally inconsistent verdicts do not mandate outright reversal of a conviction. And even though the facts of this case strongly suggested that the jury did not believe defendant was the "principal shooter," such a conclusion would still be speculation, and a reviewing court "may not guess as to why a jury did what it did, no matter how obvious it may seem."

The Court remanded the case for a new trial.

People v. Reed, 396 Ill. App. 3d 636, 919 N.E.2d 1106 (4th Dist. 2009) The Appellate Court reiterated that no statutory authority exists for using special interrogatories in criminal cases. Thus, the jury's answer to a special interrogatory concerning a sentence enhancement cannot be deemed inconsistent with a jury verdict for purposes of overturning that verdict. (See **JURY**, §32-8(a)).

The jury's negative answer to a special interrogatory whether defendant personally discharged a firearm which proximately caused death – asked in order to obtain a sentence enhancement under 730 ILCS 5/5-8-1(a)(1)(d) – cannot be used to challenge the jury's verdict convicting the defendant of first degree murder.

People v. Becker, 315 Ill.App.3d 980, 734 N.E.2d 987 (1st Dist. 2000) Where allegedly culpable conduct is essentially one act, the trier of fact may not find that defendant simultaneously acted knowingly and recklessly. Here, involuntary manslaughter and armed violence counts alleged the same conduct - that defendant engaged in an unjustified physical altercation with the decedent, during which the decedent was fatally wounded. However, the involuntary manslaughter count involved a mental state of recklessness while armed violence required knowledge. The record did not suggest that defendant committed separate knowing and reckless acts or that his mental state changed during the incident. The guilty verdicts were inconsistent.

Where the jury returns legally inconsistent guilty verdicts, the trial court should give additional instructions and require further deliberations. On retrial the court should instruct the jury before it begins deliberating that it cannot simultaneously return guilty verdicts for both reckless and knowing offenses.

People v. Rhoden, 299 Ill.App.3d 951, 702 N.E.2d 209 (1st Dist. 1998) Legally inconsistent findings returned in a bench trial may stand if there is a rational basis for the judgment and an examination of the record as a whole indicates that there was no confusion on the part of the judge. Here, a directed verdict on attempt robbery was consistent with convictions for attempt armed robbery and felony murder based on attempt armed robbery; the trial court recognized that the offender was in possession of a weapon at all times, and therefore was either guilty of the greater offense or not guilty at all.

People v. Chambers, 219 Ill.App.3d 470, 579 N.E.2d 875 (1st Dist. 1991) Verdicts of guilty on attempt murder and reckless conduct were legally inconsistent. Attempt murder requires

specific intent to kill, while reckless conduct requires the lesser mental state of recklessness.

Furthermore, the verdicts could not be reconciled on the basis of defendant's commission of separate acts (i.e., pointing and attempting to fire a gun followed by the act of struggling with the complainant when the gun failed to fire). The evidence did not support a conclusion that defendant's state of mind varied during the acts.

People v. Randle, 213 Ill.App.3d 1082, 572 N.E.2d 1207 (3d Dist. 1991) Conviction for armed violence predicated on aggravated battery is inconsistent with reckless conduct conviction; defendant may not simultaneously act recklessly and intentionally.

People v. Rentfrow, 221 Ill.App.3d 112, 581 N.E.2d 746 (5th Dist. 1991) When legally inconsistent guilty verdicts are returned, defendant is entitled to a new trial on all counts.

People v. Batson, 144 Ill.App.3d 1027, 495 N.E.2d 154 (5th Dist. 1986) Guilty verdicts on murder, voluntary manslaughter and reckless homicide were legally inconsistent. See also, **People v. O'Neil**, 194 Ill.App.3d 79, 550 N.E.2d 1090 (1st Dist. 1990) (murder and involuntary manslaughter).

People v. Coleman, 131 Ill.App.3d 76, 475 N.E.2d 565 (1st Dist. 1985) Verdicts finding defendant guilty of attempt murder and reckless conduct were legally inconsistent. Attempt requires that the defendant "intended to commit a specific offense," while recklessness "involves no specific intent but rather a conscious disregard of the consequences of one's actions."

People v. Rogers, 104 Ill.App.3d 326, 432 N.E.2d 975 (1st Dist. 1982) There is no inconsistency when the trial judge, at a bench trial, enters only one finding - guilty on one count and no finding on two other counts. Where there is only one finding, there is nothing with which it can be inconsistent. The fact that there is an implied acquittal when no finding is entered does not show any inconsistency.

People v. Carter, 19 Ill.App.3d 21, 311 N.E.2d 213 (1st Dist. 1974) Where the evidence against defendant, who was found guilty by a jury, was no stronger than that against a co-defendant who was acquitted by a judge, the inconsistent findings raise a reasonable doubt as to defendant's guilt. Where co-defendants are tried on the same facts, the verdicts should be consistent. Reversed.

§53-3

Multiple Convictions Based on the Same Conduct (One-Act, One-Crime Rule)

§53-3(a)

General Rule

United States Supreme Court

Rutledge v. U.S., 517 U.S. 292, 116 S.Ct. 1241, 134 L.Ed.2d 419 (1996) Defendant was convicted of two federal offenses - participating in a conspiracy to distribute a controlled substance and conducting a continuing criminal enterprise. The agreement that formed the basis for the conspiracy conviction was also an essential element of the CCE offense - that

defendant acted "in concert with five or more other persons" in violating federal criminal laws. The trial court imposed concurrent life sentences for both offenses.

It was error to impose sentences on both counts. Courts may not impose greater punishment than was intended by the legislature; thus, even concurrent sentences on counts that contain common elements are permissible only if the legislature intended to authorize multiple sentences. Where the "in concert" element of a continuing criminal enterprise involves the same agreement already punished as conspiracy, the latter is a lesser included offense for which Congress did not intend multiple punishments.

Illinois Supreme Court

People v. Reveles-Cordova, 2020 IL 124797 Under the one-act, one-crime doctrine, a court first must determine whether a defendant's conduct involved multiple acts or a single act. Multiple convictions based on a single physical act are improper. If there were multiple acts, however, the court must go on to determine if one offense was a lesser-included of the other. If so, multiple convictions cannot stand.

Here, the defendant's sexual assault and home invasion convictions involved multiple physical acts (unlawful entry to the home of another, sexual assault) requiring the court to proceed to the second step of the analysis. In ascertaining whether one offense is a lesser included of another, it is well-settled that courts use the abstract elements approach.

Home invasion involves unlawful entry into the dwelling place of another with knowledge that one or more persons is present, coupled with additional enumerated conduct, such as using or threatening force while armed, intentionally causing injury, discharging a firearm, or committing one of several types of sexual offenses. 720 ILCS 5/12-11(a). Here, the Supreme Court clarified that "each of the alternative acts or predicates contained in the six subsections of section 12-11(a) of the home invasion statute should be construed as separately proscribed offenses." And, within the subsection listing various sex offenses, each is a separately proscribed offense, as well.

In reaching this holding, the Court looked to the United States Supreme Court's decision in **Whalen v. United States**, 445 U.S. 684 (1980), which held that convictions of rape and felony murder predicated on rape could not both stand. Although the felony murder statute allowed for felony murder to be predicated on any of six different predicate felonies, under **Blockburger v. United States**, 284 U.S. 299 (1932), the appropriate analysis is to look to the specific statutory subsection under which the defendant was charged to determine whether one offense is a lesser-included of another. **Blockburger** announced the rule that "the test to be applied to determine whether there are two offenses or only one, is whether each provision requires proof of a fact the other does not." And, a conviction for killing in the course of a rape necessarily encompassed all of the elements of the offense of rape.

Applying that same reasoning here, defendant's conviction of criminal sexual assault had to be vacated because all of its elements were necessarily included in the offense of home invasion predicated on criminal sexual assault. In reaching this conclusion, the Court expressly overruled the decisions in **People v. Fuller**, 2013 IL App (3d) 110391, and **People v. Bouchee**, 2011 IL App (2d) 090542.

In re Samantha V., 234 Ill.2d 359, 917 N.E.2d 487 (2009) The court reiterated that the "one-act, one-crime" rule applies in juvenile proceedings. (See **JUVENILE**, §§33-5(a), 33-9 & **WAIVER – PLAIN ERROR – HARMLESS ERROR**, §§56-1(a), 56-2(b)(6)(a).)

People v. Artis, 232 Ill.2d 156, 902 N.E.2d 677 (2009) Under **People v. King**, 66 Ill.2d 551,

363 N.E.2d 838 (1977) and **People v. Rodriguez**, 169 Ill.2d 183, 661 N.E.2d 305 (1996), multiple convictions cannot be based on a single physical act. Although the original rationale for the one-act, one-crime doctrine was the possibility of prejudice when seeking parole, the doctrine is also based on notions of fairness and the avoidance of prejudice in such matters as the setting of bond and sentencing. The court rejected the State's request to abolish the one-act, one-crime doctrine in light of the abolishment of parole under Illinois law.

Under the one-act, one-crime doctrine, a sentence should be imposed on the more serious offense, and the less serious offense should be vacated. In determining which offense is more serious, a reviewing court compares the relative punishments prescribed by the legislature for each offense.

Here the classifications of the offenses and authorized sentences were the same. Accordingly, the cause was remanded to the trial court to determine which conviction should be retained.

The State does not get to decide which of multiple offenses of the same legislative classification should be retained. Although the State has the power to nol-pros a charge throughout the trial proceedings, including at a sentencing hearing held on remand, the power to nol-pros does not extend to the appellate level. Thus, the State does not have the power to nol-pros one of the convictions once the case is on appeal.

People v. Lee, 213 Ill.2d 218, 821 N.E.2d 307 (2004) Where two convictions are based upon a single act, Illinois law holds that the less serious offense must be vacated. Whenever possible, determination of the "less serious offense" is to be based on the plain language of the statute and the General Assembly's classification of the offenses. Where the offenses in question carry the same classification, the trial court must determine, based on the mental states involved in each, which is more serious.

Where defendant was convicted of aggravated battery with a firearm (a Class X felony with a possible sentence of 6 to 30 years) and second degree murder (a Class 1 felony with a possible sentence of 4 to 20 years), the General Assembly determined that second degree murder was the less serious offense. That conclusion was not affected by the fact that in this particular case, the trial judge imposed a longer sentence for second degree murder than for aggravated battery with a firearm.

People v. Bishop, 218 Ill.2d 232, 843 N.E.2d 365 (2006) Where defendant was charged with four counts of aggravated criminal sexual assault and four counts of criminal sexual assault, and in both the indictments and at trial the State focused on three acts of sexual penetration, no error occurred when defendant was convicted of three counts of aggravated criminal sexual assault.

Because the complainant became pregnant only once, however, defendant could be convicted of only one count of aggravated criminal sexual assault predicated on bodily harm by pregnancy.

Four counts of criminal sexual assault were clearly intended to be lesser included crimes of the four counts of aggravated criminal sexual assault. Therefore, convictions on the lesser charges were improper.

People v. Harvey, 211 Ill.2d 368, 813 N.E.2d 181 (2004) Where defendant was charged with four counts of unlawful possession of a stolen motor vehicle for possessing four separate vehicles and a separate count of aggravated possession of all four stolen motor vehicles within one year, the aggravated offense was based upon the same physical act as the unlawful possession. Although the aggravated count required a finding that defendant possessed three

or more stolen vehicles within one year, the time limitation was an additional element which did not change the underlying act.

The court reached the issue under the plain error rule. An "alleged one-act, one-crime violation and the potential for a surplus conviction and sentence affects the integrity of the judicial process, thus satisfying the second prong of the plain error rule."

People v. Sienkiewicz, 208 Ill.2d 1, 802 N.E.2d 767 (2003) Under **Blockburger v. U.S.**, 284 U.S. 299 (1932), a single act cannot be the subject of successive prosecutions under different statutes unless each statute requires proof of a fact which the other did not. In addition, because a lesser included offense requires no proof beyond that required for the greater offense, the prosecution of a lesser included offense prevents a subsequent prosecution for the greater offense.

Reckless driving is a lesser included offense of reckless homicide, and **Blockburger** therefore prohibits a prosecution for reckless homicide after defendant was convicted of reckless driving.

People v. Henry, 204 Ill.2d 267, 789 N.E.2d 274 (2003) Where defendant was acquitted of aggravated battery, his conviction for the lesser included offense of misdemeanor battery could not stand. An acquittal for an offense constitutes an acquittal of all included lesser offenses.

People v. Crespo, 203 Ill.2d 335, 788 N.E.2d 1117 (2001) Under **People v. King**, 66 Ill.2d 551, 363 N.E.2d 838 (1977), where more than one offense arises from a series of incidental or closely related acts and the offenses are not lesser included crimes, convictions with concurrent sentences can be entered on all the offenses.

Here, each of three stab wounds to the victim could have been the basis for a separate charge of armed violence or aggravated battery. However, both the indictment and the State's arguments at trial established that the prosecution did not differentiate between the three stab wounds, but instead based one count of armed violence and two counts of aggravated battery on different theories of culpability. It "would be profoundly unfair" to allow the State, on appeal, to "apportion the crimes among the various stab wounds" where it had not sought to do so in the charge or at trial.

People v. Quigley, 183 Ill.2d 1, 697 N.E.2d 735 (1998) Defendant did not commit a misdemeanor DUI when he started his vehicle's engine and an aggravated DUI when he performed "some other act" that led to an accident. Both the felony and misdemeanor DUI offenses were based on the "continuing" act of driving a vehicle while under the influence of alcohol.

People v. Smith, 183 Ill.2d 425, 701 N.E.2d 1097 (1998) Defendant was convicted of felony murder (predicated on armed robbery) and armed robbery. The armed robbery involved taking money from a cash register during a robbery of a Jiffy Lube Center. Defendant could not be convicted and sentenced on both felony murder and the underlying predicate offense of armed robbery.

People v. Rodriguez, 169 Ill.2d 183, 661 N.E.2d 305 (1996) Defendant was charged with eight counts of aggravated criminal sexual assault, including four based on displaying or threatening to use a dangerous weapon and four based on committing a sexual offense during a home invasion. Defendant was also charged with home invasion based upon a threat to use

force or use of force while armed with a dangerous weapon.

The jury returned general verdicts convicting defendant of aggravated criminal sexual assault, home invasion and intimidation. The evidence showed that after entering the bedroom of a 13-year-old girl, defendant committed sexual assaults while he brandished a handgun and made several threats. The trial court imposed consecutive 35-year sentences for aggravated criminal sexual assault and home invasion and a five-year sentence for intimidation.

Multiple "acts" were involved here. **King** defines an "act" as "any overt or outward manifestation which will support a different offense." Under this definition, the home invasion was based on the "act" of an unlawful entry to the complainant's home, while the aggravated criminal sexual assault was based on the "act" of sexual penetration. Thus, although the offenses shared a common act (i.e., threatening the victim with a gun), they were based on different "acts" for **King** purposes.

Because the offenses were based on multiple "acts," multiple convictions were proper so long as one was not a lesser included offense of the other. Under these circumstances, home invasion is not a lesser included offense of aggravated criminal sexual assault. Because defendant was convicted of aggravated criminal sexual assault in a general verdict, the conviction is presumed to have been based on any good count in the indictment to which the proof was applicable. One of the "good" counts for the sexual assault conviction alleged that defendant displayed or threatened to use the gun during sexual activity, a theory that posed no lesser included offense problems with home invasion based on an illegal entry. Thus, the convictions and sentences were proper.

People v. Segara, 126 Ill.2d 70, 533 N.E.2d 802 (1988) A defendant may be properly convicted of more than one offense arising out of the same transaction, unless the offenses involve precisely the same physical act. If exactly the same physical act forms the basis of more than one offense, defendant may only be convicted of one offense.

People v. King, 66 Ill.2d 551, 363 N.E.2d 838 (1977) A defendant may not be convicted for more than one offense arising out of the same physical act. The Supreme Court rejected the "independent motivation" test as a standard for determining whether multiple convictions (with concurrent sentences) are permissible. Defendant's criminal objective or motivation is only relevant in determining whether consecutive sentences can be imposed.

"When more than one offense arises from a series of incidental or closely related acts and the offenses are not, by definition, lesser included offenses, convictions with concurrent sentences can be entered."

Convictions for both rape and burglary with intent to commit rape were affirmed. See also, **People v. Johnson**, 128 Ill.2d 253, 538 N.E.2d 1118 (1989); **People v. Turner**, 128 Ill.2d 540, 531 N.E.2d 1196 (1989).

Likewise, the felony murder could not be upheld by construing an uncharged attempt armed robbery of a safe in a different part of the building as the predicate offense. The State did not specifically charge defendant with attempt armed robbery of the safe, discuss any attempt armed robbery of the safe in closing arguments, seek jury instructions on attempt armed robbery, or at any time assert that defendant had committed an attempt armed robbery of the safe. Due process would be violated if attempt armed robbery was substituted for the armed robbery asserted in the trial court as the predicate for felony murder.

Illinois Appellate Court

People v. Profit, 2021 IL App (1st) 170744 Defendant was found guilty of attempt robbery and unlawful restraint. The sentencing court merged the unlawful restraint conviction into the attempt robbery conviction pursuant to the one-act/one-crime rule, and imposed a four-year sentence for attempt robbery. On appeal, defendant challenged his duty to register under the “violent offender against youth” statute, [730 ILCS 154/5\(a\)](#).

The Appellate Court found no duty to register. Under the plain language of the statute, registration is required if one is “convicted” of unlawful restraint, but not attempt robbery. According to the definition provided by the Code of Corrections, a “conviction” includes the sentence imposed following the guilty verdict. [730 ILCS 5/5-1-5](#). Therefore, a guilty finding for unlawful restraint, without a sentence, did not constitute a conviction.

People v. Coats, 2018 IL 121926 Convictions for armed violence and armed habitual criminal, both predicated on the possession of the same handgun, do not violate the one-act, one-crime rule where defendant committed two acts - possession of drugs and possession of the gun - and only the armed violence conviction was predicated on possession of the drugs.

A defendant may not be convicted of multiple offenses when those offenses are based on precisely the same act, and violation of this one-act, one-crime rule rises to the level of second-prong plain error. To analyze alleged one-act, one-crime violations, courts determine whether defendant committed one act or multiple acts and, if the defendant committed multiple acts, whether any of the offenses are lesser-included offenses.

Here, defendant committed two acts. Both armed violence and armed habitual criminal used defendant’s possession of a single gun to satisfy one of its elements, but armed violence required a different element predicated on the separate act of possession of the drugs. In such cases, including **People v. Rodriguez, 169 Ill. 2d 183 (1996)**, the overlap of one act does not preclude multiple convictions. The Supreme Court rejected defendant’s claim that the one-act, one-crime rule is violated if the overlapping act is the “crux” or “essence” of the crime, finding no support for this theory in its precedent. Nor did the court agree with defendant’s attempt to compare his case to those finding convictions for both intentional and felony murder improper, as murder is a single offense. Finally, neither armed violence nor armed habitual criminal is a lesser-included offense of the other under the abstract elements test and therefore both convictions should stand.

People v. Brown, 2017 IL App (3d) 150070 In determining whether multiple convictions violate the one-act one-crime rule, courts apply a two-step analysis in which the first step is determining whether the conduct in question consisted of single or multiple acts. If a single act was involved, multiple convictions are prohibited. If the conduct consisted of multiple acts, the court must then determine whether any of the crimes in question are lesser-included offenses.

