No. 128269

IN THE
SUPREME COURT OF ILLINOIS

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| PEOPLE OF THE STATE OF ILLINOIS,<br><br>Plaintiff-Appellee,<br><br>v.<br><br>REGINALD LANE,<br><br>Defendant-Appellant. | ) On Appeal from the Appellate Court<br>) of Illinois, First Judicial District,<br>) No. 1-18-2672<br>)<br>) There on Appeal from the Circuit<br>) Court of Cook County, Illinois,<br>) No. 07 CR 8129<br>)<br>)<br>) The Honorable<br>) Carl B. Boyd,<br>) Judge Presiding. |

**BRIEF OF PLAINTIFF-APPELLEE**
**PEOPLE OF THE STATE OF ILLINOIS**

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## POINTS AND AUTHORITIES

## NATURE OF THE CASE

Following a bench trial, defendant was found guilty of first degree murder and intentional homicide of an unborn child. The circuit court sentenced defendant to concurrent terms of natural life imprisonment. Defendant appealed, arguing that the court erred in imposing a mandatory life sentence. The appellate court affirmed, and this Court granted defendant's petition for leave to appeal. No issue is raised on the pleadings.

## ISSUE PRESENTED FOR REVIEW

Whether the trial court properly imposed a mandatory life sentence on defendant, who was convicted of first degree murder and intentional homicide of an unborn child, where the intentional homicide of an unborn child statute provides that the penalty shall be the same as for first degree murder, *see* 720 ILCS 5/9-1.2, and where the sentencing statute for first degree murder provides that a defendant shall be sentenced to a term of natural life for murdering more than one victim, *see* 730 ILCS 5/5-8-1(a)(1)(c)(ii).

## JURISDICTION

Jurisdiction lies under Supreme Court Rules 315 and 612(b). This Court granted leave to appeal on May 25, 2022.

## STATUTORY PROVISIONS INVOLVED

The intentional homicide of an unborn child statute provides:

(a) A person commits the offense of intentional homicide of an unborn child if, in performing acts which cause the death of an unborn child, he without lawful justification:

(1) either intended to cause the death of or do great bodily harm to the pregnant individual or unborn child or knew that such acts would cause death or great bodily harm to the pregnant individual or unborn child; or

(2) knew that his acts created a strong probability of death or great bodily harm to the pregnant individual or unborn child; and

(3) knew that the individual was pregnant.

(b) For purposes of this Section, (1) "unborn child" shall mean any individual of the human species from the implantation of an embryo until birth, and (2) "person" shall not include the pregnant woman whose unborn child is killed.

(c) This Section shall not apply to acts which cause the death of an unborn child if those acts were committed during any abortion, as defined in Section 1-10 of the Reproductive Health Act, to which the pregnant individual has consented. This Section shall not apply to acts which were committed pursuant to usual and customary standards of medical practice during diagnostic testing or therapeutic treatment.

(d) Penalty. The sentence for intentional homicide of an unborn child shall be the same as for first degree murder, except that:

(1) the death penalty may not be imposed;

(2) if the person committed the offense while armed with a firearm, 15 years shall be added to the term of imprisonment imposed by the court;

(3) if, during the commission of the offense, the person personally discharged a firearm, 20 years shall be added to the term of imprisonment imposed by the court;

> (4) if, during the commission of the offense, the person personally discharged a firearm that proximately caused great bodily harm, permanent disability, permanent disfigurement, or death to another person, 25 years or up to a term of natural life shall be added to the term of imprisonment imposed by the court.
>
> (e) The provisions of this Act shall not be construed to prohibit the prosecution of any person under any other provision of law.