Noting a conflict in Appellate Court authority, the Third District held that convictions of armed violence for being armed with a handgun while possessing cocaine and unlawful possession of a weapon by a felon were based on the single act of possessing a gun. Because only a single act was involved, the one-act one-crime doctrine prohibits multiple convictions.

Although defendant did not raise the issue in the lower court, a violation of the one-act one-crime rule affects the integrity of the judicial process and therefore constitutes plain error under the substantial rights prong of the plain error rule.

People v. Betance-Lopez, 2015 IL App (2d) 130521 Defendant was convicted of two counts of predatory criminal sexual assault of a child and one count of aggravated criminal sexual abuse. At sentencing, the trial court declined to impose a sentence for aggravated criminal

sexual abuse, finding that the conviction merged with predatory criminal sexual assault of a child. On appeal, the State argued for the first time that the trial court incorrectly concluded that aggravated criminal sexual abuse was a less-included offense of predatory criminal sexual assault of a child and asked the court to remand the cause for sentencing on the former count.

The court acknowledged that where a criminal defendant appeals a conviction, the reviewing court has authority to grant the State's request to remand for imposition of a sentence on a conviction that was improperly vacated under one-act, one-crime principles. However, the court concluded that defendant was prejudiced by the State's failure to raise the issue in the trial court because he would be subject to mandatory consecutive sentencing if the State's request was granted. Noting that defendant might have decided to not appeal had the State raised the issue below, the court declined to overlook the State's waiver.

People v. Gillespie, 2014 IL App (4th) 121146 Under **People v. King**, 66 IL 2d 551, 363 N.E.2d 838 (1977), where more than one offense arises from a series of closely related acts and the offenses are not by definition lesser-included offenses, convictions with concurrent sentences can be entered on all of the offenses. Although the Illinois Supreme Court has identified three possible methods for determining whether one offense is a lesser-included offense of another, the appropriate test for **King** purposes is the abstract elements test. Under this test, a crime is a lesser-included offense if all of its elements are included within a second offense and it contains no element not included in the second offense.

For there to be a lesser included offense under the abstract elements test, it must be impossible to commit the greater offense without also committing the lesser offense. The abstract elements approach does not consider the facts of a crime as charged in the particular charging instrument or as proved at trial.

Defendant was convicted of robbery and aggravated criminal sexual assault based on committing a criminal sexual assault during the commission of a felony. The predicate felony for the aggravated criminal sexual assault was the same robbery for which defendant was convicted.

The court concluded that under Illinois law, the predicate offense for a crime is necessarily a lesser-included offense of that crime. Thus, where robbery is the predicate offense for aggravated criminal sexual assault, robbery is by definition a lesser-included offense. The robbery conviction was vacated.

People v. McFadden, 2014 IL App (1st) 102939 As a matter of plain error, the court found that multiple convictions for unlawful use of a weapon by a felon were improper under the one-act, one-crime doctrine, which precludes multiple convictions based on precisely the same physical act or where one of the offenses is a lesser included offense of the other. For purposes of the doctrine, an "act" is any overt or outward manifestation which will support a different offense.

Defendant was convicted of three counts of armed robbery and two counts of unlawful use of a weapon by a felon arising from the commission of armed robberies against separate victims over a 24-hour-period. The UUW/felon convictions involved defendant's possession of a single weapon during two of the three robberies.

Noting that the UUW by a felon statute criminalizes possession rather than use of a weapon, the court concluded that a "singular and continuous" act of possession occurring over a several-hour period constitutes a single act for purposes of the one-act, one crime doctrine. Because the legislature is presumed to not have intended absurd results, the court concluded that the legislative intent of the UUW by a felon statute was to permit only one conviction

for the continuous possession of a firearm, even where that firearm is used in the commission of several offenses during a single chain of events. Otherwise, “a potentially infinite number of convictions” could occur because “the defendant possessed the firearm from hour to hour, minute to minute, nanosecond to nanosecond.”

The court vacated one of defendant’s convictions for unlawful use of a weapon by a felon.

People v. Pittman, 2014 IL App (1st) 123499 The simultaneous possession of different types of controlled substances will not support more than one conviction and sentence unless the statute expressly authorizes multiple convictions. **People v. Manning, 71 Ill.2d 132, 374 N.E.2d 200 (1978)**. Where defendant threw 1.8 grams of heroin into a garbage can as he was fleeing police, and after his arrest led police to an additional 3.1 grams of heroin concealed in the wheel well of a boat located in an adjacent vacant lot, the court found that defendant engaged in separate rather than simultaneous acts of possession.

An “act” is any overt or outward manifestation which will support a different offense. Here, there was evidence to support a finding of an act of actual possession of the heroin which defendant discarded while fleeing the police. In addition, there was separate evidence of an independent act of constructive possession of the heroin found in the boat. Under these circumstances, two acts of possession occurred.

Even where more than one act occurred, multiple convictions are permitted only if the State apportioned each act to separate charges in the indictment or information. That requirement was satisfied here, because the State charged separate offenses based on the separate acts.

People v. Sanchez, 2014 IL App (1st) 120514 Although a defendant generally may not be convicted of an uncharged offense, a reviewing court may enter judgment on a lesser-included offense even where the lesser offense was not charged at trial. Courts use the charging instrument approach to determine whether to enter judgment on the lesser offense. Under this test, the court first examines the indictment and determines whether the factual allegations provide a broad foundation or main outline of the lesser offense. The court then considers whether the trial evidence was sufficient to uphold conviction on the lesser offense.

Defendant was charged with aggravated battery of a peace officer but convicted by a jury of resisting a peace officer. Aggravated battery of a peace officer is defined as striking a person known to be an officer engaged in the performance of his duties. **720 ILCS 5/12-4(b)(1)**. Resisting a peace officer is defined as knowingly resisting or obstructing the performance of any authorized act of a known officer. **720 ILCS 5/31-1(a)**. The information charged that defendant intentionally and knowingly caused bodily harm to a police officer while the officer was performing his official duties.

Since both offenses require that a defendant act with knowledge that he is striking or resisting an officer acting in his official capacity, the information charging aggravated battery broadly defined the offense of resisting a peace officer.

The evidence also supported the conviction for resisting a peace officer. Although the officer was not attempting to arrest defendant when he was struck, he was still engaged in the authorized act of trying to interview a potential witness. The State’s witnesses testified that the police legally entered the home to interview defendant. The officers woke defendant up and identified themselves before defendant jumped up and punched one of the officers. Based on this evidence, a reasonable jury could have concluded that the defendant resisted an authorized act of the officer when he punched him in the chest.

People v. Stull, 2014 IL App (4th) 120704 When determining whether the jury should be instructed on an uncharged lesser included offense, the predominant concern is providing notice of the offenses of which a defendant may be convicted. Under these circumstances, the “charging instrument” approach is used. However, when determining whether multiple convictions may be entered under **King**, the defendant has notice of the possible convictions based on the charges. In this situation, the “abstract elements” approach is more appropriate because it permits defendants to be held accountable for the full measure of their conduct and the harm caused. For purposes of **King**, therefore, application of the “one act, one crime” doctrine is determined under the “abstract elements” test. (**People v. Miller**, 238 Ill. 2d 161, 938 N.E.2d 498 (2010)).

Under the abstract elements approach, the statutory elements of the two offenses in question are compared. If all of the elements of one offense are included within the second offense, and the first offense contains no element not included in the second offense, the first offense is a lesser included of the second. The “statutory elements” approach is easily stated and applied, and results in a lesser included offense only where it is impossible to commit the greater offense without necessarily committing the lesser offense.

Under the statutory elements test, aggravated criminal sexual abuse is not a lesser included offense of predatory criminal sexual assault of a child. Predatory criminal sexual assault of a child occurs where a person who is over the age of 17 commits an act of sexual penetration with a person who is under the age of 13. Aggravated criminal sexual abuse occurs where a “family member” commits an act of “sexual conduct” with a person who is under the age of 18. As relevant here, “sexual conduct” means the intentional or knowing touching or fondling of any part of the body of a child under the age of 13 for purposes of sexual gratification or arousal.

Because predatory criminal sexual assault of a child requires an act of sexual penetration, and aggravated criminal sexual abuse does not require penetration but does require a familial relationship, under the abstract elements test aggravated criminal sexual abuse is not a lesser included offense of predatory criminal sexual assault. Because defendant’s conviction for aggravated criminal sexual abuse did not violate the one-act one-crime rule, the conviction was affirmed.

People v. Clark, 2014 IL App (1st) 123494 A defendant has a due process right to notice of the charges brought against him. A defendant may be convicted of an uncharged offense only if that crime is a lesser included offense of a crime with which the defendant is expressly charged. The charging instrument approach is used to determine whether an uncharged crime is a lesser-included offense.

Under this approach, the court looks first to the allegations of the charging instrument to see whether the description of the greater offense contains the broad foundation or main outline of the lesser offense. Every element of the lesser offense need not be explicitly contained in the greater charge, so long as the missing elements can be reasonably inferred. If the description of the greater offense contains the broad foundation of the lesser offense, the defendant may be convicted of the lesser offense if the evidence presented at trial rationally supports a conviction on that offense.

720 ILCS 5/18-4(a) provides alternative methods of committing aggravated vehicular hijacking: (1) by taking a motor vehicle from the person or immediate presence of another by the use or threat of immediate force while armed “with a dangerous weapon, other than a firearm,” (720 ILCS 5/18-4(a)(3)), or (2) by taking a motor vehicle from the person or immediate presence of another by the use or threat of immediate force while armed “with a firearm.” (720 ILCS 5/18-4(a)(4)). Similarly, armed robbery is defined as: (1) knowingly

taking property other than a vehicle from the person or the presence of another by the use or threat of imminent force while armed with “a dangerous weapon, other than a firearm” (720 ILCS 5/18-2(a)(1)), or (2) knowingly taking property other than a vehicle from the person or the presence of another by the use or threat of imminent force while armed with “a firearm.” (720 ILCS 5/18-2(a)(1)). Thus, the statutes create mutually exclusive forms of armed robbery and aggravated vehicular hijacking depending on the nature of the weapon used.

Because the offenses are mutually exclusive, charging one offense does not allege the basic outlines of the alternative offenses. In other words, the allegation that defendant was armed with a firearm necessarily excluded an allegation that he was armed with a dangerous weapon other than a firearm. Furthermore, none of the language in the charging instrument implies that defendant was armed with a weapon other than a firearm or that he used a firearm as a bludgeon. Therefore, aggravated vehicular hijacking with a dangerous weapon other than a firearm and armed robbery with a dangerous weapon other than a firearm were not lesser included offenses of aggravated vehicular hijacking with a firearm and armed robbery with a firearm.

The court concluded that entering judgment on offenses that were not lesser-included offenses of charged offenses constitutes plain error under the second prong of the plain error rule, which applies to clear and obvious errors which are so serious as to affect the reliability of the trial and challenge the integrity of the judicial process.

The convictions were reduced to vehicular hijacking and robbery and the cause was remanded for re-sentencing.

People v. Sedelsky, 2013 IL App (2d) 111042 Statutory construction requires a court to ascertain and give effect to the intent of the legislature. The most reliable indicator of legislative intent is the language of the statute, which, if plain and unambiguous, must be read without exception, limitation, or condition. Criminal statutes must be strictly construed in defendant’s favor.

The “allowable unit of prosecution” as defined by statute governs whether a particular course of conduct involves one or more distinct offenses under the statute.

Defendant was convicted and sentenced for two counts of possession of child pornography based on his possession of duplicate identical images uploaded at nearly the same time and stored in the same digital medium, but under different file names.

The child pornography statute proscribes possession of “any *** depiction by computer” of a pornographic image of a child. 720 ILCS 5/11-20.1(a)(6). “Any” is not defined by statute and can mean singular or plural. Because “any” does not indicate whether the possession of duplicate depictions by computer in the same digital medium constitute separate offenses, the statute must be construed in defendant’s favor. Therefore, only one conviction of possessing child pornography can be entered for defendant’s possession of the same digital image stored in the same digital medium.

Because this holding applies only to the narrow facts presented, it does not conflict with the purpose of the child pornography statute, which is to “dry up” the pornography market. An individual possessing two duplicate digital images saved in the same medium cannot disseminate the image more widely than an individual possessing a single digital image. The images were not stored in different locations and could only be accessed through defendant’s account.

People v. Fuller, 2013 IL App (3d) 110391 When multiple charges arise from the same act, the defendant may be convicted and sentenced for the most serious offense. Where multiple charges arise from multiple acts, the court must determine whether any other offenses are

lesser included offenses. If so, multiple convictions are improper.

Defendant was convicted of home invasion and criminal sexual assault, and argued that criminal sexual assault was a lesser included offense of home invasion and therefore could not be the subject of a separate conviction.

Illinois courts have identified three methods for determining whether one crime is a lesser included offense of another offense: (1) the “charging instrument” approach, (2) the “abstract elements” approach, and (3) the “facts or evidence adduced at trial” approach. In [People v. Miller, 238 Ill.2d 161, 938 N.E.2d 498 \(2010\)](#), the Supreme Court held that the “abstract elements” approach governs whether a charged offense is a lesser included crime of another charged offense.

Under the abstract elements approach, if all of the elements of one offense are included in the second offense, and the first offense contains no element that is not also an element of the second offense, the first offense is a lesser included offense of the second crime. The court concluded that because it is possible to commit home invasion without necessarily committing criminal sexual assault, criminal sexual assault is not a lesser included offense of home invasion where both offenses are charged. The court added that even if only the sex offense provision of the home invasion statute is considered, home invasion may occur by the commission of sex offenses other than criminal sexual assault. Therefore, where both offenses are charged and the abstract elements test applies, criminal sexual assault is not a lesser included offense of home invasion.

[People v. McSwain, 2012 IL App \(4th\) 100619](#) If a statute permits multiple convictions for simultaneous possession, the one-act, one-crime doctrine applies. When construing whether a statute permits multiple convictions, a court is required to ascertain and give effect to the intent of the legislature. the most reliable indicator of legislative intent is the plain language of the statute, which, if plain and unambiguous, must be read without exception, limitation, or other condition. Criminal statutes must be strictly construed in the defendant’s favor.

The child pornography statute provides that a person commits child pornography who “with knowledge of the nature and content thereof, possesses *any* film, videotape, photograph or similar visual reproduction or depiction of any child . . . whom the person knows or reasonably should know to be under the age of 18 . . . engaged in any activity described in subparagraphs (i) through (vii) of paragraph (1) of this subsection.” [720 ILCS 5/11-20.1\(a\)\(6\)](#) (emphasis added).

The term “any” in the statute could be singular or plural, as it can mean “any one of a kind,” “any kind,” or “any number.” The term “any” thus does not adequately define the allowable unit of prosecution for a child pornography offense. The statute is therefore ambiguous and must be construed in favor of the defendant. Consequently, the simultaneous possession of multiple images cannot support multiple convictions.

While agreeing with the State that each photograph exploits the minor and adds to the market, the court held that it is for the legislature to define what it desires to make an allowable unit of prosecution. By its amendment of other statutes, the legislature has demonstrated that it knows how to authorize multiple convictions for simultaneous violations of a single statute. The legislature can amend the statute if it wants to authorize multiple convictions based on simultaneous possession of different images of child pornography.

As defendant was convicted of five counts of child pornography based on his receipt of an email that displayed five photos within the body of that email, the court vacated convictions on four of those counts.

[People v. Koter, 2012 IL App \(1st\) 100951](#) The “one act, one crime” doctrine prohibits

multiple convictions based on a single physical act. If a defendant commits multiple acts, however, multiple convictions may stand provided that none of the offenses are lesser included offenses. An “act” is “any overt or outward manifestation which will support a different offense.”

Whether a defendant was improperly convicted of multiple offenses arising from a single act, and whether charges are lesser included offenses, are questions of law that are reviewed *de novo*.

Where the defendant was convicted of five counts of theft for obtaining control over money belonging to the village which employed him as a parking enforcement officer and one count of official misconduct over a period of time which encompassed all five of the thefts, the court concluded that the single charge of official misconduct was based on the same physical act as the five thefts. Therefore, it was error to enter convictions on all of the offenses.

Where multiple convictions are improperly imposed, a sentence is to be imposed on the most serious offense and the convictions for the less serious offenses vacated. Because theft of government property as charged was a Class 2 felony and official misconduct was a Class 3 felony, the official misconduct conviction must be vacated. The convictions for five counts of theft were affirmed.

People v. Ramirez, 2012 Il App (1st) 093504 Under the one-act, one-crime doctrine, a court shall not impose multiple convictions where multiple offenses are carved from the same physical act. Even where there are arguably separate acts, separate convictions cannot be sustained where the prosecution does not charge the acts as separate offenses.

A person commits bribery when with the intent to influence the performance of any act related to the employment or function of a public employee, he promises or tenders to that employee property or personal advantage which the employee would not be authorized by law to accept. **720 ILCS 5/33-1(b)**. The act of bribery is complete as of the promise where it is given with the requisite intent.

Defendant could be convicted of only one count of bribery based on evidence that he promised to pay a city employee a sum of money to delete four building code violations from the city’s computer system, and tendered the employee money in payment on that promise on two separate dates. The act of bribery was complete when defendant promised to pay the sum of money. He could not be convicted of a separate act of bribery for his subsequent tender of a portion of that sum. The State could have charged defendant with multiple acts of bribery for the promises made with respect to the separate building code violations, but because it charged him with only one count of bribery for his actions on the date that he reached the agreement, it could obtain but one conviction.

People v. Sotelo, 2012 IL App (2d) 101046 430 ILCS 65/2(a) defines the offenses of unlawful possession of a firearm and unlawful possession of ammunition:

(a)(1) No person may acquire or possess any firearm, stun gun, or taser . . . without having in his possession a [FOID] card. . . .

(2) No person may acquire or possess firearm ammunition within this State without having in his or her possession a [FOID] card.

Although the “singular act of failing to possess a FOID card could not sustain multiple convictions of an offense comprised *solely of that act*, failing to possess a FOID card may serve as a common element of multiple offenses that include additional physical acts - possession of different firearms, or of firearm ammunition.”

However, the court concluded that the General Assembly did not intend to authorize

multiple convictions for the simultaneous possession of multiple weapons without an FOID card. In determining whether the legislature intended to permit multiple convictions, the court is required to determine the “allowable unit of prosecution” for §65/2(a). Where a statute is ambiguous as to the allowable unit of prosecution, the court “must adopt a construction which favors the defendant.”

In [People v. Carter](#), 213 Ill. 2d 295, 821 N.E.2d 233 (2004), the Illinois Supreme Court concluded that a statute which prohibited the possession of “any firearm or any firearm ammunition” was ambiguous because it could be read as providing either that the possession of each firearm constituted a separate offense, or as providing that the simultaneous possession of multiple firearms and ammunition constitute only a single offense. Because the statute was ambiguous, the **Carter** court adopted an interpretation that favored the defendant and held that the simultaneous possession of multiple firearms and ammunition constituted only a single offense.

The court reached the same conclusion concerning §65/2(a)(1), which uses similar language to the statute in [Carter](#). Thus, because the legislature did not intend that the simultaneous possession of multiple firearms constitutes multiple violations of §65/2(a)(1), two of three of defendant’s convictions under (a)(1) must be vacated.

The court reached the opposite conclusion concerning the possession of ammunition, however. The court concluded that had the General Assembly intended the simultaneous possession of firearms and ammunition to constitute a single unit of prosecution, it would have placed the firearms and ammunition provisions in a single statute rather than in two separate subsections. The court concluded that the structure of §65(a) showed that the General Assembly intended to permit separate convictions for possession of firearms without a FOID card and possession of ammunition without a FOID card. Thus, defendant’s conviction for possession of ammunition was affirmed.

[People v. Bouchee](#), 2011 IL App (2d) 090542 Multiple convictions are prohibited where the offenses are carved from the same physical act or where, with regard to multiple acts, one of the offenses is a lesser-included offense of the other. To determine whether a charged offense is a lesser included of another charged offense for purposes of this rule, courts employ the abstract-elements approach. Under this approach, if all of the elements of one offense are included within a second offense and the first offense contains no element not included in the second offense, the first offense is deemed a lesser-included offense of the second. [People v. Miller](#), 238 Ill.2d 161, 938 N.E.2d 498 (2010). To satisfy the abstract-elements approach, it must be impossible to commit the greater offense without necessarily committing the lesser offense. Whether one charge is a lesser-included offense of the other is a legal question reviewed *de novo*.

Defendant was convicted of home invasion, in that he entered a dwelling and therein committed a criminal sexual assault, and criminal sexual assault. Under the abstract-elements approach, criminal sexual assault is not a lesser-included offense of home invasion because it is possible to commit home invasion without necessarily committing criminal sexual assault. A person can also commit home invasion under the charged subsection by entering and committing therein criminal sexual abuse. [720 ILCS 5/12-11\(a\)\(6\)](#).

The court rejected the argument that home invasion is analogous to felony murder, where the predicate felony is deemed to be a lesser-included offense of felony murder for purposes of the same-elements test employed for double-jeopardy purposes. Although the same-elements test is equivalent to the abstract-elements approach, unlike felony murder, it would contravene legislative intent to treat home invasion and its predicate felony as a single offense.

In the case of felony murder, the predicate felony supplies the mental state for first-degree murder. Therefore it can be safely assumed that the legislature did not intend to allow convictions for both the murder and the predicate felony. In contrast, the gravamen of home invasion is unauthorized entry, and that gravamen is complete when a person knowingly enters without authority, knowing that one or more persons is present. [720 ILCS 5/12-11\(a\)](#). Although home invasion also requires the subsequent commission of another offense, that offense is a discrete offense with its own elements and mental state.

Moreover, the predicate offense is not necessarily “lesser.” For instance, in the case of criminal sexual assault, the predicate offense could be subject to a extended-term penalty greater than that available for home invasion. Because it must be presumed that the legislature did not intend to create an absurdity or an injustice, it cannot be presumed that the legislature intended that a person could commit the gravamen of home invasion, and receive punishment for the same, but receive no punishment for even a more serious offense that he commits inside.

Because criminal sexual assault is not a lesser-included offense of home invasion, both convictions stand.

[People v. Price](#), 2011 IL App (4th) 100311 Under [People v. King](#), 66 Ill.2d 551, 363 N.E.2d 838 (1977), a defendant may not be convicted of multiple offenses based on precisely the same act. An “act” is “any overt or outward manifestation which will support a different offense.” So long as offenses consist of multiple acts under **King**, a defendant may be convicted of two offenses which share a common act, unless one of the offenses is a lesser included offense of the other. [People v. Rodriguez](#), 169 Ill.2d 183, 661 N.E.2d 305 (1996).

Residential burglary and home invasion share a common act – an act of entry – but home invasion requires the additional act of causing injury to a resident. The **Rodriguez** rule applies, therefore, and both convictions may stand. Because the defendant did not argue that residential burglary was included in home invasion, the court found that it need not determine whether residential burglary is a lesser included offense of home invasion.

The court acknowledged that in [People v. McLaurin](#), 184 Ill.2d 58, 703 N.E.2d 11 (1988), the Supreme Court vacated a residential burglary conviction after finding that home invasion and residential burglary were based on the same physical act of entering the dwelling of the victim. The court also acknowledged that several Appellate Courts have vacated residential burglary convictions based on **McLaurin**. The court noted, however, that **McLaurin** did not discuss the applicability of **Rodriguez** or “the fact the home-invasion offense required the additional physical act of causing injury to a person in the dwelling.” The court also noted that **McLaurin** also held that convictions could be entered for both intentional murder and home invasion which shared a common act - setting a fire - because home invasion required the additional act of entry to the victim’s residence. The court concluded that applying both **Rodriguez** and **McLaurin**, defendant’s convictions of home invasion and residential burglary should both be affirmed.

[People v. Stanford](#), 2011 IL App (2d) 090420 Defendant was convicted of attempt murder and armed violence based on aggravated battery. Defendant admitted that separate injuries to the complainant’s head and both ankles resulted from three separate acts. The court rejected the argument that the charging instrument treated the defendant’s separate acts as a single act where the three armed violence counts differentiated between the injuries that the complainant suffered, even though the attempt murder charge did not. The prosecutor’s argument that defendant’s intent to kill was established by his firing multiple shots did not

reflect a theory of the case that the shots constituted a single act. Therefore, defendant's convictions for attempt murder and armed violence were not based on one physical act.

Applying the abstract elements approach, defendant's armed violence conviction was not a lesser included of the attempt murder conviction. All of the elements of armed violence based on aggravated battery alleging great bodily harm are not included in the offense of attempt murder. Armed violence requires that defendant personally discharge a firearm that is a category I or II weapon, whereas attempt murder does not. Armed violence predicated on aggravated battery requires infliction of great bodily harm, while attempt murder does not. Because it is possible to commit attempt murder without committing armed violence, armed violence is not a lesser included of attempt murder.

People v. Bailey, 409 Ill.App.3d 574, 948 N.E.2d 690 (1st Dist. 2011) Multiple convictions are improper if they are based on precisely the same physical act. If a defendant is convicted of two offenses based on the same physical act, the conviction for the less serious offense must be vacated.

When a defendant has committed multiple acts, each capable of sustaining a separate conviction, the State can charge defendant either for each separate act or for the cumulative effect of the acts under multiple theories of the offense. But in order to sustain multiple convictions, the State must provide notice to the defendant in the charging instrument that it intends to treat the conduct of the defendant as multiple acts.

The defendant was convicted of multiple counts of financial exploitation of an elderly person. Two counts charged that defendant "knowingly and by deception obtained control over property," of the victim, which the court construed to refer to her obtaining of a durable power of attorney from the victim. The court ordered that the counts charging that act should merge into the count charging the greater amount of money, as that was the more serious offense, even though both carried the same penalty.

Two other counts charged that defendant "knowingly and illegally used the assets or resources" of the victim, which the court construed to refer to her unauthorized taking of the victim's savings. Although the evidence showed that multiple takings took place over a period of months, the State did not charge each taking as a separate act. Therefore, the State was not entitled to multiple convictions. The counts charging the act of taking merged into the count charging the greater amount of money, as that was the more serious offense, even though both carried the same penalty.

People v. Schmidt, 405 Ill.App.3d 474, 938 N.E.2d 559 (3d Dist. 2010) Determining whether multiple convictions are permissible requires a two-step analysis under which the court must first determine whether the defendant's conduct involved a single or multiple acts. If a single act was involved, only one conviction may be imposed. If the conduct involved multiple acts, the court must also determine whether any of the offenses are lesser included offenses. If so, multiple convictions are improper. The "abstract elements" test is used to determine whether a crime is a lesser included offense.

Here, defendant was convicted of unlawful use of property to commit a methamphetamine violation, possession of methamphetamine, and possession of a methamphetamine precursor. The convictions were based on three acts: possession of methamphetamine, possession of pseudoephedrine, and using a vehicle to possess methamphetamine. Thus, multiple convictions were permissible unless any of the charges were lesser included offenses.

As a matter of plain error, the court concluded that possession of methamphetamine was an included offense of unlawful use of property. Defendant was charged with unlawful

use of property for knowingly using his personal vehicle to possess methamphetamine. Because all of the elements of possession of methamphetamine are required to commit the offense of unlawful use of property to possess methamphetamine, the possession offense was vacated.

However, the court rejected the State's confession of error that possession of a methamphetamine precursor was also a lesser included offense of unlawful use of property. The jury instructions showed that the unlawful use of property charge was based on the defendant's use of his vehicle to possess methamphetamine, not on the possession of pseudoephedrine. Thus, under the State's theory of the case, the elements of possession of a methamphetamine precursor were not included in the unlawful use of property charge.

The conviction for possession of methamphetamine was vacated. The cause was remanded for resentencing.

People v. Patrick, 406 Ill.App.3d 548, 956 N.E.2d 443 (2d Dist. 2010) A defendant may not be convicted of or sentenced for more than one offense carved from a single physical act. "Act" means any overt or outward manifestation that would support a different offense.

The offense of leaving the scene of an accident involving death or injury contemplates that there may be several persons injured in an accident, but focuses on the duty of the driver to remain on the scene to provide information and assistance. 625 ILCS 5/11-401(a). Therefore, defendant may not be convicted and sentenced for more than one offense of leaving the scene of an accident where there is only one accident scene, despite the number of persons injured or killed by the accident.

People v. Jimerson, 404 Ill.App.3d 621, 936 N.E.2d 749 (1st Dist. 2010) A defendant may not be convicted of multiple offenses based on the same physical act. An "act" is any overt outward manifestation supporting a different offense, even though closely related. If the charging instrument does not differentiate between the closely-related acts, multiple convictions cannot stand. It is unfair to allow the State on appeal to apportion the crimes among the various acts where it had not sought to do so at trial.

Where the evidence at trial proved that defendant and his accomplices struck correctional officers multiple times, convictions for both mob action and aggravated battery could stand. The State proceeded at trial on the theory that the multiple strikes were separate acts.

People v. Nunez, 236 Ill.2d 488, 925 N.E.2d 1083 (2010) Defendant was convicted of one count of aggravated driving under the influence of a drug or combination of drugs while his driver's license was suspended or revoked and one count of driving while his license was suspended or revoked. Defendant was sentenced to concurrent terms of two years imprisonment.

The court rejected the argument that the conviction for driving while license revoked must be vacated on one-act, one-crime principles. Under Illinois law, multiple convictions may not be based on a single physical act. Where convictions are based on multiple acts, however, the defendant is prejudiced only if some of the convictions are, by definition, lesser included offenses of other convictions.

When conducting a one-act, one-crime analysis, the court must first determine whether the defendant's conduct consisted of one or several acts. If it is determined that the defendant committed multiple acts, the court must go on to determine whether any of the convictions are for lesser included offenses. If so, multiple convictions are improper.

Because the legislature has provided that the penalty for driving while license revoked

for DUI “shall be in addition to the penalty imposed for any subsequent” DUI ([625 ILCS 5/11-501\(b\)\(1\), \(2\)](#)), it intended that sentences be imposed both for driving while license revoked and aggravated DUI. “Since we are aware of no constitutional principle contravened by the statute, the legislation’s intent must be given effect.”

The court rejected the argument that multiple convictions were improper because DWLR based on a previous DUI conviction is a lesser included offense of aggravated DUI. A lesser included offense is one that: (1) is composed of some but not all of the elements of the greater offense, and (2) has no element that is not included in the greater offense. The court concluded that having a revoked driver’s license is not an element of aggravated DUI, but merely a factor which enhances sentencing. Because aggravated DUI does not contain all of the elements of DWLR, therefore, the latter is not a lesser included offense of the former.

In re Rodney S., [402 Ill.App.3d 272, 932 N.E.2d 588 \(4th Dist. 2010\)](#) Even if closely related, separate blows are separate acts that support multiple convictions, but only if the State treats them as separate acts at the trial level. If the State charges the multiple blows as a single physical act, multiple convictions are improper. **People v. Crespo**, [203 Ill.2d 335, 788 N.E.2d 1117 \(2001\)](#).

In this case, the State could have but did not differentiate between the multiple blows struck by the respondent. Instead, it charged a series of acts in each count of two counts of aggravated battery. Therefore, the Appellate Court vacated one of the convictions.

People v. Johnson, [237 Ill.2d 81, 927 N.E.2d 1179 \(2010\)](#) Under Illinois law, multiple convictions cannot be based on a single physical act. Under such circumstances, the conviction for the less serious offense must be vacated.

The comparative seriousness of two offenses is a matter of legislative intent, considering such factors as the felony classification of the offenses, the authorized sentencing ranges, the length of the mandatory supervised released terms, whether the offenses are probationable, the mental states involved, and the specificity with which each offense is defined. The court concluded that unlawful use of a weapon by a felon is a less serious offense than aggravated unlawful use of a weapon because it is: (1) probationable, (2) a Class 3 felony (compared to a Class 2), and (3) carries a lower mandatory supervised release term. The fact that the maximum authorized sentence for unlawful possession of a weapon by a felon is

longer than the maximum authorized sentence for aggravated unlawful use of a weapon does not establish a legislative intent that the former is the less serious offense.

People v. Hagler, [402 Ill.App.3d 149, 937 N.E.2d 204 \(2d Dist. 2010\)](#) Defendant was convicted of aggravated battery of a peace officer and resisting a peace officer, proximately causing injury to the officer. Both charges alleged an injury to the officer that occurred when defendant slammed a door on the officer, causing the officer’s hand and arm to go through a glass pane on the door. The slamming of the door was the only act that formed the basis for the aggravated battery charge. The Appellate Court rejected the State’s argument that the defendant’s act of running when instructed by the officer to stop was a separate act that supported the resisting conviction. Because the resisting statute ([720 ILCS 5/31-1\(a-7\)](#)) requires that the act of resisting be the proximate cause of the injury to the officer in order to impose a Class 4 sentence, there was only one act that formed the basis for both charges.

The court vacated defendant’s conviction for resisting a peace officer proximately causing injury, which is a less serious offense (Class 4 felony) than aggravated battery to an officer (Class 2 felony).

People v. Miller, 238 Ill.2d 161, 938 N.E.2d 498 (2010) Under **People v. King**, 66 Ill.2d 551, 363 N.E.2d 838 (1977), multiple convictions and sentences can be entered where the defendant is convicted of multiple offenses arising from a series of incidental or closely related acts, and none of the offenses are by definition lesser included offenses of any of the other offenses. The **King** doctrine requires a two-step analysis under which the court must first determine whether the defendant's conduct involved a single or multiple acts. If only a single act was involved, only one conviction may be imposed.

If the conduct involved multiple acts, the court must then determine whether any of the offenses are lesser included offenses. If so, multiple convictions are improper.

Illinois courts have used three methods to determine whether one crime is a lesser included offense of another crime: (1) the "abstract elements" approach, under which the statutory elements of the offenses are compared; (2) the "charging instrument" approach, under which the charging instrument is examined to determine whether the description of the greater offense contains a "broad foundation" or "main outline" of the lesser offense; and (3) the "evidence" or "fact" approach, under which the court looks to the facts adduced at trial to determine whether proof of the greater offense necessarily establishes the lesser offense.

The court stated that where the issue is whether the jury should be instructed on an uncharged lesser included offense, the predominant concern is providing notice of the offenses of which a defendant may be convicted. Under these circumstances, the "charging instrument" approach is appropriate.

When determining whether multiple convictions may be entered for closely related acts, however, the defendant has notice of the possible convictions based on the charges. The "abstract elements" approach is more appropriate for these purposes, because it permits defendants to be held accountable for the full measure of their conduct and resulting harm.

Thus, application of the "one act, one crime" doctrine is determined under the "abstract elements" test.

Because it is possible to commit burglary without necessarily committing retail theft, retail theft is not a lesser included offense under the abstract elements test. First, each offense contains unique elements not included in the other. Second, the mental states for the offenses differ; burglary requires intent to commit a felony or theft, while retail theft requires intent to deprive a merchant of possession, use or benefit of merchandise without paying the full retail value.

The court concluded that convictions for retail theft and burglary were proper under **King**.

People v. Johnson, 387 Ill.App.3d 780, 901 N.E.2d 455 (3d Dist. 2009) The relative seriousness of offenses is a matter of legislative intent; the clearest indication of the legislature's intent is the classification level assigned to each offense. Unlawful possession of a weapon by a felon is a less serious offense than aggravated unlawful use of a weapon, although the former carries a higher maximum prison term. Unlawful possession of a weapon by a felon is a Class 3 felony (compared to a Class 2 for aggravated unlawful use of a weapon), is probationable (aggravated unlawful use of a weapon is non-probationable), and has a shorter MSR period.

People v. Poe, 385 Ill.App.3d 763, 896 N.E.2d 453 (3d Dist. 2008) The "charging instrument" approach, which is used to determine lesser included offenses for the purposes of instructing the jury and allowing convictions for uncharged offenses, does not apply when determining whether multiple convictions violate the one-act, one-crime rule.

Burglary with intent to commit a theft and theft are not based on a single act; burglary

is based on entering the premises with intent to commit a theft, and theft is based on committing a theft after the entry is complete. In addition, based on their statutory elements, neither burglary nor theft is a lesser-included offense of the other. Thus, convictions may be entered on both offenses, even if the theft was a lesser included offense for purposes of instructing the jury.

People v. Finn, 316 Ill.App.3d 1139, 738 N.E.2d 952 (1st Dist. 2000) Under the "charging instrument" test, criminal sexual abuse was not a lesser included offense of attempt aggravated criminal sexual assault here. Also, Supreme Court Rule 615 does not permit a reviewing court to enter judgment on a lesser included offense of a charge on which defendant was acquitted.

People v. Fitzgerald, 313 Ill.App.3d 76, 728 N.E.2d 1271 (1st Dist. 2000) Under the "charging instrument" test, a crime is a lesser included offense if it is fairly described by the charging instrument. To be a lesser included offense, the "broad foundation" or "main outline" of the lesser charge must be set out by the charging instrument.

Here, aggravated battery was not a lesser included offense of home invasion. The home invasion charge stated that defendant "injured" two individuals, "kicked" his girlfriend and "punched" a friend. Because the indictment failed to allege an essential element of aggravated battery - that the victim suffered "great bodily harm" - the home invasion charge failed to set forth the "main outline" of aggravated battery.

People v. Bowens, 307 Ill.App.3d 484, 718 N.E.2d 602 (1st Dist. 1999) It is improper to base multiple convictions on a single physical act. Where defendant commits multiple, closely related acts, convictions may not be entered for crimes that are lesser included offenses of other convictions on which judgment is entered. On the other hand, multiple convictions are permitted on separate acts so long as none of the crimes are lesser included offenses.

Defendant's convictions were not based on a single act, because defendant's conduct (stabbing the victim in the throat, pushing him to the ground, and kicking him) could be divided into "overt manifestations" sufficient to support different convictions. However, the trial court erred by entering convictions for both attempt murder and armed violence, despite the existence of separate acts, because under the "charging instrument" approach armed violence was a lesser included offense of attempt murder.

Where multiple convictions are improper, the court should impose a sentence on the more serious count and vacate the judgment on the less serious count. Although attempt murder and armed violence both carry Class X sentences, attempt murder is a more serious offense because it involves specific intent.

People v. Whalum, 2012 IL App (1st) 110959 The mittimus showed that the defendant was convicted of two counts of UUW by a felon. The judge's oral pronouncement was that the two counts merged, but he also stated, "That's a concurrent sentence on both counts." When the judge imposed sentence, he stated, "This sentence, on this case, will be ten years in the Illinois Department of Corrections."

The judge's oral pronouncement that the two counts merged controlled. Although the judge immediately contradicted himself by referring to "both counts," he imposed a single sentence without mention of counts or concurrent sentences. Therefore, the Appellate Court ordered that the mittimus be corrected to reflect a single conviction.