720 ILCS 5/9-1.2.[1]

> The sentencing statute for first degree murder provides:
>
> (a) Term. The defendant shall be sentenced to imprisonment or, if appropriate, death under Section 9-1 of the Criminal Code of 1961 or the Criminal Code of 2012 (720 ILCS 5/9-1). Imprisonment shall be for a determinate term, subject to Section 5-4.5-115 of this Code, of (1) not less than 20 years and not more than 60 years; (2) not less than 60 years and not more than 100 years when an extended term is imposed under Section 5-8-2 (730 ILCS 5/5-8-2); or (3) natural life as provided in Section 5-8-1 (730 ILCS 5/5-8-1).

730 ILCS 5/5-4.5-20(a).

> Section 5-8-1 of the Criminal Code of 2012 provides that:
>
> (1) for first degree murder,
>
> ***
>
> (c) the court shall sentence the defendant to a term of natural life imprisonment if the defendant, at the time of the commission of the murder, had attained the age of 18, and:
>
> ***
>
> (ii) is found guilty of murdering more than one victim . . . .

730 ILCS 5/5-8-1(a)(1)(c)(ii).

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[1] Although this statute was amended following defendant's crime and sentencing, the pertinent language has not changed. This brief thus cites the current statute.

## STATEMENT OF FACTS

Defendant was charged with the first degree murder of his girlfriend Jwonda Thurston and the intentional homicide of her unborn child. C74-97.[2] The evidence at defendant's 2018 bench trial showed the following. Jwonda had three young children, and defendant knew that she was three months pregnant. R1197-99. On the evening of March 23, 2007, Jwonda planned to drop off her children at her sister June Thurston's apartment so that she could meet up with her best friend Natasha Johnson. R1101, 1201.

When Jwonda, defendant, and the three children arrived at June's apartment, defendant began shouting at Jwonda and told her that she was not going anywhere. R1202. After Jwonda failed to show up at the agreed-upon time and place, Natasha went to June's apartment to check on her. R1103. When Natasha arrived, she tried to convince Jwonda to leave. R1105. But defendant said that Jwonda would not be going anywhere and then told everyone to sit down, confiscated Natasha and June's cell phones so that they could not call the police, and took out a gun. R1105-08, 1208-10. Defendant also screamed at Jwonda, pushed her to the ground while she was holding her one-year old son, and told her that he would kill her if she left. R1204-05, 1207.

[2] Citations to "AT Br." are to defendant's opening brief; citations to "A__" are to defendant's appendix; citations to "C__" are to the common-law record; and citations to "R__" are to the report of proceedings.

Defendant eventually returned Natasha's cell phone and allowed her to leave the apartment, R1109-10, but he told her that he would hurt Jwonda if she called the police, R1113, 1116, 1213. After leaving, Natasha flagged down a police officer and recounted what she had witnessed in the apartment. R1111-13, R1138. Defendant saw Natasha speaking with the officer and called to tell her that he would kill her if she told the police anything. R1116, 1215.

Shortly thereafter, four officers were dispatched to investigate Natasha's report: two approached the front door, while two monitored the back door. R1144-47. When the officers knocked on the front door and announced their presence, defendant told June that if she answered and let the officers in, he would kill Jwonda. R1221. Defendant then grabbed Jwonda by the hair, held a gun to her head, and took her to the back door. R1222. When defendant and Jwonda reached the back door, the officers saw Jwonda and instructed her to put her hands up and stop moving. R1148. Defendant then shot Jwonda in the back of the head. R1149, R1223.

During his testimony, defendant admitted that he shot Jwonda, but claimed that the gun accidentally discharged when he pulled it out of his pocket. R1297.

At the conclusion of the trial, the court found that defendant knowingly discharged a firearm that proximately caused the death of Jwonda and her unborn child, and thus was guilty of first degree murder and

intentional homicide of an unborn child. R1409-10. Prior to sentencing, defendant filed a motion to prohibit a natural life sentence. C479-81. According to defendant, he was not subject to a mandatory life sentence—which, as relevant here, applies when a defendant is "found guilty of murdering more than one victim," 730 ILCS 5/5-8-1(a)(1)(c)(ii) ("multiple-murder sentencing statute")—because he was "not convicted of 'murdering' more than one victim," C479. Instead, defendant argued, he was convicted of the "first-degree murder of Jwonda Thurston and the intentional homicide of an unborn child, which is not murder." C480.