§53-3(b) Multiple Convictions Upheld

United States Supreme Court

Missouri v. Hunter, 459 U.S. 359, 103 S.Ct. 673, 74 L.Ed.2d 535 (1983) Double jeopardy does not prohibit conviction and sentence on both armed robbery and armed criminal action (committing a felony while armed with a deadly weapon) at a single trial. Where a legislature specifically authorizes cumulative punishment under two statutes, regardless of whether such statutes proscribe the same conduct, the prosecution may seek, and the court may impose, cumulative punishments.

Illinois Supreme Court

People v. Smith, 2019 IL 123901 Citing the one-act, one-crime rule, defendants challenged convictions of both aggravated battery of a senior citizen and robbery where a single punch to the victim both caused an injury to the victim and caused him to drop his property. The first part of a one-act, one-crime analysis is to determine whether there was a single physical act or multiple physical acts. An act is any overt or outward manifestation that would support a separate offense. Two offenses can be supported by a common act if the common act is part of both offenses or if the common act is part of one offense and is the only act of another. Here, punching the victim was the only physical act of the aggravated battery and was also the force element of robbery, but the robbery involved the additional act of taking property, thus there was no one-act, one-crime violation.

The Court rejected the defendants' argument that the robbery was complete when the victim dropped his property and that therefore the taking was not part of the robbery and was not a separate physical act. While dispossessing a victim of property is the minimum conduct required to complete the offense of robbery, a robbery only ends once the force and taking have ceased.

The second part of a one-act, one-crime analysis is to determine whether, using the abstract elements test, one offense is a lesser included of the other. Defendants here did not argue that aggravated battery was a lesser included offense of robbery, and the Court agreed there was no lesser-included offense issue here.

People v. Coats, 2018 IL 121926 Convictions for armed violence and armed habitual criminal, both predicated on the possession of the same handgun, do not violate the one-act, one-crime rule where defendant committed two acts - possession of drugs and possession of the gun - and only the armed violence conviction was predicated on possession of the drugs.

A defendant may not be convicted of multiple offenses when those offenses are based on precisely the same act, and violation of this one-act, one-crime rule rises to the level of second-prong plain error. To analyze alleged one-act, one-crime violations, courts determine whether defendant committed one act or multiple acts and, if the defendant committed multiple acts, whether any of the offenses are lesser-included offenses.

Here, defendant committed two acts. Both armed violence and armed habitual criminal used defendant's possession of a single gun to satisfy one of its elements, but armed violence required a different element predicated on the separate act of possession of the drugs. In such cases, including **People v. Rodriguez**, 169 Ill. 2d 183 (1996), the overlap of one act does not preclude multiple convictions. The Supreme Court rejected defendant's claim that the one-act, one-crime rule is violated if the overlapping act is the "crux" or "essence" of the crime, finding no support for this theory in its precedent. Nor did the court agree with

defendant's attempt to compare his case to those finding convictions for both intentional and felony murder improper, as murder is a single offense. Finally, neither armed violence nor armed habitual criminal is a lesser-included offense of the other under the abstract elements test and therefore both convictions should stand.

People v. Almond, 2015 IL 113817 Defendant, a convicted felon, was properly convicted of two separate firearm offenses based on his simultaneous possession of a firearm and the firearm ammunition that was loaded in the gun. The UUW by a felon statute specifically authorizes two separate convictions for simultaneously possessing a firearm and firearm ammunition, and the two convictions did not violate the one act/one crime rule. The statute specifically states that “the possession of each firearm or firearm ammunition in violation of this Section constitutes a single and separate violation.” [720 ILCS 5/24-1.1\(e\)](#). Based on this language, the statute unambiguously authorizes separate convictions when a felon possesses a loaded firearm: a conviction for possessing the firearm, and a conviction for possessing the ammunition inside the firearm.

The court also held that multiple convictions did not violate the one act/one crime rule. Under that rule, a defendant may not be convicted of multiple offenses based on the same physical act. But multiple convictions are permitted in cases where a defendant commits several acts, even if they are interrelated. An act is defined as any overt or outward manifestation that will support a conviction.

Here defendant possessed two separate and distinct items of contraband, a firearm and ammunition. Although his possession was simultaneous, that fact alone did not render his conduct a single act. Instead, defendant committed two separate acts: possession of a firearm and possession of ammunition. Each act was materially different, even if both items were possessed simultaneously.

People v. Miller, 238 Ill.2d 161, 938 N.E.2d 498 (2010) When determining whether multiple convictions may be entered for closely related acts, the “abstract elements” approach is appropriate because it permits defendants to be held accountable for the full measure of their conduct and resulting harm. Thus, application of the “one act, one crime” doctrine is determined under the “abstract elements” test.

Because it is possible to commit burglary without necessarily committing retail theft, retail theft is not a lesser included offense under the abstract elements test. First, each offense contains unique elements not included in the other. Second, the mental states for the offenses differ; burglary requires intent to commit a felony or theft, while retail theft requires intent to deprive a merchant of possession, use or benefit of merchandise without paying the full retail value.

The court concluded that convictions for retail theft and burglary were proper under **King**.

People v. Nunez, 236 Ill.2d 488, 925 N.E.2d 1083 (2010) Defendant was convicted of one count of aggravated driving under the influence of a drug or combination of drugs while his driver's license was suspended or revoked and one count of driving while his license was suspended or revoked. Defendant was sentenced to concurrent terms of two years imprisonment.

The court rejected the argument that the conviction for driving while license revoked must be vacated on one-act, one-crime principles. When conducting a one-act, one-crime analysis, the court must first determine whether the defendant's conduct consisted of one or several acts. If it is determined that the defendant committed multiple acts, the court must

go on to determine whether any of the convictions are for lesser included offenses. If so, multiple convictions are improper.

Because the legislature has provided that the penalty for driving while license revoked for DUI “shall be in addition to the penalty imposed for any subsequent” DUI ([625 ILCS 5/11-501\(b\)\(1\), \(2\)](#)), it intended that sentences be imposed both for driving while license revoked and aggravated DUI. “Since we are aware of no constitutional principle contravened by the statute, the legislation’s intent must be given effect.”

The court rejected the argument that multiple convictions were improper because DWLR based on a previous DUI conviction is a lesser included offense of aggravated DUI. A lesser included offense is one that: (1) is composed of some but not all of the elements of the greater offense, and (2) has no element that is not included in the greater offense. The court concluded that having a revoked driver’s license is not an element of aggravated DUI, but merely a factor which enhances sentencing. Because aggravated DUI does not contain all of the elements of DWLR, therefore, the latter is not a lesser included offense of the former.

People v. Kuntu, [196 Ill.2d 105, 752 N.E.2d 380 \(2001\)](#) Where multiple murder convictions are entered for a single victim, the conviction for the most culpable charge will be upheld and the convictions for less culpable charges vacated. However, where defendant was convicted of both murder and aggravated arson, but different victims were named for each offense, the aggravated arson convictions need not be vacated although the State alleged that the murders occurred in the course of the aggravated arson.

People v. Turner, [128 Ill.2d 540, 531 N.E.2d 1196 \(1989\)](#) Defendant was properly convicted of both criminal sexual assault and aggravated criminal sexual assault. The evidence showed numerous sexual assaults against the victim. Defendant committed one sexual assault himself, and the jury could have found him accountable for another committed by the codefendant. See also, **People v. Hines**, [165 Ill.App.3d 289, 518 N.E.2d 1362 \(4th Dist. 1988\)](#).

People v. Eyler, [133 Ill.2d 173, 549 N.E.2d 268 \(1989\)](#) Convictions for both murder and aggravated kidnapping were upheld.

The cause of death was stab wounds to the back, but there were also 14 additional puncture wounds and blows to the right eye and the left side of the face. Thus, the aggravated kidnapping was supported by evidence independent of the murder.

Also, generally an aggravated kidnapping conviction should not be sustained where the confinement constitutes technical compliance with the statutory definition but is in reality incidental to another offense. Here, however, the confinement was not “incidental to” the murders.

People v. Johnson, [128 Ill.2d 253, 538 N.E.2d 1118 \(1989\)](#) Defendant was properly convicted of both armed violence and attempt murder arising out of the same incident because there were “two separate physical acts [two gunshots] sufficient to support each conviction . . . along with a number of events intervening between the two acts.”

People v. DelPercio, [105 Ill.2d 372, 475 N.E.2d 528 \(1985\)](#) Convictions of attempt armed robbery and conspiracy to commit armed robbery were proper. Each had a different factual basis. “The acts in furtherance of the conspiracy were procuring the shotgun and tape and knocking on the door, while the substantial step [for the attempt] was the threat of the imminent use of force and pointing the shotgun at [the victim].”

People v. Stroner, 96 Ill.2d 204, 449 N.E.2d 1326 (1983) Convictions for solicitation to commit murder, conspiracy to commit murder and attempt murder were affirmed. Solicitation was not a lesser included offense of conspiracy and conspiracy was not a lesser included offense of attempt murder.

People v. Myers, 85 Ill.2d 281, 426 N.E.2d 535 (1981) Defendant was convicted of armed violence (based upon aggravated battery) and attempt murder for the stabbing of the complainant, and received concurrent sentences. The convictions and sentences were proper because more than one physical act was involved where defendant stabbed the complainant in the throat, moved the knife and cut a third party, and then returned the knife to the complainant's throat.

People v. Smith, 78 Ill.2d 298, 399 N.E.2d 1289 (1980) Defendant convicted of both robbery and intimidation was not entitled to have the latter conviction vacated on the ground that it was a lesser included offense. In order to be classified as a lesser included offense, all of the elements of the lesser offense must be included within the greater. Intimidation requires specific intent to cause another to perform or omit to perform certain acts, but robbery requires no specific intent. Since intimidation requires proof of an element that is not required for robbery, it is not a lesser included offense of robbery.

People v. Thomas, 67 Ill.2d 388, 367 N.E.2d 1281 (1977) Defendant was properly convicted of five counts of armed robbery, occurring during a single incident, against five victims.

People v. Butler, 64 Ill.2d 485, 356 N.E.2d 350 (1976) Where defendant and a codefendant robbed two persons in a car, defendant holding a knife and taking money from one person and the codefendant holding the gun and taking money from the other, it was proper for defendant to be convicted of two armed robberies.

People v. Canale, 52 Ill.2d 107, 285 N.E.2d 133 (1972) Where defendant drove the victim some distance from her home, confined her for 45 minutes and raped her, it was proper to convict of both aggravated kidnapping and rape.

People v. Segara, 126 Ill.2d 70, 533 N.E.2d 802 (1988) Defendant was properly convicted of two counts of aggravated criminal sexual assault where the evidence showed both vaginal rape and oral sex.

Illinois Appellate Court

People v. Daigle, 2024 IL App (4th) 230015 Defendant argued that he was erroneously convicted of three counts of disseminating child pornography based upon three separate videos where the State did not specifically prove that its investigator acquired those three videos via three separate downloads. But, at the time of defendant's conduct in November 2015, the child pornography statute specifically provided that each individual video in violation of the statute constitutes a single and separate violation, except where multiple copies of the same video are at issue. 720 ILCS 5/11-20.1(f)(1). Here, defendant's three convictions were predicated on his possession of three separate video files, each involving a different child. Accordingly, three separate convictions were proper.

People v. Avendano, 2023 IL App (2d) 220176 The appellate court affirmed all three of defendant’s convictions for predatory criminal sexual assault, despite the fact that the State did not charge or elicit testimony in support of three specific acts. Defendant argued that only one conviction could stand under the one-act/one-crime rule, because the indictments did not differentiate between different acts or dates, instead charging the exact same conduct three times. Defendant pointed out that the child victim did not specify the number of times the conduct occurred. But the appellate court disagreed. The victim testified that the alleged conduct happened “every time she was in school” during her year in kindergarten. The State argued in both opening and closing that it was charging three of those separate acts. Thus, the jury could find three separate acts of assault.

Nor did the charges violate double jeopardy. Although identically worded indictments may form the basis for a double jeopardy/due process claim (see e.g. **Valentine v. Konteh, 395 F.3d 626 (6th Cir. 2005)**), no such violation occurred here. Whereas in **Valentine** both the indictments and evidence alleged general conduct, such that the charges weren’t specific enough to bar re-prosecution for the same offenses, this case is distinguishable. Through its arguments and evidence, the State made clear the three charges covered all of the multiple instances of touching conduct that was alleged to have taken place while the victim was in defendant’s kindergarten class. This was sufficiently specific so as to allow defendant to plead double jeopardy should the State attempt to re-prosecute him for that specific conduct.

People v. Keys, 2023 IL App (4th) 210630 Multiple convictions for dismembering a human body were upheld based on separate acts committed on separate days, though only a single body was the subject of those acts. One of the counts was based on mutilation by fire on one day, while another was based on severing and separating the body’s appendages on another. Unlike murder, where a victim can be killed but once, multiple acts of dismemberment can be committed on a single body.

Similarly, multiple convictions of concealment of a homicidal death involving a single victim could stand. “That there is but one body does not mean it cannot be concealed more than once.” Here, defendant’s convictions were based on acts occurring at different locations, separated by intervening events, on different dates.

People v. Melvin, 2023 IL App (4th) 220405 Presence – either actual or virtual – is a necessary element in proving a charge of sexual exploitation of a child pursuant to **720 ILCS 5/11-9.1(a)**. That is, an individual must do the prohibited acts in the presence of a child in order to be found guilty of sexual exploitation of a child. “Virtual presence” is defined as an “environment that is created with software and presented to the user and or receiver via the Internet, in such a way that the user appears in front of the receiver on the computer monitor or screen or hand-held portable electronic device, usually through a web camming program. ‘Virtual presence’ includes primarily experiencing through sight or sound, or both, a video image that can be explored interactively at a personal computer or hand-held communication device or both.”

Defendant argued that the State’s factual basis for his guilty plea to sexual exploitation of a child was deficient in that it failed to establish his “virtual presence.” Specifically, defendant argued that his sending of digital photographs of his exposed penis to a Facebook account which he believed to belong to a 16-year-old girl was insufficient to establish his “virtual presence” as a matter of law. Defendant relied on **People v. White, 2021 IL App (4th) 200354**, where the Court found Snapchat photographs, with no conversation between the sender and the recipient, were insufficient to establish that the sender had exposed herself in the virtual presence of the recipient.

The court distinguished **White** both procedurally and factually. First, **White** involved a trial, while the instant matter involved a guilty plea. Thus, the court here did not have a fully developed record. A factual basis is not a substitute for proof beyond a reasonable doubt, but rather is for the purpose of ensuring a defendant does not plead guilty to a crime he did not commit. Here, the State's factual basis, coupled with defendant's admission to committing the offense, was adequate. As to the facts, the court noted that defendant here sent the explicit images in the context of an ongoing lewd conversation between himself and the recipient, rather than sending photographs only as in **White**. This was sufficient to satisfy the "virtual presence" element, at least on the limited record available in this guilty plea case.

The court also rejected defendant's argument that his convictions for both sexual exploitation and distribution of harmful materials were improper on one-act, one-crime grounds. While both involved the physical act of sending pictures of his exposed penis, sexual exploitation contains the additional act of presence. Further, while defendant made no argument that one offense was a lesser-included of the other, the court engaged in a brief lesser-included-offense analysis and concluded that under the abstract elements approach, the Class A misdemeanor sexual-exploitation offense's inclusion of the virtual-presence element rendered it not a lesser-included offense of Class 4 distribution of harmful materials which contains no presence requirement.

People v. Rubio, 2023 IL App (1st) 211078 Convictions of both possession of child pornography and creation of child pornography do not violate the one-act, one-crime doctrine. Defendant recorded three separate videos of himself pulling down the pants of a five-year-old girl while she was asleep and touching her buttocks. The videos were all recorded within a matter of a few minutes, and defendant stopped recording when he was caught in the act by the child's mother. The possession of child pornography and creation of child pornography counts were both based on the first of the three videos.

The appellate court looked to the factors identified in **People v. Baity**, 125 Ill. App. 3d 50 (1984) to determine whether defendant's conduct consisted of a single act or multiple acts, specifically: (1) whether there was an intervening event, (2) how much time elapsed between successive parts of defendant's conduct, (3) whether the identity of the victim was the same, (4) how similar the defendant's conduct was, (5) whether the location of the conduct remained the same, and (6) the intent of the State, as evidenced by the charging instrument. Here, the victim and location were the same throughout the incident, and defendant's conduct was similar, weighing in favor of finding a single act. The State's intent was inconclusive where the indictment did not distinguish between different acts.

But, while very little time elapsed, there were intervening events where defendant stopped recording the first video and then recorded two additional videos, retaining possession of the first video while he continued to record. While defendant's possession of the first video was attendant to its creation at the moment he stopped recording, his retention of that video while he went on to record two more was sufficient to render his possession of it a separate act from its creation.

Further, possession of child pornography is not a lesser included offense of creation of child pornography under the abstract elements test. Each requires an element that the other does not. Creation requires the use of visual media to depict the pornography, while possession does not. And, possession, of course, requires possession, but the creation offense does include possession as an element.

At the outset, the State argued that the one-act, one-crime issue was forfeited because defendant raised it at sentencing but did not raise it in a written post-sentencing motion. The

appellate court found the issue adequately preserved where defendant orally moved to reduce his sentence, and the State did not object to that procedure.

People v. McCloud, 2020 IL App (3d) 180241 Convictions for criminal sexual abuse (hand to breast), unlawful restraint, and battery (insulting or provoking contact about the body), were all affirmed over a one-act/one-crime challenge. The defendant's attack involved multiple acts of offensive touching. Under the abstract elements test, none of the offenses were lesser-included offenses. While sexual contact is inherently insulting or provoking, the evidence showed defendant engaged in other offensive touching of the victim's body, not just her breast, and therefore battery was not a lesser-included offense of the CSA charge.

People v. Marzonie, 2018 IL App (4th) 160107 Defendant was convicted of four meth-based charges based on his possession of meth, various precursors, and manufacturing material. Defendant alleged that the counts all merge into Count 1, "participating in the manufacture of meth," under the one-act, one-crime rule. The court disagreed, finding that the three remaining convictions – possession of methamphetamine; possession, transportation, or storage of a methamphetamine precursor in any form other than a standard dosage form with the intent to manufacture; and possession, transportation, or storage of methamphetamine manufacturing material with the intent to manufacture – are not based on the same act. Although closely related, the separate acts support multiple convictions. Participation in particular includes merely assisting in the production of meth, a different act than possession.

People v. Brown, 2018 IL App (3d) 150070-B Convictions for both armed violence and unlawful possession of a weapon by a felon did not violate the one-act, one-crime rule. While both charges shared the element of possession of a gun, armed violence included the additional act of possession of a controlled substance. And, unlawful possession of a weapon by a felon included the additional element of having a prior felony conviction, so it was not a lesser included offense of armed violence. Both convictions could be upheld under **People v. Coats, 2018 IL 121926**.

People v. Stull, 2014 IL App (4th) 120704 Under the statutory elements test, aggravated criminal sexual abuse is not a lesser included offense of predatory criminal sexual assault of a child. Predatory criminal sexual assault of a child occurs where a person who is over the age of 17 commits an act of sexual penetration with a person who is under the age of 13. Aggravated criminal sexual abuse occurs where a "family member" commits an act of "sexual conduct" with a person who is under the age of 18. As relevant here, "sexual conduct" means the intentional or knowing touching or fondling of any part of the body of a child under the age of 13 for purposes of sexual gratification or arousal.

Because predatory criminal sexual assault of a child requires an act of sexual penetration, and aggravated criminal sexual abuse does not require penetration but does require a familial relationship, under the abstract elements test aggravated criminal sexual abuse is not a lesser included offense of predatory criminal sexual assault. Because defendant's conviction for aggravated criminal sexual abuse did not violate the one-act one-crime rule, the conviction was affirmed.

People v. Pittman, 2014 IL App (1st) 123499 The simultaneous possession of different types of controlled substances will not support more than one conviction and sentence unless the

statute expressly authorizes multiple convictions. [People v. Manning, 71 Ill.2d 132, 374 N.E.2d 200 \(1978\)](#). Where defendant threw 1.8 grams of heroin into a garbage can as he was fleeing police, and after his arrest led police to an additional 3.1 grams of heroin concealed in the wheel well of a boat located in an adjacent vacant lot, the court found that defendant engaged in separate rather than simultaneous acts of possession.

An “act” is any overt or outward manifestation which will support a different offense. Here, there was evidence to support a finding of an act of actual possession of the heroin which defendant discarded while fleeing the police. In addition, there was separate evidence of an independent act of constructive possession of the heroin found in the boat. Under these circumstances, two acts of possession occurred.

Even where more than one act occurred, multiple convictions are permitted only if the State apportioned each act to separate charges in the indictment or information. That requirement was satisfied here, because the State charged separate offenses based on the separate acts.

[People v. Fuller, 2013 IL App \(3d\) 110391](#) Defendant was convicted of home invasion and criminal sexual assault, and argued that criminal sexual assault was a lesser included offense of home invasion and therefore could not be the subject of a separate conviction.

Illinois courts have identified three methods for determining whether one crime is a lesser included offense of another offense: (1) the “charging instrument” approach, (2) the “abstract elements” approach, and (3) the “facts or evidence adduced at trial” approach. In [People v. Miller, 238 Ill.2d 161, 938 N.E.2d 498 \(2010\)](#), the Supreme Court held that the “abstract elements” approach governs whether a charged offense is a lesser included crime of another charged offense.

Under the abstract elements approach, if all of the elements of one offense are included in the second offense, and the first offense contains no element that is not also an element of the second offense, the first offense is a lesser included offense of the second crime. In other words, a crime is a lesser included offense if it is impossible to commit the greater offense without committing the lesser offense.

Home invasion is committed where one: (1) knowingly enters the dwelling place of another with reason to know that persons are present, and (2) intentionally causes injury, uses force or threatens to use force while armed with a dangerous weapon, personally discharges a firearm that causes great bodily harm or death, uses force or threatens to use force while discharging a firearm, or commits any of several specified sex offenses against a person in the dwelling. The court concluded that because it is possible to commit home invasion without necessarily committing criminal sexual assault, criminal sexual assault is not a lesser included offense of home invasion where both offenses are charged. The court added that even if only the sex offense provision of the home invasion statute is considered, home invasion may occur by the commission of sex offenses other than criminal sexual assault. Therefore, where both offenses are charged and the abstract elements test applies, criminal sexual assault is not a lesser included offense of home invasion.

[People v. Sotelo, 2012 IL App \(2d\) 101046 430 ILCS 65/2\(a\)](#) defines the offenses of unlawful possession of a firearm and unlawful possession of ammunition:

(a)(1) No person may acquire or possess any firearm, stun gun, or taser . . . without having in his possession a [FOID] card. . . .

(2) No person may acquire or possess firearm ammunition within this State without having in his or her possession a

[FOID] card.

Under [People v. King](#), 66 Ill. 2d 551, 363 N.E.2d 838 (1977), multiple convictions are prohibited for offenses carved from a single physical act or, with regard to multiple acts, where one of the offenses is a lesser included offense of the other. However, **King** does not prohibit multiple convictions for the simultaneous possession of multiple firearms without an FOID card. Although the “singular act of failing to possess a FOID card could not sustain multiple convictions of an offense comprised *solely of that act*, failing to possess a FOID card may serve as a common element of multiple offenses that include additional physical acts - possession of different firearms, or of firearm ammunition.”

However, the court concluded that the General Assembly did not intend to authorize multiple convictions for the simultaneous possession of multiple weapons without an FOID card. In determining whether the legislature intended to permit multiple convictions, the court is required to determine the “allowable unit of prosecution” for §65/2(a). Where a statute is ambiguous as to the allowable unit of prosecution, the court “must adopt a construction which favors the defendant.”

In [People v. Carter](#), 213 Ill. 2d 295, 821 N.E.2d 233 (2004), the Illinois Supreme Court concluded that a statute which prohibited the possession of “any firearm or any firearm ammunition” was ambiguous because it could be read as providing either that the possession of each firearm constituted a separate offense, or as providing that the simultaneous possession of multiple firearms and ammunition constitute only a single offense. Because the statute was ambiguous, the **Carter** court adopted an interpretation that favored the defendant and held that the simultaneous possession of multiple firearms and ammunition constituted only a single offense.

The court reached the same conclusion concerning §65/2(a)(1), which uses similar language to the statute in [Carter](#). Thus, because the legislature did not intend that the simultaneous possession of multiple firearms constitutes multiple violations of §65/2(a)(1), two of three of defendant’s convictions under (a)(1) must be vacated.

The court reached the opposite conclusion concerning the possession of ammunition, however. The court concluded that had the General Assembly intended the simultaneous possession of firearms and ammunition to constitute a single unit of prosecution, it would have placed the firearms and ammunition provisions in a single statute rather than in two separate subsections. The court concluded that the structure of §65(a) showed that the General Assembly intended to permit separate convictions for possession of firearms without a FOID card and possession of ammunition without a FOID card. Thus, defendant’s conviction for possession of ammunition was affirmed.

[People v. Yaworski](#), 2011 IL App (2d) 090785 Multiple convictions may not be based on a single physical act. Where convictions are based on multiple acts, however, the defendant is prejudiced only if some of the convictions are, by definition, lesser-included offenses of other convictions.

Defendant was convicted of driving while his license was revoked (DWLR) and driving under the influence of alcohol (DUI). The DUI was a nonprobationable Class 2 felony because it was a fourth or subsequent DUI committed when the defendant’s driving privileges were revoked for a violation of the DUI statute. [625 ILCS 5/11-501\(c-1\)\(3\)](#).

Defendant’s DWLR conviction was not a lesser-included offense of his DUI conviction. The revocation of defendant’s driving privileges was a sentencing-enhancement factor, rather than an element of the DUI offense. [People v. Nunez](#), 236 Ill.2d 488, 925 N.E.2d 1083 (2010).

Because the circuit court erroneously merged the convictions, the court reinstated the DWLR conviction and imposed a concurrent sentence.

People v. Price, 2011 IL App (4th) 100311 Convictions of residential burglary and home invasion share a common act – an act of entry – but home invasion requires the additional act of causing injury to a resident. The **Rodriguez** rule applies, therefore, and both convictions may stand. Because the defendant did not argue that residential burglary was included in home invasion, the court found that it need not determine whether residential burglary is a lesser included offense of home invasion.

The court acknowledged that in **People v. McLaurin**, 184 Ill.2d 58, 703 N.E.2d 11 (1988), the Supreme Court vacated a residential burglary conviction after finding that home invasion and residential burglary were based on the same physical act of entering the dwelling of the victim. The court also acknowledged that several Appellate Courts have vacated residential burglary convictions based on **McLaurin**. The court noted, however, that **McLaurin** did not discuss the applicability of **Rodriguez** or “the fact the home-invasion offense required the additional physical act of causing injury to a person in the dwelling.” The court also noted that **McLaurin** also held that convictions could be entered for both intentional murder and home invasion which shared a common act - setting a fire - because home invasion required the additional act of entry to the victim’s residence. The court concluded that applying both **Rodriguez** and **McLaurin**, defendant’s convictions of home invasion and residential burglary should both be affirmed.

People v. Stanford, 2011 IL App (2d) 090420, 953 N.E.2d 992 Defendant was convicted of attempt murder and armed violence based on aggravated battery. Defendant admitted that separate injuries to the complainant’s head and both ankles resulted from three separate acts. The court rejected the argument that the charging instrument treated the defendant’s separate acts as a single act where the three armed violence counts differentiated between the injuries that the complainant suffered, even though the attempt murder charge did not. The prosecutor’s argument that defendant’s intent to kill was established by his firing multiple shots did not reflect a theory of the case that the shots constituted a single act. Therefore, defendant’s convictions for attempt murder and armed violence were not based on one physical act.

Applying the abstract elements approach, defendant’s armed violence conviction was not a lesser included of the attempt murder conviction. All of the elements of armed violence based on aggravated battery alleging great bodily harm are not included in the offense of attempt murder. Armed violence requires that defendant personally discharge a firearm that is a category I or II weapon, whereas attempt murder does not. Armed violence predicated on aggravated battery requires infliction of great bodily harm, while attempt murder does not. Because it is possible to commit attempt murder without committing armed violence, armed violence is not a lesser included of attempt murder.

People v. Bouchee, 2011 IL App (2d) 090542 Defendant was convicted of home invasion, in that he entered a dwelling and therein committed a criminal sexual assault, and criminal sexual assault. Under the abstract-elements approach, criminal sexual assault is not a lesser-included offense of home invasion because it is possible to commit home invasion without necessarily committing criminal sexual assault. A person can also commit home invasion under the charged subsection by entering and committing therein criminal sexual abuse. 720 ILCS 5/12-11(a)(6).

The court rejected the argument that home invasion is analogous to felony murder, where the predicate felony is deemed to be a lesser-included offense of felony murder for purposes of the same-elements test employed for double-jeopardy purposes. Although the same-elements test is equivalent to the abstract-elements approach, unlike felony murder, it would contravene legislative intent to treat home invasion and its predicate felony as a single offense.

In the case of felony murder, the predicate felony supplies the mental state for first-degree murder. Therefore it can be safely assumed that the legislature did not intend to allow convictions for both the murder and the predicate felony. In contrast, the gravamen of home invasion is unauthorized entry, and that gravamen is complete when a person knowingly enters without authority, knowing that one or more persons is present. 720 ILCS 5/12-11(a). Although home invasion also requires the subsequent commission of another offense, that offense is a discrete offense with its own elements and mental state.

Moreover, the predicate offense is not necessarily “lesser.” For instance, in the case of criminal sexual assault, the predicate offense could be subject to a extended-term penalty greater than that available for home invasion. Because it must be presumed that the legislature did not intend to create an absurdity or an injustice, it cannot be presumed that the legislature intended that a person could commit the gravamen of home invasion, and receive punishment for the same, but receive no punishment for even a more serious offense that he commits inside.

Because criminal sexual assault is not a lesser-included offense of home invasion, both convictions stand.

People v. Schmidt, 405 Ill.App.3d 474, 938 N.E.2d 559 (3d Dist. 2010) Defendant was convicted of unlawful use of property to commit a methamphetamine violation, possession of methamphetamine, and possession of a methamphetamine precursor. The convictions were based on three acts: possession of methamphetamine, possession of pseudoephedrine, and using a vehicle to possess methamphetamine. Thus, multiple convictions were permissible unless any of the charges were lesser included offenses.

As a matter of plain error, the court concluded that possession of methamphetamine was an included offense of unlawful use of property. Defendant was charged with unlawful use of property for knowingly using his personal vehicle to possess methamphetamine. Because all of the elements of possession of methamphetamine are required to commit the offense of unlawful use of property to possess methamphetamine, the possession offense was vacated.

However, the court rejected the State’s confession of error that possession of a methamphetamine precursor was also a lesser included offense of unlawful use of property. The jury instructions showed that the unlawful use of property charge was based on the defendant’s use of his vehicle to possess methamphetamine, not on the possession of pseudoephedrine. Thus, under the State’s theory of the case, the elements of possession of a methamphetamine precursor were not included in the unlawful use of property charge.

The conviction for possession of methamphetamine was vacated. The cause was remanded for resentencing.

People v. Jimerson, 404 Ill.App.3d 621, 936 N.E.2d 749 (1st Dist. 2010) A defendant may not be convicted of multiple offenses based on the same physical act. An “act” is any overt outward manifestation supporting a different offense, even though closely related. If the charging instrument does not differentiate between the closely-related acts, multiple convictions cannot stand. It is unfair to allow the State on appeal to apportion the crimes

among the various acts where it had not sought to do so at trial.

Where the evidence at trial proved that defendant and his accomplices struck correctional officers multiple times, convictions for both mob action and aggravated battery could stand. The State proceeded at trial on the theory that the multiple strikes were separate acts.

People v. Cunningham, 365 Ill.App.3d 991, 851 N.E.2d 653 (5th Dist. 2006) Where more than one offense arises from a series of closely related acts and the offenses are not, by definition, lesser included offenses, multiple convictions with concurrent sentences may be entered. Whether offenses are lesser included crimes is determined by the "charging instrument" approach, under which the allegations of the charge are examined to determine if the "main outline" of the lesser offense is set forth.

Under the circumstances of this case, armed violence predicated on residential burglary was not a lesser included offense of home invasion. Residential burglary as it was charged contained an element - intent to commit theft - that is not an element of home invasion. Because armed violence was not a lesser included offense of home invasion, convictions could be entered on both offenses and concurrent sentences imposed.

People v. Anderson, 325 Ill.App.3d 624, 759 N.E.2d 83 (4th Dist. 2001) The court affirmed convictions for counts of aggravated criminal sexual assault involving: (1) contact between defendant's penis and the victim's vagina, and (2) contact between defendant's fingers and the victim's vagina. The court rejected defendant's argument that because his hand came in contact with the complainant's vagina only when he was attempting to insert his penis, judgment could be entered on only one count. The State presented sufficient evidence for a rational jury to find the essential elements of separate crimes beyond a reasonable doubt.

People v. White, 311 Ill.App.3d 374, 724 N.E.2d 572 (4th Dist. 2000) Convictions for unlawful possession of a weapon by a felon and armed violence based on illegal possession of a controlled substance do not violate the "one act, one crime" doctrine. Possession of two items of contraband constitutes simultaneous, separate "acts."

Here, armed violence and UUV by a felon shared the common act of possession of a weapon. However, each offense also required an additional, separate element - possession of drugs for armed violence and status as a felon for UUV by a felon. Thus, the two offenses were not based on a single physical "act."

Also, because each charge failed to allege an essential element of the other crime, neither crime was a lesser included offense of the other.

People v. Kleba, 110 Ill.App.3d 345, 442 N.E.2d 605 (1st Dist. 1982) Defendant was properly convicted and sentenced for attempt rape, robbery and aggravated kidnapping. Each offense was based upon a separate physical act. See also, **People v. Olbrot**, 106 Ill.App.3d 367, 435 N.E.2d 1242 (1st Dist. 1982) (attempt murder and aggravated battery); **People v. Boclair**, 106 Ill.App.3d 515, 435 N.E.2d 1237 (1st Dist. 1982) (armed robbery and unlawful restraint); **People v. Wojtanski**, 104 Ill.App.3d 263, 432 N.E.2d 925 (1st Dist. 1982) (deviate sexual assault and indecent liberties with a child); **People v. Palmer**, 76 Ill.App.3d 1014, 395 N.E.2d 713 (5th Dist. 1979) (aggravated battery and murder); **People v. Govednik**, 150 Ill.App.3d 717, 502 N.E.2d 276 (1st Dist. 1986) (home invasion and residential burglary).

People v. Pettus, 84 Ill.App.3d 390, 405 N.E.2d 489 (4th Dist. 1980) It was proper for the

trial court to enter judgment and sentences for attempt rape and burglary with intent to commit rape. Although the offenses were closely related, they were based upon separate acts with different mental states.

People v. Schultz, 73 Ill.App.3d 379, 392 N.E.2d 322 (3d Dist. 1979) Convictions for three counts of aggravated kidnapping upheld where three different victims were involved. Convictions for two counts of aggravated kidnapping against the same victim also upheld, since the acts were not simultaneous and took place at different locations and different times. **People v. Watson**, 35 Ill.App.3d 723, 342 N.E.2d 398 (2d Dist. 1976) It was proper to convict defendant of both burglary and possession of burglary tools. "Burglary and possession of burglary tools are separate acts not arising from the same conduct unless the possession is shown to be exclusively for the purpose of committing that burglary for which one is convicted."

§53-3(c)

Multiple Convictions Improper

Illinois Supreme Court

People v. Hartfield, 2022 IL 126729 As defendant fled from the scene of an armed robbery, he turned and fired a gun. At the time, four police officers were pursuing him. The State charged him with armed robbery and four counts of aggravated discharge of a firearm. Although evidence suggested defendant fired multiple rounds, the charging documents differentiated each count based only on the victim, one charge per officer. The State argued in closing that regardless if defendant fired one round or four, he should still be convicted of four counts of aggravated discharge based on the presence of four officers.

During deliberations, the jury sent the following note to the circuit court: "Does suspect need to know there were 4 cops on the scene in the area where gun was fired to be guilty of all four counts of [aggravated] discharge of firearm?" The court responded "No" and informed the jury that it must determine which officers "may have been in the line of fire" at the time of the discharge. Defendant was convicted of and sentenced on all counts.

The Appellate Court, finding a one-act/one-crime violation, vacated three of the four aggravated discharge convictions and remanded for resentencing. The State appealed, and defendant cross-appealed.

The Supreme Court first discussed defendant's allegations on cross-appeal, including a challenge to the response to the jury note. The defense position below, offered only after the court proposed to answer "no," and not after it decided to further instruct the jury about the "line of fire," was that no answer was needed other than to refer to the given instructions. The Supreme Court disagreed. A jury question evincing confusion over a point of law should be answered substantively by the trial court.

But the Supreme Court also found that the answer here was deficient. Regardless of whether the first answer—"no"—was an accurate statement of law, the second answer—"You must determine based on the evidence which officer or officers, if any, may have been in the line of fire when the firearm was discharged"—is not an accurate statement of law. The offense of aggravated discharge requires the jury to determine whether a peace officer *was* in the direction of discharge; but the second answer instructed the jury to determine whether a peace officer *may* have been in the line of fire. Additionally, it is not clear that "in the line of fire" is an accurate way to describe the statutory element "in the direction of." Thus, the instruction reduced the State's burden of proof by suggesting the State need only prove the

officers “may” have been in the line of fire, and, by referring to “line of fire” rather than “in the direction of,” the response may have caused the jury to find defendant guilty based on conduct that is not an element of the offense.

Although defendant forfeited this claim by not objecting to the proposed response, substantial jury instruction errors may be reviewed under Rule 451(c), which is co-extensive with the plain error doctrine. The Supreme Court has previously found that a single erroneous instruction might be cured by other instructions or by some other showing of a lack of prejudice. But two directly conflicting instructions on an essential element, one stating the law correctly and the other erroneously, cannot be cured this way because it’s impossible to determine which instruction the jury was following. Such an error affects the integrity of the judicial system itself, and must be presumed prejudicial.

Because the issue might arise on retrial, the court went on to decide the question posed in the State’s PLA – whether a single discharge in the direction of multiple peace officers can support multiple convictions of aggravated discharge of a firearm. This question was initially raised under the one-act, one-crime rule, but a threshold question to reaching the one-act, one-crime rule is to determine the unit of prosecution of the offense at issue. The unit of prosecution of an offense refers to what act or course of conduct the legislature has prohibited for purposes of a single conviction and sentence. Here, the question is whether the offense of aggravated discharge commands a single conviction per discharge or a single conviction per person in the direction of a discharge.

Determining the unit of prosecution is a question of statutory interpretation. Where legislative intent is not clear, courts should apply the rule of lenity to determine the appropriate unit of prosecution.