The People responded that the penalty provision of the intentional homicide of an unborn child statute provides that "the sentence for intentional homicide of an unborn child shall be the same as for murder." 720 ILCS 5/9-1.2(d); R1424. And here, the People explained, "we have the first degree murder of [Jwonda], and we have the penalty that shall be the same as first degree murder" for the intentional homicide of the unborn child. R1424. Accordingly, the People argued, under the multiple-murder sentencing statute, defendant was subject to a term of mandatory natural life. *Id.* Following argument, the court denied defendant's motion. R1428.

At sentencing, the People explained that if each offense were taken individually, the sentencing range for each would be 20 to 60 years, with an enhancement of 25 years to natural life for use of a firearm, and the sentences would run consecutively. R1458, 1476-78, 1480. In other words,

defendant faced a minimum sentence of 90 years and a maximum sentence of natural life. The People further argued that the court was required to impose natural life under the multiple-murder sentencing statute. R1455-60, 1477. For his part, defendant reiterated his argument that the statute was inapplicable. R1459-61. The court again rejected defendant's arguments, explaining that the multiple-murder sentencing statute required that he impose a natural life sentence. R1491. The court thus sentenced defendant to two terms of natural life, to be served concurrently. A4. Defendant filed a motion to reconsider that sentence, which the court denied. C490, C492, R1498.

Defendant appealed, A5, arguing that he was entitled to a new sentencing hearing because the circuit court erroneously imposed a mandatory natural life sentence under the multiple-murder sentencing statute, A6 ¶ 2. Defendant first reiterated his argument that the multiple-murder sentencing statute was inapplicable because intentional homicide of an unborn child is not a "murder." A14 ¶29. Defendant then raised the alternative argument that he was found guilty of murdering only one victim because an unborn fetus is not a "victim." A22 ¶ 45.

The appellate court affirmed the circuit court's judgment, concluding that "a defendant who is found guilty of both first degree murder and intentional homicide of an unborn child is required to be sentenced to a term of natural life imprisonment." A20 ¶ 43. It rejected defendant's first

argument—that the multiple-murder sentencing statute "applies only where a defendant is convicted of two murders, not one murder and one intentional homicide," A13 ¶ 29—based on the plain, unambiguous language of the penalty provision for intentional homicide of an unborn child and the multiple-murders sentencing statute, A20 ¶ 43. The text of the penalty provision providing "that the sentence for intentional homicide of an unborn child 'shall be the same as first degree murder' shows the legislature's intent to punish that offense with the same severity as first degree murder." *Id.* (quoting 720 ILCS 5/9-1.2(d)). The court also found it notable that the "legislature made only one exception to that sentencing scheme, providing that a defendant found guilty of intentional homicide of an unborn child shall not be sentenced to death," and did not exempt "mandatory natural life imprisonment." *Id.* (internal quotations omitted).

The appellate court rejected defendant's second argument—that "an unborn child is not a 'victim'" as defined in either 725 ILCS 120/3 or 730 ILCS 5/5-1-22—because defendant failed to raise that argument in the trial court. A22 ¶ 45. Instead, "[d]efendant's arguments below and the trial court's ruling were based solely on whether defendant's conviction for intentional homicide of an unborn child satisfied [the multiple-murder sentencing statute's] provision that defendant was found guilty of more than one murder." *Id.* Furthermore, the court noted, defendant did not "allege that the trial court committed plain error in finding that the unborn child

was a victim such that we may excuse his waiver of this claim." *Id.* Finally, the court determined that defendant's new argument, even if preserved, would fail on the merits because when a defendant "commits intentional homicide of an unborn child and also commits the offense of first degree murder of the mother, there are two separate victims" for purposes of the multiple-murder sentencing statute. A22-23 ¶ 46.

## STANDARD OF REVIEW

Determining whether a defendant who is found guilty of both first degree murder and intentional homicide of an unborn child must be sentenced to a term of natural life imprisonment involves resolving questions of statutory interpretation, which are legal issues that this court reviews *de novo*. *In re Jarquan B.*, 2017 IL 121483, ¶ 21.

## ARGUMENT

### The Appellate Court Correctly Affirmed Defendant's Mandatory Life Sentence.

The appellate court correctly concluded that under the plain text of the relevant statutes, "a defendant who is found guilty of both first degree murder and intentional homicide of an unborn child is required to be sentenced to a term of natural life imprisonment." A20 ¶ 43. This plain-text reading, moreover, is supported by the statutory scheme as a whole and confirmed by the legislative history criminalizing feticide.

Defendant's arguments to the contrary are not persuasive. As the appellate court rightly determined, the General Assembly made clear that

intentional homicide of an unborn child is the functional equivalent of a "murder" for sentencing purposes. And although defendant now argues that the multiple-murder sentencing statute is inapplicable because he did not murder multiple "victims," defendant did not raise this argument before the trial court and did not argue that the trial court committed plain error either in the appellate court or his opening brief to this court. But in any event, even if this court were to consider this unpreserved argument, there are numerous indications that the General Assembly intended for there to be two victims for purposes of sentencing where, as here, a defendant is convicted of first degree murder of a pregnant person and the intentional homicide of their unborn child. Finally, the legislative history does not support either of defendant's theories, and instead confirms the appellate court's conclusion.

### A. The multiple-murder sentencing statute applies to intentional homicide of an unborn child convictions.

The court's "primary objective in construing a statutory scheme is to ascertain and give effect to the intent of the legislature." *People v. Boyce*, 2015 IL 117108, ¶ 15. And the "most reliable indicator of legislative intent is the language of the statute, given its plain and ordinary meaning." *Id.* "Unless the language of a statute is ambiguous, a court should not resort to further aids of construction and must apply the statute as written." *People v. Clark*, 2019 IL 122891, ¶ 26. If the text is ambiguous, however, "this court may look to various tools of statutory interpretation, such as legislative history." *Dynak v. Bd. of Educ. of Wood Dale Sch. Dist. 7*, 2020 IL 125062,

¶ 16. In assessing the plain language, courts "must view the statute as a whole, construing words and phrases in light of other relevant statutory provisions and not in isolation." *Clark*, 2019 IL 122891, ¶ 20. As part of this analysis, courts "may consider the reason for the law, the problems sought to be remedied, the purposes to be achieved, and the consequences of construing the statute one way or another." *Id*.

Application of these principles here establishes that the trial court was required to impose a term of mandatory life on defendant. The penalty provision of the intentional homicide of an unborn child statute provides that the sentence for that offense "shall be the same as for first degree murder." 720 ILCS 5/9-1.2(d). As the appellate court explained, that language "shows the legislature's intent to punish that offense with the same severity as first degree murder." A20 ¶ 43; *see also People v. Shoultz*, 289 Ill. App. 3d 392, 398 (4th Dist. 1997) (penalty provision "mandates application of the first degree murder penal scheme").

The first degree murder sentencing statute, in turn, authorizes the imposition of three possible terms of imprisonment: (1) a term of "not less than 20 years and not more than 60 years"; (2) a term of "not less than 60 years and not more than 100 years when an extended term is imposed"; or (3) "natural life as provided in Section 5-8-1." 730 ILCS 5/5-4.5-20(a).[3]

[3] The text of this statute also provides for imposition of the death penalty, *see* 730 ILCS 5/5-4.5-20(a), although the legislature in 2011 abolished the death penalty under a separate statute, *see* 725 ILCS 5/119-1.