The State, citing one-act, one-crime authority, asserted that the unit of prosecution is determined by the number of victims. The Supreme Court disagreed. One-act, one-crime analysis applies when two distinct offenses are carved from a single act, whereas unit-of-prosecution analysis determines how many times the same offense has been committed in a particular course of conduct. While the number of victims may control in a one-act, one-crime analysis, it does not control in a unit of prosecution analysis. Rather, in determining the unit of prosecution, the court looks to the language of the statute to determine what precisely has been prohibited by the legislature and in what unit of time, actions, or instances that crime is committed once.

Here, the aggravated discharge statute is violated when a defendant, *inter alia*, discharges a firearm in the direction of a person he or she knows to be a peace officer. The Supreme Court could discern no legislative intent with regard to the unit of prosecution; it was not clear whether multiple crimes occurred with each discharge or each officer, or both or neither. Noting that the legislature often chooses to define the unit of prosecution, the absence of any such language here resulted in ambiguity and required application of the rule of lenity. Thus, a single discharge in the direction of multiple peace officers constitutes a single offense.

People v. Price, 221 Ill.2d 182, 850 N.E.2d 199 (2006) Verdicts convicting defendants of theft by: (1) exerting unauthorized control over property with intent to permanently deprive, and (2) obtaining control over property under circumstances which would lead one to believe that the property was stolen, were not legally inconsistent. Regardless, it was error to enter convictions and sentences on both verdicts. Generally, when two or more related offenses arise from the same conduct, only the conviction for the most serious offense may stand. Because the convictions here were for the same offense and neither was more serious than

the other, the court vacated the conviction for one count of theft and allowed the other to stand.

People v. Carter, 213 Ill.2d 295, 821 N.E.2d 233 (2004) In the absence of an express statutory provision to the contrary, statutes outlawing the possession of contraband do not authorize multiple convictions for the simultaneous possession of several items of contraband. 720 ILCS 5/24-1.1(a), which prohibits the possession of "any firearm or any firearm ammunition" by a person who has been convicted by a felony, does not authorize multiple convictions for the simultaneous possession of multiple types of firearms and ammunition.

People v. Garcia, 179 Ill.2d 55, 688 N.E.2d 57 (1997) Where multiple convictions of greater and lesser offenses are entered for offenses that arise from a single physical act, a sentence should be imposed on the most serious offense and the convictions on lesser offenses vacated. Where multiple convictions for the same offense arise from a single act, however, "there is no way to determine the most serious conviction because none of the convictions involve either a more or less culpable mental state." In such cases, the cause should be remanded for the trial court to determine the counts on which judgement will be entered.

People v. Pitsonbarger, 142 Ill.2d 353, 568 N.E.2d 783 (1990) It was improper to convict defendant of six counts of murder where only two persons were killed. One conviction for intentional murder as to each victim was affirmed, and convictions for four counts of felony murder were vacated.

People v. Payne, 98 Ill.2d 45, 456 N.E.2d 44 (1983) A defendant may not be convicted of both armed violence and the underlying felony on which the armed violence was based.

Illinois Appellate Court

People v. Carter, 2024 IL App (2d) 230234 Defendant was convicted of two counts of home invasion, both predicated on his commission of criminal sexual assault within the dwelling, and he was also convicted of the underlying criminal sexual assault. On appeal, one of defendant's home invasion convictions and his conviction of criminal sexual assault were vacated on one-act, one-crime grounds, where all were predicated on the same act of criminal sexual assault.

People v. Ryan, 2024 IL App (2d) 220076 The trial court committed second-prong plain error when it held defendant's stipulated bench trial over Zoom without obtaining defendant's waiver. Defendant was charged with possessing a weapon without a FOID card, two counts of aggravated UUV, and violation of conditions of bail bond. At a Zoom hearing, the parties provided the court with a stipulation to the facts of the case, which defendant signed. The stipulation indicated that defendant possessed a loaded shotgun, that he did not have a FOID card, and that he was on bond with a condition that he not possess a firearm. The court continued the case, and at a subsequent Zoom hearing, found defendant guilty of all four counts.

The appellate court held that by conducting a stipulated bench trial and entering guilty verdicts remotely, without defendant's explicit consent, the trial court violated his right to be present. Although defendant did not object, the error was reviewable as plain error. First, the appellate court rejected the State's invited error argument, which was based on defendant's statement over Zoom that he agreed to "proceed in this fashion." This comment

referred to the stipulated bench trial itself, not to the fact that it would be held remotely. Next, the appellate court found clear and obvious error because the Illinois Supreme Court's emergency order in place at the time of the trial – January of 2022 – allowed for stipulated bench trials to be held remotely only if the trial court made certain findings and obtained the written consent of the defendant. Moreover, a stipulated bench trial and the announcement of guilt are both critical stages, at which a defendant's presence is required.

The error could be reviewed under the substantial rights prong of the plain error doctrine. The court cited [People v. Stroud, 208 Ill. 2d 398 \(2004\)](#), which held that physical presence during a guilty plea contributes to the fairness of the proceeding and therefore a remote guilty plea requires a waiver. Although the State sought to distinguish **Stroud** because the instant case involved a stipulated bench trial rather than a guilty plea, the appellate court found no meaningful distinction. By agreeing to a stipulated bench trial, defendant's guilt became a foregone conclusion and he waived his right to cross-examine the witnesses against him, just as in a guilty plea. Therefore defendant's physical presence would have contributed to the fairness of the proceedings and his absence resulted in an error equivalent to structural error.

On remand, the court instructed that if defendant is re-convicted, only the first count – possession of a firearm without a FOID – can stand. The remaining three counts are based on the same act of possessing a firearm. While the State argued that the charge alleging violation of a bond condition includes an additional act, the court concluded that being on bond is a status, not an act.

[People v. O'Brien, 2021 IL App \(2d\) 210060](#) Aggravated domestic battery under section 12-3.3(a) is a more serious offense than aggravated battery under section 12-3.05(a)(4). Both are Class 3 felonies requiring a three to seven year prison term. While aggravated battery is probationable, and aggravated domestic battery is not, aggravated domestic battery must be served at 85%, and has a longer term of MSR. Accordingly, defendant's aggravated battery conviction was vacated under the one-act/one-crime rule.

[People v. May, 2021 IL App \(4th\) 190893](#) Defendant was convicted of three counts of aggravated DUI. Each count alleged that defendant drove while under the influence of alcohol and each included a separate aggravating factor, specifically that: he had three prior DUI violations (Count I), his driving privileges were revoked for a prior DUI (Count II), and he knew or should have known that the vehicle he was driving was not covered by a liability insurance policy (Count III). He was convicted at a bench trial and was sentenced to concurrent terms of four years of imprisonment on each count.

On appeal, defendant argued that the aggravating factors were elements of the offense, not sentencing factors, and that the State failed to prove those factors for Counts I and II beyond a reasonable doubt. The Appellate Court disagreed. The elements of the offense of DUI are included in subsection (a). while the aggravating factors, all of which are included in subsection (d) of the DUI statute, relate only to the available sentence. Generally, the aggravating factors in subsection (d) still must be proven to the trier of fact to comply with **Apprendi**, but there is an exception for the factors that were charged in Counts I and II, here, because they are based on prior convictions.

Two of defendant's aggravated DUI convictions were vacated as a matter of second-prong plain error, however, because all three were based on the same physical act of driving while under the influence of alcohol.

People v. Hartfield, 2020 IL App (4th) 170787 As four police officers chased defendant, a suspect in an armed robbery, defendant turned and fired two to five shots in their direction. No officers were struck.

Defendant was convicted of four counts of aggravated discharge of a weapon, and, together with a sentence for armed robbery, was sentenced to an aggregate term of 90 years.

Under section 24-1.2(a)(3), a single discharge of a firearm in the direction of a group of peace officers will not support multiple convictions of aggravated discharge of a firearm. Here, while the State presented evidence that defendant fired two to five shots in the direction of four officers, it did not apportion the shots in the charging instrument, and argued to the jury that the number of shots did not matter, because one bullet in the direction of four officers would support four convictions. The Appellate Court disagreed and held that under the statute, each “discharge” constitutes a separate crime, not each victim.

The court acknowledged that courts have consistently held that the same act committed against multiple victims will support multiple convictions under the one-act/one-crime rule. But in this case the question is one of statutory interpretation and legislative intent. The statutory language makes clear that the unit of prosecution is the “discharge,” not the number of peace officers. The court remanded with instructions to vacate three counts and resentence defendant on one count.

People v. O’Brien, 2019 IL App (2d) 170030 Defendant’s convictions of both aggravated battery and aggravated domestic battery based on a single physical act could not stand. The Appellate Court remanded to the trial court to determine which should be vacated as the less serious offense, where both were Class 2 felonies but aggravated battery was non-probationable while aggravated domestic battery was probationable but carried a longer four-year term of mandatory supervised release.

People v. Skaggs, 2019 IL App (4th) 160335 One of defendant’s convictions of criminal sexual assault was vacated as a lesser-included offense of home invasion. The abstract elements test is used to determine whether one offense is a lesser-included of another. To apply the abstract elements test, however, the court must still look to the offense as charged, not to all of the ways the offense could be charged under the statute. In reaching this conclusion, the Appellate Court rejected **People v. Bouchee, 2011 IL App (2d) 090542**, and **People v. Fuller, 2013 IL App (3d) 110391**. So, while home invasion may be premised on a variety of different conduct and underlying offenses, here it was premised on defendant’s commission of one of the two counts of criminal sexual assault of which he was also convicted. Where one offense serves as the predicate for another, it is a lesser-included offense.

People v. Cogger, 2019 IL App (1st) 163250 Separate convictions for delivery of heroin and delivery of cocaine were improper where both convictions were based on a single delivery of three packets which each tested positive for a mixture of the two drugs, disagreeing with **People v. Bui, 381 Ill. App. 3d 397 (1st Dist. 2008)**. A drug user could not separate the substance into two separate drugs for separate use, so it would not further the purpose of the statute to punish defendant for two separate offenses. Further, the statute criminalizes possession of a “substance containing” certain illegal drugs not each of the ingredients within a single substance. And, there was no evidence that the defendant knew the substance contained more than one drug. Accordingly, one of defendant’s delivery convictions was vacated.

[People v. Campos, 2019 IL App \(1st\) 152613](#) When the State alleges the same conduct comprising criminal sexual abuse in multiple counts, and provides an overlapping range of dates for each count, the court may enter verdicts on multiple counts if the State's evidence establishes a separate and distinct act for each count. Here, the victim testified to two separate incidents during which she was made to touch defendant's penis, and testified she was a different age at the time of each incident. Thus, even though the conduct alleged in the counts was the same, and the dates overlapped, two convictions could stand. On the other hand, one of two convictions based on touching the victim's breasts must be vacated, because the evidence did not detail multiple incidents within the time frames listed on the two counts.

[People v. Hamerlinck, 2018 IL App \(1st\) 152759](#) Defendant was convicted of two counts of aggravated DUI, each alleging a different minimum blood alcohol content (BAC). The Appellate Court vacated the count alleging the lower BAC (.08) and upheld the greater (.16) on one-act, one-crime grounds.

The Appellate Court rejected defendant's challenge to the admission of his hospital records as proof of his BAC on the basis that the State had not established a chain of custody for his blood. In the trial court, defense counsel stipulated that the hospital records established defendant's BAC was .259 and stated he had no objection to admission of the hospital records as business records. Trial counsel instead defended on the theory that defendant had not been driving the vehicle. Given counsel's repeated concessions to defendant's BAC in the trial court, even if there was error in admission of the hospital records, it was invited error that could not be challenged on appeal.

[People v. Curry, 2018 IL App \(1st\) 152616](#) A defendant is "armed" for purposes of armed violence where he is in possession of a weapon at a time when there is "immediate potential for violence" such as during a drug sale or at the time he encounters police. Defendant need not be armed at the moment of arrest. The Appellate Court found the evidence sufficient to sustain defendant's armed violence conviction where he discarded a loaded gun, as well as a bag of drugs, as he fled from the police. The predicate offense of unlawful possession of a controlled substance (heroin) with intent to deliver was vacated as a matter of second-prong plain error, however, because it was based on the same act as the armed violence conviction.

The State conceded error in assessment of an electronic citation fee, as well as the failure to award presentence custody credit against fines, but argued that defendant had forfeited the errors. Noting that "forfeiture is a limitation on the parties, not the court," the Appellate Court exercised its discretion to review the assessments and ordered them corrected under Rule 615(b)(1).

[People v. Brown, 2018 IL App \(1st\) 151311-B](#) & [People v. Smith, 2018 IL App \(1st\) 151312-B](#) Codefendants Smith and Brown were convicted of robbery and aggravated battery of a senior citizen for punching the victim in the back and taking a bank deposit bag containing cash and checks. On remand from the Illinois Supreme Court to reconsider in light of [People v. Coats, 2018 IL 121926](#), the convictions of aggravated battery of a senior citizen were vacated on one-act, one-crime grounds. The Appellate Court distinguished **Coats** because the convictions of armed violence and armed habitual criminal involved a single weapon but multiple acts. Here, the single physical act of punching the victim could not serve as both the basis of the aggravated battery charge and the force element of the robbery charge.

The Appellate Court also distinguished [People v. Pearson, 331 Ill. App. 3d 312 \(1st Dist. 2002\)](#), where robbery and aggravated battery were upheld against a one-act, one-crime

challenge. In **Pearson**, there were two separate physical acts where the defendant grabbed a woman's purse off her shoulder and then pushed her to the ground during an ensuing struggle. Here, there was no evidence of how the taking occurred; the victim may have dropped the bank bag when he was punched. The evidence failed to show a separate physical act.

People v. Brown, 2017 IL App (3d) 150070 In determining whether multiple convictions violate the one-act one-crime rule, courts apply a two-step analysis in which the first step is determining whether the conduct in question consisted of single or multiple acts. If a single act was involved, multiple convictions are prohibited. If the conduct consisted of multiple acts, the court must then determine whether any of the crimes in question are lesser-included offenses.

Noting a conflict in Appellate Court authority, the Third District held that convictions of armed violence for being armed with a handgun while possessing cocaine and unlawful possession of a weapon by a felon were based on the single act of possessing a gun. Because only a single act was involved, the one-act one-crime doctrine prohibits multiple convictions.

Although defendant did not raise the issue in the lower court, a violation of the one-act one-crime rule affects the integrity of the judicial process and therefore constitutes plain error under the substantial rights prong of the plain error rule.

People v. Melecio, 2017 IL App (1st) 141434 A defendant may not be convicted of multiple offenses based on the same physical act. Here, the evidence showed that defendant and another man entered the victim's car, pulled him out of the car, and shot him. Defendant was convicted of first degree murder and vehicular invasion.

The Appellate Court vacated the vehicular invasion conviction since it was based on the same physical act as the murder. The indictment alleged that defendant entered the car with the intent to commit first degree murder. Accordingly, the act of entering the car and pulling the victim out was inherent in the murder itself.

People v. Smith, 2017 IL App (1st) 151312 Under the one act/one crime doctrine, a defendant may be convicted of two offenses where a common act is a part of both crimes. But where two offenses share a common act, there must be another separate act to sustain both convictions. An act is any overt or outward manifestation which will support a different offense.

The State charged defendant with robbery for taking money from the victim by force and aggravated battery of a senior citizen for causing the victim great bodily harm. The evidence showed that defendant punched the victim in the side from behind, knocking him to the ground and fracturing his ribs. At some point, defendant took property from the victim. The trial court convicted defendant of both offenses.

The Appellate Court held that defendant could only be convicted of one crime. The record showed that defendant committed a single physical act when he punched the victim and that act was the basis for both convictions. The court rejected the State's argument that defendant used another act of force to take money from the victim since there was no evidence explaining how the taking occurred.

The court vacated defendant's aggravated battery conviction.

People v. Gillespie, 2014 IL App (4th) 121146 Under **People v. King, 66 IL 2d 551, 363 N.E.2d 838 (1977)**, where more than one offense arises from a series of closely related acts and the offenses are not by definition lesser-included offenses, convictions with concurrent

sentences can be entered on all of the offenses. Although the Illinois Supreme Court has identified three possible methods for determining whether one offense is a lesser-included offense of another, the appropriate test for **King** purposes is the abstract elements test. Under this test, a crime is a lesser-included offense if all of its elements are included within a second offense and it contains no element not included in the second offense.

For there to be a lesser included offense under the abstract elements test, it must be impossible to commit the greater offense without also committing the lesser offense. The abstract elements approach does not consider the facts of a crime as charged in the particular charging instrument or as proved at trial.

Defendant was convicted of robbery and aggravated criminal sexual assault based on committing a criminal sexual assault during the commission of a felony. The predicate felony for the aggravated criminal sexual assault was the same robbery for which defendant was convicted.

The court concluded that under Illinois law, the predicate offense for a crime is necessarily a lesser-included offense of that crime. Thus, where robbery is the predicate offense for aggravated criminal sexual assault, robbery is by definition a lesser-included offense. The robbery conviction was vacated.

People v. McFadden, 2014 IL App (1st) 102939 As a matter of plain error, the court found that multiple convictions for unlawful use of a weapon by a felon were improper under the one-act, one-crime doctrine, which precludes multiple convictions based on precisely the same physical act or where one of the offenses is a lesser included offense of the other. For purposes of the doctrine, an “act” is any overt or outward manifestation which will support a different offense.

Defendant was convicted of three counts of armed robbery and two counts of unlawful use of a weapon by a felon arising from the commission of armed robberies against separate victims over a 24-hour-period. The U UW by a felon convictions involved defendant’s possession of a single weapon during two of the three robberies.

Noting that the U UW by a felon statute criminalizes possession rather than use of a weapon, the court concluded that a “singular and continuous” act of possession occurring over a several-hour period constitutes a single act for purposes of the one-act, one crime doctrine. Because the legislature is presumed to not have intended absurd results, the court concluded that the legislative intent of the U UW by a felon statute was to permit only one conviction for the continuous possession of a firearm, even where that firearm is used in the commission of several offenses during a single chain of events. Otherwise, “a potentially infinite number of convictions” could occur because “the defendant possessed the firearm from hour to hour, minute to minute, nanosecond to nanosecond.”

The court vacated one of defendant’s convictions for unlawful use of a weapon by a felon.

People v. Clark, 2014 IL App (1st) 123494 A defendant has a due process right to notice of the charges brought against him. A defendant may be convicted of an uncharged offense only if that crime is a lesser included offense of a crime with which the defendant is expressly charged. The charging instrument approach is used to determine whether an uncharged crime is a lesser-included offense.

Under this approach, the court looks first to the allegations of the charging instrument to see whether the description of the greater offense contains the broad foundation or main outline of the lesser offense. Every element of the lesser offense need not be explicitly contained in the greater charge, so long as the missing elements can be reasonably inferred.

If the description of the greater offense contains the broad foundation of the lesser offense, the defendant may be convicted of the lesser offense if the evidence presented at trial rationally supports a conviction on that offense.

[720 ILCS 5/18-4\(a\)](#) provides alternative methods of committing aggravated vehicular hijacking: (1) by taking a motor vehicle from the person or immediate presence of another by the use or threat of immediate force while armed “with a dangerous weapon, other than a firearm,” ([720 ILCS 5/18-4\(a\)\(3\)](#)), or (2) by taking a motor vehicle from the person or immediate presence of another by the use or threat of immediate force while armed “with a firearm.” ([720 ILCS 5/18-4\(a\)\(4\)](#)). Similarly, armed robbery is defined as: (1) knowingly taking property other than a vehicle from the person or the presence of another by the use or threat of imminent force while armed with “a dangerous weapon, other than a firearm” ([720 ILCS 5/18-2\(a\)\(1\)](#)), or (2) knowingly taking property other than a vehicle from the person or the presence of another by the use or threat of imminent force while armed with “a firearm.” ([720 ILCS 5/18-2\(a\)\(1\)](#)). Thus, the statutes create mutually exclusive forms of armed robbery and aggravated vehicular hijacking depending on the nature of the weapon used.