Section 5-8-1 includes the multiple-murder sentencing provision at issue here, which requires the imposition of a natural life sentence where a defendant is "found guilty of murdering more than one victim." 730 ILCS 5/5-8-1(a)(1)(c)(ii).

By instructing that the penalty be the "same" as the penalty for first degree murder, the General Assembly mandated that defendants convicted of intentional homicide of an unborn child be sentenced pursuant to the multiple-murder sentencing statute in section 5-8-1. Indeed, the legislature "made only one exception" to the application of the first degree murder sentencing scheme: "a defendant found guilty of intentional homicide of an unborn child shall not be sentenced to death." A20 ¶ 43; 720 ILCS 5/9-1.2(d)(1). That the legislature did not also exempt mandatory life imprisonment under the multiple-murder sentencing statute thus demonstrates its intent for that statute to apply to intentional homicide of an unborn child. To reach a contrary result would require reading an additional exception into the penalty provision of the intentional homicide of an unborn child statute. And, as this court has explained, "[c]ourts are not free to read into a statute exceptions, limitations, or conditions the legislature did not express." *Dew-Becker v. Wu*, 2020 IL 124472, ¶ 14.

Furthermore, as the appellate court in *Shoultz* explained, the express exception for the death penalty shows that the legislature must have contemplated that the clause "found guilty of murdering more than one

victim" in the multiple-murder sentencing statute, 730 ILCS 5/5-8-1(a)(1)(c)(ii), would encompass intentional homicide of an unborn child, 289 Ill. App. 3d at 398. Otherwise, "there would have been no reason for it to expressly exempt the death penalty, since provisions authorizing imposition of the death penalty also apply when 'the defendant has been convicted of murdering two or more individuals.'" *Id.*

There are also several indications beyond the plain text of the intentional homicide of an unborn child statute that the legislature intended for intentional homicide of an unborn child to be treated as a murder for purposes of the multiple-murder sentencing statute. One such example is the similarity between the elements of the intentional homicide of an unborn child statute and the first degree murder statute. *Compare* 720 ILCS 5/9-1.2(a), *with id.* 5/9-1(a). As the appellate court noted, "the language of the intentional homicide of an unborn child statute is almost identical to the language of the first degree murder statute, with the exception that the offender knew the individual was pregnant." A21 ¶ 44. Relevant here, both statutes impose criminal liability where a person performs acts that cause death by either intending "to cause death or do great bodily harm" or knowing "that the acts create a strong probability of death or great bodily harm." *Id.* (referring to 720 ILCS 5/9-1(a) and 720 ILCS 5/9-1.2(a)).

Moreover, the legislature placed intentional homicide of an unborn child (section 9-1.2) within the first degree murder section of the Criminal

Code (section 9-1), and not within the second-degree murder (section 9-2) or involuntary manslaughter and reckless homicide sections (section 9-3). The broader context of the statute further demonstrates "the legislature's intent to treat intentional homicide of an unborn child as another form of first degree murder," A21-22 ¶ 44, and not a lesser crime that should be subject to a less-severe penalty.

Finally, treating intentional homicide of an unborn child as a form of murder is consistent with the genesis of the feticide statute (the precursor to intentional homicide of an unborn child), which was enacted in response to *People v. Greer*, 79 Ill. 2d 103 (1980). In *Greer*, this court considered whether "the killing of an unborn fetus may constitute murder" and, relatedly, whether imposition of the death sentence was appropriate when the multiple-murder aggravating factor was based on the murder of a pregnant woman and her unborn child. *Id.* at 110, 116. This court concluded that under the then-governing law, the killing of an unborn fetus could not constitute murder because such a killing was not murder at common law, *id.* at 111, and because the legislature had "declined to specifically include the unborn within the potential victims of homicide or to create a separate offense of feticide," *id.* at 116.