Because the offenses are mutually exclusive, charging one offense does not allege the basic outlines of the alternative offenses. In other words, the allegation that defendant was armed with a firearm necessarily excluded an allegation that he was armed with a dangerous weapon other than a firearm. Furthermore, none of the language in the charging instrument implies that defendant was armed with a weapon other than a firearm or that he used a firearm as a bludgeon. Therefore, aggravated vehicular hijacking with a dangerous weapon other than a firearm and armed robbery with a dangerous weapon other than a firearm were not lesser included offenses of aggravated vehicular hijacking with a firearm and armed robbery with a firearm.

The court concluded that entering judgment on offenses that were not lesser-included offenses of charged offenses constitutes plain error under the second prong of the plain error rule, which applies to clear and obvious errors which are so serious as to affect the reliability of the trial and challenge the integrity of the judicial process.

The convictions were reduced to vehicular hijacking and robbery and the cause was remanded for re-sentencing.

People v. Sedelsky, 2013 IL App (2d) 111042 Statutory construction requires a court to ascertain and give effect to the intent of the legislature. The most reliable indicator of legislative intent is the language of the statute, which, if plain and unambiguous, must be read without exception, limitation, or condition. Criminal statutes must be strictly construed in defendant’s favor.

The “allowable unit of prosecution” as defined by statute governs whether a particular course of conduct involves one or more distinct offenses under the statute.

Defendant was convicted and sentenced for two counts of possession of child pornography based on his possession of duplicate identical images uploaded at nearly the same time and stored in the same digital medium, but under different file names.

The child pornography statute proscribes possession of “any *** depiction by computer” of a pornographic image of a child. [720 ILCS 5/11-20.1\(a\)\(6\)](#). “Any” is not defined by statute and can mean singular or plural. Because “any” does not indicate whether the possession of duplicate depictions by computer in the same digital medium constitute separate offenses, the statute must be construed in defendant’s favor. Therefore, only one conviction of possessing child pornography can be entered for defendant’s possession of the same digital image stored in the same digital medium.

Because this holding applies only to the narrow facts presented, it does not conflict

with the purpose of the child pornography statute, which is to “dry up” the pornography market. An individual possessing two duplicate digital images saved in the same medium cannot disseminate the image more widely than an individual possessing a single digital image. The images were not stored in different locations and could only be accessed through defendant’s account.

People v. Sotelo, 2012 IL App (2d) 101046 430 ILCS 65/2(a) defines the offenses of unlawful possession of a firearm and unlawful possession of ammunition:

(a)(1) No person may acquire or possess any firearm, stun gun, or taser . . . without having in his possession a [FOID] card. . . .

(2) No person may acquire or possess firearm ammunition within this State without having in his or her possession a [FOID] card.

1. Under **People v. King**, 66 Ill. 2d 551, 363 N.E.2d 838 (1977), multiple convictions are prohibited for offenses carved from a single physical act or, with regard to multiple acts, where one of the offenses is a lesser included offense of the other. However, **King** does not prohibit multiple convictions for the simultaneous possession of multiple firearms without an FOID card. Although the “singular act of failing to possess a FOID card could not sustain multiple convictions of an offense comprised *solely of that act*, failing to possess a FOID card may serve as a common element of multiple offenses that include additional physical acts - possession of different firearms, or of firearm ammunition.”

2. However, the court concluded that the General Assembly did not intend to authorize multiple convictions for the simultaneous possession of multiple weapons without an FOID card. In determining whether the legislature intended to permit multiple convictions, the court is required to determine the “allowable unit of prosecution” for §65/2(a). Where a statute is ambiguous as to the allowable unit of prosecution, the court “must adopt a construction which favors the defendant.”

In **People v. Carter**, 213 Ill. 2d 295, 821 N.E.2d 233 (2004), the Illinois Supreme Court concluded that a statute which prohibited the possession of “any firearm or any firearm ammunition” was ambiguous because it could be read as providing either that the possession of each firearm constituted a separate offense, or as providing that the simultaneous possession of multiple firearms and ammunition constitute only a single offense. Because the statute was ambiguous, the **Carter** court adopted an interpretation that favored the defendant and held that the simultaneous possession of multiple firearms and ammunition constituted only a single offense.

The court reached the same conclusion concerning §65/2(a)(1), which uses similar language to the statute in **Carter**. Thus, because the legislature did not intend that the simultaneous possession of multiple firearms constitutes multiple violations of §65/2(a)(1), two of three of defendant’s convictions under (a)(1) must be vacated.

The court reached the opposite conclusion concerning the possession of ammunition, however. The court concluded that had the General Assembly intended the simultaneous possession of firearms and ammunition to constitute a single unit of prosecution, it would have placed the firearms and ammunition provisions in a single statute rather than in two separate subsections. The court concluded that the structure of §65(a) showed that the General Assembly intended to permit separate convictions for possession of firearms without a FOID card and possession of ammunition without a FOID card. Thus, defendant’s conviction for possession of ammunition was affirmed.

People v. Ramirez, 2012 Il App (1st) 093504 Under the one-act, one-crime doctrine, a court

shall not impose multiple convictions where multiple offenses are carved from the same physical act. Even where there are arguably separate acts, separate convictions cannot be sustained where the prosecution does not charge the acts as separate offenses.

A person commits bribery when with the intent to influence the performance of any act related to the employment or function of a public employee, he promises or tenders to that employee property or personal advantage which the employee would not be authorized by law to accept. [720 ILCS 5/33-1\(b\)](#). The act of bribery is complete as of the promise where it is given with the requisite intent.

Defendant could be convicted of only one count of bribery based on evidence that he promised to pay a city employee a sum of money to delete four building code violations from the city's computer system, and tendered the employee money in payment on that promise on two separate dates. The act of bribery was complete when defendant promised to pay the sum of money. He could not be convicted of a separate act of bribery for his subsequent tender of a portion of that sum. The State could have charged defendant with multiple acts of bribery for the promises made with respect to the separate building code violations, but because it charged him with only one count of bribery for his actions on the date that he reached the agreement, it could obtain but one conviction.

People v. Hardin, 2012 IL App (1st) 100682 Under the one-act, one-crime doctrine, a defendant may not be convicted of multiple crimes if they are based on precisely the same physical act.

Subsection (a)(3) of the aggravated-discharge-of-a-firearm statute prohibits discharge of a firearm “in the direction of a person” defendant knows to be a police officer, while subsection (a)(4) prohibits the discharge of a firearm “in the direction of a vehicle” that defendant knows is occupied by a police officer. [720 ILCS 5/24-1.2\(a\)\(3\)](#) and [\(a\)\(4\)](#). Because the crime set forth in subsection (a)(4) is the discharge of a firearm in the direction of a vehicle rather than a person, evidence that defendant fired one gunshot at a vehicle occupied by two police officers could support but one conviction for aggravated discharge of a firearm under subsection (a)(4).

Salone, J., concurring and part and dissenting part, would uphold both convictions for aggravated discharge of a firearm even though they were derived from the same act because the legislature intended that the statute protect police officers, not vehicles.

People v. McSwain, 2012 IL App (4th) 100619 If a statute permits multiple convictions for simultaneous possession, the one-act, one-crime doctrine applies. When construing whether a statute permits multiple convictions, a court is required to ascertain and give effect to the intent of the legislature. the most reliable indicator of legislative intent is the plain language of the statute, which, if plain and unambiguous, must be read without exception, limitation, or other condition. Criminal statutes must be strictly construed in the defendant's favor.

The child pornography statute provides that a person commits child pornography who “with knowledge of the nature and content thereof, possesses *any* film, videotape, photograph or similar visual reproduction or depiction of any child . . . whom the person knows or reasonably should know to be under the age of 18 . . . engaged in any activity described in subparagraphs (i) through (vii) of paragraph (1) of this subsection.” [720 ILCS 5/11-20.1\(a\)\(6\)](#) (emphasis added).

The term “any” in the statute could be singular or plural, as it can mean “any one of a kind,” “any kind,” or “any number.” The term “any” thus does not adequately define the allowable unit of prosecution for a child pornography offense. The statute is therefore ambiguous and must be construed in favor of the defendant. Consequently, the

simultaneous possession of multiple images cannot support multiple convictions.

While agreeing with the State that each photograph exploits the minor and adds to the market, the court held that it is for the legislature to define what it desires to make an allowable unit of prosecution. By its amendment of other statutes, the legislature has demonstrated that it knows how to authorize multiple convictions for simultaneous violations of a single statute. The legislature can amend the statute if it wants to authorize multiple convictions based on simultaneous possession of different images of child pornography.

As defendant was convicted of five counts of child pornography based on his receipt of an email that displayed five photos within the body of that email, the court vacated convictions on four of those counts.

People v. Koteru, 2012 IL App (1st) 100951 The “one act, one crime” doctrine prohibits multiple convictions based on a single physical act. If a defendant commits multiple acts, however, multiple convictions may stand provided that none of the offenses are lesser included offenses. An “act” is “any overt or outward manifestation which will support a different offense.”

Whether a defendant was improperly convicted of multiple offenses arising from a single act, and whether charges are lesser included offenses, are questions of law that are reviewed *de novo*.

Where the defendant was convicted of five counts of theft for obtaining control over money belonging to the village which employed him as a parking enforcement officer and one count of official misconduct over a period of time which encompassed all five of the thefts, the court concluded that the single charge of official misconduct was based on the same physical act as the five thefts. Therefore, it was error to enter convictions on all of the offenses.

Where multiple convictions are improperly imposed, a sentence is to be imposed on the most serious offense and the convictions for the less serious offenses vacated. Because theft of government property as charged was a Class 2 felony and official misconduct was a Class 3 felony, the official misconduct conviction must be vacated. The convictions for five counts of theft were affirmed.

People v. Bailey, 409 Ill.App.3d 574, 948 N.E.2d 690 (1st Dist. 2011) The defendant was convicted of multiple counts of financial exploitation of an elderly person. Two counts charged that defendant “knowingly and by deception obtained control over property,” of the victim, which the court construed to refer to her obtaining of a durable power of attorney from the victim. The court ordered that the counts charging that act should merge into the count charging the greater amount of money, as that was the more serious offense, even though both carried the same penalty.

Two other counts charged that defendant “knowingly and illegally used the assets or resources” of the victim, which the court construed to refer to her unauthorized taking of the victim’s savings. Although the evidence showed that multiple takings took place over a period of months, the State did not charge each taking as a separate act. Therefore, the State was not entitled to multiple convictions. The counts charging the act of taking merged into the count charging the greater amount of money, as that was the more serious offense, even though both carried the same penalty.

People v. Cook, 2011 IL App (4th) 090875 A defendant may not be convicted of multiple offenses based on a single act. Courts have interpreted this rule to prohibit convicting a defendant (1) of multiple counts of reckless homicide, premised on drunken driving, where a single victim was killed, or (2) under multiple subsections of the DUI statute for a single

instance of driving, or (3) of multiple counts of an aggravated offense based on the same aggravating circumstance.

Defendant was convicted of three counts of aggravated DUI in that he caused a death by driving under the influence of alcohol, by driving with a BAC of .08 or greater, and by driving under the combined influence of alcohol and other drugs. Because he committed a single act of driving having consumed the alcohol and illegal drugs that impaired him, and a single death resulted from the ensuing accident, only one of the three convictions could stand.

People v. Strawbridge, 404 Ill.App.3d 460, 935 N.E.2d 1104 (2d Dist. 2010) As a matter of plain error, the court found that the “one-act, one-crime” rule was violated where two counts of predatory criminal sexual assault of a child involved identical allegations except for the time periods involved, and the evidence would have allowed the jury to convict based upon a single instance occurring within the time periods alleged in both counts. Although there was adequate evidence in the record to support convictions on both counts, the court refused to assume that the jury based the verdicts on separate incidents.

The court vacated one of the convictions for predatory criminal sexual assault of a child.

People v. Schmidt, 405 Ill.App.3d 474, 938 N.E.2d 559 (3d Dist. 2010) Multiple convictions and sentences can be entered where the defendant is convicted of multiple offenses arising from a series of incidental or closely related acts, and none of the offenses are by definition lesser included offenses of any of the other charges. Determining whether multiple convictions are permissible requires a two-step analysis under which the court must first determine whether the defendant’s conduct involved a single or multiple acts. If a single act was involved, only one conviction may be imposed.

If the conduct involved multiple acts, the court must also determine whether any of the offenses are lesser included offenses. If so, multiple convictions are improper. The “abstract elements” test is used to determine whether a crime is a lesser included offense.

Here, defendant was convicted of unlawful use of property to commit a methamphetamine violation, possession of methamphetamine, and possession of a methamphetamine precursor. The convictions were based on three acts: possession of methamphetamine, possession of pseudoephedrine, and using a vehicle to possess methamphetamine. Thus, multiple convictions were permissible unless any of the charges were lesser included offenses.

As a matter of plain error, the court concluded that possession of methamphetamine was an included offense of unlawful use of property. Defendant was charged with unlawful use of property for knowingly using his personal vehicle to possess methamphetamine. Because all of the elements of possession of methamphetamine are required to commit the offense of unlawful use of property to possess methamphetamine, the possession offense was vacated.

However, the court rejected the State’s confession of error that possession of a methamphetamine precursor was also a lesser included offense of unlawful use of property. The jury instructions showed that the unlawful use of property charge was based on the defendant’s use of his vehicle to possess methamphetamine, not on the possession of pseudoephedrine. Thus, under the State’s theory of the case, the elements of possession of a methamphetamine precursor were not included in the unlawful use of property charge.

The conviction for possession of methamphetamine was vacated. The cause was remanded for resentencing.

People v. Patrick, 406 Ill.App.3d 548, 956 N.E.2d 443 (2d Dist. 2010) A defendant may not be convicted of or sentenced for more than one offense carved from a single physical act. “Act” means any overt or outward manifestation that would support a different offense.

The offense of leaving the scene of an accident involving death or injury contemplates that there may be several persons injured in an accident, but focuses on the duty of the driver to remain on the scene to provide information and assistance. 625 ILCS 5/11-401(a). Therefore, defendant may not be convicted and sentenced for more than one offense of leaving the scene of an accident where there is only one accident scene, despite the number of persons injured or killed by the accident.

In re Rodney S., 402 Ill.App.3d 272, 932 N.E.2d 588 (4th Dist. 2010) Even if closely related, separate blows are separate acts that support multiple convictions, but only if the State treats them as separate acts at the trial level. If the State charges the multiple blows as a single physical act, multiple convictions are improper. **People v. Crespo**, 203 Ill.2d 335, 788 N.E.2d 1117 (2001).

In this case, the State could have but did not differentiate between the multiple blows struck by the respondent. Instead, it charged a series of acts in each count of two counts of aggravated battery. Therefore, the Appellate Court vacated one of the convictions.

People v. Hagler, 402 Ill.App.3d 149, 937 N.E.2d 204 (2d Dist. 2010) Multiple convictions are improper if based on the same physical act. If a common act is part of both offenses, or part of one offense and the only act of another, multiple convictions can stand. The key question is whether there is a separate act that will support a different offense.

Defendant was convicted of aggravated battery of a peace officer and resisting a peace officer, proximately causing injury to the officer. Both charges alleged an injury to the officer that occurred when defendant slammed a door on the officer, causing the officer’s hand and arm to go through a glass pane on the door. The slamming of the door was the only act that formed the basis for the aggravated battery charge. The Appellate Court rejected the State’s argument that the defendant’s act of running when instructed by the officer to stop was a separate act that supported the resisting conviction. Because the resisting statute (720 ILCS 5/31-1(a-7)) requires that the act of resisting be the proximate cause of the injury to the officer in order to impose a Class 4 sentence, there was only one act that formed the basis for both charges.

The court vacated defendant’s conviction for resisting a peace officer proximately causing injury, which is a less serious offense (Class 4 felony) than aggravated battery to an officer (Class 2 felony).

People v. Morgan, 385 Ill.App.3d 771, 896 N.E.2d 417 (3d Dist. 2008) Under "one-act one-crime" principles, only one count of home invasion may be based on a single entry to a residence, regardless of the number of persons present or harmed by defendant. Defendant did not waive the erroneous entry of judgment on three unauthorized counts of home invasion, either by pleading guilty or by failing to raise the issue in the motion to withdraw the plea.

People v. Young, 362 Ill.App.3d 843, 840 N.E.2d 825 (2d Dist. 2005) Where the State charged and prosecuted two counts of domestic battery under alternate theories of culpability, there could be only one conviction.

People v. James, 362 Ill.App.3d 250, 839 N.E.2d 1135 (4th Dist. 2005) Where defendant

stabbed the victim several times, but the State charged only that he "repeatedly stabb[ed] [the complainant] with a knife," the State failed to allege separate acts as multiple offenses. Thus, convictions for both aggravated domestic battery and attempt first degree murder violated the one-act, one-crime rule. Conviction for aggravated domestic battery vacated.

People v. Brener, 357 Ill.App.3d 868, 830 N.E.2d 692 (2d Dist. 2005) The double jeopardy clauses of the Federal and Illinois Constitutions protect against multiple punishments for the same offense. Double jeopardy precludes a subsequent prosecution for an offense arising from the same physical act as a lesser included offense for which defendant was previously prosecuted.

A one-hour, nonstop, alcohol-impaired drive through three counties constituted a single act, without regard to the time and distance which defendant drove."Counties are not sovereign entities[,] but rather are subordinate government instrumentalities" that are equally subordinate to the State double-jeopardy prohibition. "[A]s equal, subordinate instrumentalities of Illinois, the counties must coordinate their efforts to prosecute an offender where that prosecution arises from the same act."

Because DUI is a lesser included offense of aggravated DUI, defendant's guilty plea to DUI in Winnebago County precluded a subsequent prosecution in Jo Daviess County for aggravated DUI based on the same act of driving while intoxicated.

People v. Johnson, 347 Ill.App.3d 570, 807 N.E.2d 1171 (1st Dist. 2004) Defendant's conviction for residential burglary was required to be vacated because it was based on the same entry as a conviction for home invasion. Although some counts of home invasion and residential burglary were based upon entry to the victim's dwelling place, while other counts were based upon entry to the dwelling place of the victim's mother, it was clear that the victim's and the victim's mother's dwelling place were "one [and] the same," and "that the defendant made but one unauthorized entry."

People v. Strong, 316 Ill.App.3d 807, 737 N.E.2d 687 (3d Dist. 2000) "One act, one crime" principles precluded convictions for both armed violence based on possession of a controlled substance and possession of a controlled substance with intent to deliver, at least where all of the contraband was seized from a single area and there was no evidence to suggest that defendant segregated any of the substances for his personal use.

People v. Boyd, 307 Ill.App.3d 991, 719 N.E.2d 306 (3d Dist. 1999) Whether multiple convictions may properly stand is a question of law and subject to de novo review.

The indictment for aggravated battery with a firearm clearly set out the "main outline" of aggravated discharge of a firearm, because both indictments alleged that while acting with the required mental state defendant knowingly discharged a firearm in the direction of the complainant. In addition, the aggravated battery indictment alleged one element not involved in aggravated discharge of a firearm - that defendant's actions inflicted injury.

Because aggravated discharge of a firearm was a lesser included offense of aggravated discharge of a firearm, convictions could not be entered for both offenses. In addition, although defendant did not raise the issue in a post-trial motion, the erroneous entry of an improper conviction constitutes plain error.

People v. Bussan, 306 Ill.App.3d 836, 715 N.E.2d 820 (2d Dist. 1999) Under the circumstances of this case, theft was a lesser included offense of burglary. The burglary

charge alleged an entry to a video business with intent to commit a theft, while the theft charge alleged the knowing exertion of unauthorized control over several video games with intent to permanently deprive the video store of the use of its property.

People v. Damico, 309 Ill.App.3d 203, 722 N.E.2d 194 (2d Dist. 1999) Convictions for aggravated battery and home invasion were not based on a single act; although the offenses shared a common element - injuring the victim by striking him with a blunt instrument - the home invasion was based on defendant's unlawful entry into the victim's house.

However, the aggravated battery conviction must be vacated as a lesser included offense of home invasion. Because the home invasion charge alleged that defendant entered the victim's dwelling and "intentionally caused injury" by striking the victim in the head with a blunt instrument, and the aggravated battery charge alleged that defendant intentionally caused great bodily harm by striking the victim in the head with a blunt object and fracturing his skull, the "main outline" of aggravated battery was alleged by the home invasion charge.

People v. Conerty, 296 Ill.App.3d 459, 695 N.E.2d 898 (4th Dist. 1998) Under 720 ILCS 5/2-9(a), an included offense is one "established by proof of the same or less than all of the facts or a less culpable mental state (or both) than that which is required to establish the commission of the offense charged." In Illinois, a particular offense is "included" if the charging instrument describes it when alleging the greater charge.

Here, Count I charged defendant with committing home invasion "by entering the dwelling of the victim, knowing her to be present, and intentionally causing injury" by using force to commit an act of sexual penetration. Count II charged aggravated criminal sexual assault "in that during commission of home invasion, he knowingly committed" the same act of sexual penetration. Because home invasion was the sole aggravating factor comprising the offense of aggravated criminal sexual assault, and the intentional infliction of injury for home invasion was the act that constituted aggravated criminal sexual assault, home invasion was a lesser included offense.

People v. Lillard, 200 Ill.App.3d 173, 558 N.E.2d 616 (4th Dist. 1990) It was error to convict defendant of both first degree murder and armed violence arising out of the firing of a single shot. Armed violence vacated.

People v. Agee, 205 Ill.App.3d 146, 562 N.E.2d 545 (1st Dist. 1990) Improper to convict for aggravated battery and attempt murder since aggravated battery is a lesser included offense.

People v. Powell, 199 Ill.App.3d 291, 556 N.E.2d 896 (4th Dist. 1990) It was improper to convict defendant of both theft and State benefits fraud based upon the same acts. Theft vacated.

People v. Crews, 191 Ill.App.3d 228, 547 N.E.2d 580 (4th Dist. 1989) It was error to convict defendant of both first degree murder and solicitation to commit murder. Chapter 38, ¶8-5 prohibits convictions for both a inchoate and principal offense. Compare, **People v. Columbo**, 118 Ill.App.3d 882, 455 N.E.2d 733 (1st Dist. 1983) (solicitation and murder convictions may stand where based on "distinctly separate, albeit interrelated acts").

People v. Jolliff, 183 Ill.App.3d 962, 539 N.E.2d 913 (4th Dist. 1989) It was improper to convict defendant of both aggravated kidnapping and aggravated battery. The latter offense

was a lesser included offense of the former where the same aggravating factor (great bodily harm) was alleged for both.

People v. Bratton, 178 Ill.App.3d 718, 533 N.E.2d 572 (4th Dist. 1989) It was improper to convict defendant of both residential burglary and unlawful restraint. The unlawful restraint was the underlying felony on which the residential burglary was based, and every element of the unlawful restraint was also charged as an element of the residential burglary.

People v. Bridges, 188 Ill.App.3d 961, 545 N.E.2d 367 (5th Dist. 1989) It was error to convict defendant of two counts of aggravated battery — one for causing bodily harm and the other for striking a police officer. Both offenses stemmed from the striking of the officer, all the blows were struck in rapid succession, and there was no intervening event. See also, **People v. Varela**, 194 Ill.App.3d 357, 551 N.E.2d 318 (3d Dist. 1990).

People v. Ellis, 143 Ill.App.3d 892, 493 N.E.2d 739 (3d Dist. 1986) Defendant was convicted of two counts of aggravated battery arising out of the beating of a single victim in a single occurrence. One count alleged that defendant caused great bodily harm to the victim, and the other count alleged that the beating occurred in a public place of accommodation. While multiple blows were struck, they came in rapid succession, without an intervening act or event. Defendant's conduct could not be broken into separate acts. Because both convictions were based upon a single act, one must be vacated.

People v. Govednik, 150 Ill.App.3d 717, 502 N.E.2d 276 (1st Dist. 1986) It was improper to convict defendant of both home invasion and armed violence. **People v. Dawson**, 116 Ill.App.3d 672, 452 N.E.2d 385 (4th Dist. 1983) (residential burglary and burglary); **People v. Clerk**, 68 Ill.App.3d 1021, 386 N.E.2d 630 (1st Dist. 1979) (burglary with intent to commit rape and burglary with intent to commit theft); **People v. Jones**, 75 Ill.App.3d 214, 393 N.E.2d 1132 (5th Dist. 1979) (possession of cannabis and possession of cannabis with intent to deliver); **People v. Wagner**, 76 Ill.App.3d 965, 395 N.E.2d 414 (4th Dist. 1979) (sexual delinquency of child reversed, rape and deviate sexual assault); **People v. Clark**, 71 Ill.App.3d 381, 389 N.E.2d 911 (2d Dist. 1979) (official misconduct and bribery); **People v. Kosanovich**, 69 Ill.App.3d 748, 387 N.E.2d 1061 (1st Dist. 1979) (armed robbery and theft); **People v. Walker**, 191 Ill.App.3d 382, 547 N.E.2d 1036 (3d Dist. 1989) (theft and robbery).

People v. Morrison, 137 Ill.App.3d 171, 484 N.E.2d 329 (1st Dist. 1985) The three defendants were convicted of seven counts of home invasion based upon their entry into an apartment where several persons were present.

It was error to convict defendants on seven counts of home invasion where there had been only one entry. Convictions for six of the seven counts were vacated.

People v. Pearson, 108 Ill.App.3d 241, 439 N.E.2d 31 (4th Dist. 1982) It was improper for the trial court to enter judgment for criminal damage to property and reckless conduct, since both offenses were based on the single physical act of breaking a window in a tavern door. Conviction for criminal damage to property reversed.

People v. Austin, 93 Ill.App.3d 495, 417 N.E.2d 671 (1st Dist. 1981) Defendant was convicted of forgery and attempt theft arising out of one incident — the presentation of a forged check for payment. He received concurrent sentences. Attempt theft conviction

vacated because both offenses stemmed from the same act.

People v. Bitner, 89 Ill.App.3d 1106, 412 N.E.2d 721 (3d Dist. 1980) Battery is a lesser included offense of home invasion; thus, it was error to convict of both offenses. See also, **People v. Monigan**, 204 Ill.App.3d 686, 561 N.E.2d 1358 (3d Dist. 1990) (home invasion and aggravated battery).

§53-4

Impeachment of Verdicts

United States Supreme Court

Pena-Rodriguez v. Colorado, 580 U. S. ___, 137 S.Ct. 855, 197 L.Ed.2d 107 (2017) The traditional “no impeachment” rule prohibits jurors from testifying about any statements or incidents which occurred during jury deliberations, the effect of such matters on a juror’s vote, or a juror’s mental processes concerning the verdict. However, a juror may testify whether extraneous prejudicial information was improperly brought to the jury’s attention, outside influence was improperly brought to bear on any juror, or a mistake was made in entering the verdict on the verdict form. The purpose of the no impeachment rule is to promote full and vigorous discussion by assuring jurors that after being discharged, they will not be summoned to recount their deliberations or otherwise harassed or annoyed by litigants seeking to challenge the verdict. Thus, the rule gives stability and finality to verdicts.

Although some jurisdictions have adopted variations of the no impeachment rule, a juror’s statements about the deliberative process are generally permitted only in limited circumstances.

Due to the pervasive nature of racial discrimination in the judicial system and the threat which racial bias poses to the just administration of laws, the Sixth Amendment requires an exception to the no impeachment rule where a juror makes statements which show that overt racial bias was a significant motivating factor in a vote to convict.

In such cases, the trial court may consider the juror’s statements and any other evidence and determine whether the right to a jury trial has been violated. To justify an inquiry, there must be a threshold showing that one or more jurors made statements exhibiting overt racial bias that cast serious doubt on the fairness and impartiality of the jury’s deliberations and resulting verdict. Whether the threshold showing has been met is left to the discretion of the trial court, which must consider all of the circumstances.

Where two jurors approached defense counsel after a sex offense trial and stated that a third juror repeatedly expressed anti-Hispanic bias toward defendant and his alibi witness, said that his bias was based on knowledge obtained about Mexican men during his law enforcement experiences, and stated that “nine times out of ten” Mexican men are “guilty of being aggressive toward women,” there was a sufficient showing of racial bias to justify an inquiry by the trial court into the fairness of the deliberative process. The court found that it need not decide in this case the precise procedures the trial court must follow when considering a motion for a new trial based on juror testimony of racial bias or the appropriate standard for deciding whether evidence of racial bias requires that a verdict be set aside and a new trial granted.

Defendant’s convictions were reversed and the cause remanded for further proceedings.

Illinois Supreme Court

People v. Nitz, 219 Ill.2d 400, 848 N.E.2d 982 (2006) As a general rule, a juror's testimony is inadmissible to impeach a jury verdict. Exceptions to this rule include testimony which shows that a juror answered falsely on voir dire about a matter of potential bias or prejudice. To prevail on a motion for a new trial based on false testimony during voir dire, defendant must show that: (1) the juror answered falsely during voir dire, (2) prejudice resulted, and (3) the testimony concerned extraneous influences on the verdict rather than the process by which the jury reached its verdict.

A juror's affidavit stating that other jurors: (1) admitted answering falsely to voir dire questioning about their knowledge of defendant's previous trials, and (2) said they considered defendant's failure to testify in reaching a verdict, was inadmissible because it concerned the process by which the jury reached its verdict rather than extraneous influences.

People v. Bocclair, 129 Ill.2d 458, 544 N.E.2d 715 (1989) Following a jury trial, defendant was found guilty of murder. About 10 days later, one of the jurors wrote a letter to the parties in which he stated that he thought defendant was innocent. The juror claimed that he had resisted the guilty verdict as long as he could and that he had capitulated when two other jurors "collapsed."

The trial judge held an evidentiary hearing at which the above juror and another juror testified. The first juror reaffirmed his letter, but stated that there had been no force or coercion or "anything like that," and that he only voted guilty because "everybody else said we have now decided what we are going to do and we are the majority." However, the second juror testified that the first juror had agreed that defendant was guilty.

"[A] jury's verdict may not be impeached by the testimony or affidavit of a juror which shows the motive, method or process by which that verdict was reached. [The juror's] letter and testimony go to the very heart of the jury system. This is not a matter which courts take lightly. It is clear that [the juror] was not coerced or intimidated in any manner, and that he was, indeed, persuaded by the evidence that defendant was guilty."

See also, **People v. Silagy**, 116 Ill.2d 357, 507 N.E.2d 830 (1987).

People v. Hobley, 182 Ill.2d 404, 696 N.E.2d 313 (1998) A jury verdict may not be impeached by a juror's post-trial statements showing the "motive, method or process by which the jury reached its verdict." However, it is proper to admit testimony or affidavits offered to show improper, extraneous influences on the jury. Under Illinois law, prejudice is required before a jury verdict may be set aside because of improper outside influences. To demonstrate such prejudice, jurors may be called to testify about the outside influences. However, testimony concerning the effect of those influences on the jurors' mental processes is inadmissible. It is presumed that the right to a fair trial is prejudiced by "any communication with a juror during trial about a matter pending before the jury." Although the presumption is not conclusive, the State has the burden to establish that the communication did not harm the defendant. Here, posttrial affidavits suggested that statements of non-jurors upset several jurors to the point that one believed her life was in danger. Under these circumstances, defendant made a sufficient showing of prejudice to warrant an evidentiary hearing.

People v. Preston, 76 Ill.2d 274, 391 N.E.2d 359 (1979) The trial judge properly refused to allow the defense to use a juror's deposition to show that the verdict was a "compromise." The use of affidavits or testimony to show the motive, method or process by which the jury reached its verdict is prohibited.

People v. Holmes, 69 Ill.2d 507, 372 N.E.2d 656 (1978) During defendant's attempt armed robbery trial, there was testimony that the heel of defendant's shoe matched that left by the assailant. Defendant filed a motion for new trial, supported by his attorney's affidavit, alleging that one juror had said that several jury members visited a shoe store and inspected the heels of various shoes for the purpose of ascertaining the trade designs. The trial judge refused to consider the allegation because of the general rule that a verdict may not be impeached by a juror.

There are two categories of verdict "impeachment." The first involves an attempt to prove, by juror testimony, the motive, method or process by which the jury reached its verdict. This type of "impeachment" is improper.

The second category involves situations where juror testimony or affidavit is offered to show that extraneous prejudicial information was improperly brought to the jury's attention or that an outside influence was improperly brought to bear. Because a juror should be permitted to testify about these matters, the trial court erred by refusing to consider the testimony in this case.

Not every instance in which extraneous or unauthorized information reaches the jury requires reversal. Here, however, the improper information was in the nature of evidence crucial to the question of defendant's identification. In addition, defendant was neither confronted with the evidence at trial nor given the opportunity to refute it. Under these circumstances, the conviction should be reversed.

People v. Nuccio, 54 Ill.2d 39, 294 N.E.2d 276 (1973) Defendant alleged in his motion for a new trial that jurors had considered his prior conviction for the same crime. A defense investigator testified that certain jurors told him that they had learned of the prior conviction, but no juror stated that the prior conviction was discussed during deliberations. The trial judge properly refused to call the jurors to testify at the post-trial hearing. The general rule is that jurors may not impeach their verdict.

People v. Pulaski, 15 Ill.2d 291, 155 N.E.2d 29 (1958) After verdict, defendant sought to interrogate the jury as to whether they knew of the court's finding of guilty as to a co-defendant. The trial judge properly denied the request, since allowing the interrogation would have involved an attempt to impeach the verdict by the testimony of the jury which rendered it.

Illinois Appellate Court

People v. Caguana, 2020 IL App (1st) 180006 After trial, two jurors at defendant's murder trial admitted that they learned from outside sources that defendant's father had tried to have two witnesses in the case killed. Defense counsel filed a motion for new trial. At the hearing on that motion, one juror said he read an article about defendant's father, and the other said she had heard something about the father's case from a friend. The judge denied the motion for new trial, concluding that the jurors' knowledge of outside information did not warrant reversal because it did not directly relate to defendant's case.

The Appellate Court disagreed. It has long been the rule that a jury verdict cannot be impeached by inquiry into the method by which the jury reached its decision. In the case of outside information, a court must decide, based on the content of the outside information, whether the jury's exposure to it resulted in such a probability of prejudice that the proceedings should be deemed inherently lacking in due process. Here, the Appellate Court concluded that such a probability of prejudice existed based on the jurors' exposure to evidence of defendant's father's murder-for-hire plot.

The Appellate Court noted that it was defendant's father, not a friend or acquaintance, who was the perpetrator. The jurors could have thought that this meant defendant's own father thought defendant was guilty, or that defendant asked his father to solicit the murders of the State's key witnesses. And, important credibility determinations might have been impacted since the jurors could have concluded that those witnesses were telling the truth if someone had been willing to kill them to keep them quiet. While the trial court could not inquire into the actual thought process of the jurors in reaching their verdict, it could consider the likely impact of the outside information on a juror. Here, the court should have concluded that there was a probability of prejudice from the outside information. Accordingly, the Appellate Court reversed and remanded for a new trial.

People v. Cearlock, 381 Ill.App.3d 975, 887 N.E.2d 893 (5th Dist. 2008) The rule against impeaching a verdict with juror testimony applies not only when a verdict has been returned, but also when a mistrial is declared due to the jury's inability to reach a verdict. Here, even if a juror at defendant's first trial refused to acquit despite believing that the State had failed to prove its case, the testimony of three jurors from the first trial was not admissible at the hearing on defendant's motion to bar a retrial.

Further, even had testimony by the three jurors been admissible, there was insufficient evidence to establish that a juror refused to acquit despite her belief that the prosecution had failed to prove its case. Although one juror testified that the recalcitrant juror gave such an explanation, two others testified that she gave a different explanation.

People v. Collins, 351 Ill.App.3d 175, 813 N.E.2d 285 (2d Dist. 2004) Generally, a verdict cannot be impeached by evidence of the motives, methods or processes which the jury used to reach its conclusion. However, once the defendant shows that the jury was exposed to outside information relating to an issue in the case and that the verdict may have been influenced, the State has the burden of demonstrating that the verdict was unaffected. A guilty verdict may stand only if it is "obvious" that the defendant was not prejudiced by the extraneous matter. Because a juror admitted that an unauthorized trip to the crime scene aided him in determining guilt, the visit likely affected the foreman's evaluation of the credibility of eyewitnesses, and the crime scene was different at the time of the visit than it had been on the day of the offense, the State failed to carry its burden to show a lack of prejudice from the unauthorized visit.

People v. Crews, 191 Ill.App.3d 228, 547 N.E.2d 580 (4th Dist. 1989) A jury may not impeach its verdict through affidavits or testimony showing its misunderstanding of the instructions.

People v. Cabrera, 134 Ill.App.3d 526, 480 N.E.2d 1170 (1st Dist. 1985) Statement of juror two hours after the jury was dismissed (that she wanted to dissent from the guilty verdict and change her vote) was inadmissible.

People v. Spice, 54 Ill.App.3d 539, 370 N.E.2d 129 (4th Dist. 1977) During deliberations, the jury sent the following note to the judge: "[I]f a juror visited the site of the alleged crime during the trial would that unfairly influence the judgment of the jury." The judge apparently took no action concerning the note. At a post-trial hearing, a juror was permitted to testify that another juror had visited the crime scene and described the scene to the remaining jurors during deliberations. The juror also testified that the description influenced her vote for conviction.

The testimony by the juror that her verdict was "influenced" by the crime scene description of the other juror was improper, because it violated the rule against impeachment of a verdict. However, the juror's testimony about the other juror's visit to the crime scene and his report to the jury did not violate the rule against impeaching a verdict, and was proper. The unauthorized visit and description violated defendant's right to confront witnesses. The conviction was reversed.

People v. Pozzi, 42 Ill.App.3d 537, 356 N.E.2d 186 (2d Dist. 1976) During post-trial motions defendant made an offer of proof, based on the affidavit of a juror, that before deliberations one juror told two other jurors that defendant "has a prior conviction in cases of this kind." The same juror also made statements throughout the trial about his personal knowledge of various considerations insofar as the police department was concerned, and bragged about his connections with the police association.

The general rule prohibiting jurors from impeaching their verdict is sound, however, that rule does not prevent a new trial where facts indicate that actual prejudice existed in a juror's mind or that extraneous matter not germane to the issue was introduced during deliberations. Here, the errant juror either had a prejudice against defendant which he failed to reveal at voir dire or was supplied information of a prejudicial nature during the trial and before deliberations. Because defendant was deprived of an impartial jury and a fair trial, the conviction was reversed and the cause remanded for a new trial.

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