In response to *Greer*'s determination that the killing of an unborn child could not be considered murder absent legislative action codifying it as such, the General Assembly enacted a feticide statute that, as relevant here,

provided that the "sentence for feticide shall be the same as for murder, except that the death penalty may not be imposed." Ill. Rev. Stat. 1981, ch. 38, par. 9-1.1(d); Pub. Act 82-303 (eff. Aug. 21, 1981).[4] This legislative response strongly suggests that the legislature intended for feticide to be treated as a form of murder for the purposes of sentencing, except in the limited context of the death penalty.

The General Assembly's subsequent actions further confirm this intent. In 1986, the legislature repealed the feticide statute and replaced it with intentional homicide of an unborn child. Pub. Act 84-1414 (eff. Sept. 19, 1986). Although the legislature made substantial changes to certain aspects of the statute—for example, extending the reach of the statute from viability to the entire term of the pregnancy—it maintained the same penalty provision requiring that the sentence be the "same as for murder." Ill. Rev. Stat. 1987, ch. 38, par. 9-1.2(b)-(d). And while there have been additional amendments in the years since, the legislature has not altered the language at issue here. *E.g.*, 720 ILCS 5/9-1.2(d).

In short, the appellate court correctly determined that the legislature intended for the multiple-murder sentencing statute to apply where, as here, a defendant was convicted of both first degree murder and intentional homicide of an unborn child.

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[4] The feticide statute did not apply to any person who committed an act that complied with the Illinois Abortion Law of 1975. Ill. Rev. Stat. 1981, ch. 38, par. 9-1.1(c)(1).

### B. Defendant was found guilty of murdering more than one victim for purposes of the multiple-murder sentencing statute.

Notwithstanding the foregoing, defendant asserts that the multiple-murder sentencing statute does not apply to his convictions because under the plain text of the intentional homicide of an unborn child statute and the multiple-murder sentencing statute, he was not found guilty of multiple "murders" of more than one "victim." AT Br. 9. Defendant also asserts that to the extent the text is ambiguous, the legislative history and various canons of statutory interpretation counsel in favor of his interpretation of the multiple-murders sentencing statute. These arguments are unpersuasive.

#### 1. Defendant incorrectly asserts that his intentional homicide of an unborn child conviction is not a "murder" for purposes of the multiple-murder sentencing statute.

First, defendant wrongly contends that the multiple-murder sentencing statute is inapplicable because he was not convicted of more than one "murder." AT Br. 10. On the contrary, as the appellate court correctly recognized, a conviction for intentional homicide of an unborn child is the functional equivalent of a first degree murder conviction for sentencing purposes. A20-22 ¶¶ 43-44. Indeed, as discussed, *see supra* 11-12, the legislature directed that the sentence for intentional homicide of an unborn child be the "same" as the sentence for first degree murder, 720 ILCS 5/9-1.2(d). Therefore, as even defendant acknowledges, *see* AT Br. 10, courts apply the sentencing range for first degree murder when imposing a sentence for an intentional homicide of an unborn child conviction, even though the

defendant has not been convicted of a first degree murder offense. As a textual matter, there is no logical basis to treat his conviction for intentional homicide of an unborn child as a murder for purposes of applying the first degree murder sentencing statute, but not as a murder for purposes of applying a specific provision—here, the multiple-murder sentencing provision—within that scheme.

Defendant raises several arguments rebutting specific aspects of the appellate court's reasoning. None is persuasive. To begin, defendant argues that while "a conviction for intentional homicide of an unborn child is subject to the same sentencing range as a conviction for first degree murder," it should not "be treated as a conviction for first degree murder for *all* sentencing purposes." AT Br. 10 (emphasis added). According to defendant, the multiple-murder sentencing provision is one such instance. *Id.* at 10-11. But as explained, *see supra* pp. 12-13, when the legislature intended exceptions to its command that the two offenses be treated the "same" for sentencing purposes, it made that express—for example, by crafting an exception for the death penalty. Indeed, the sentencing-credit example set forth by defendant as support for his argument, AT Br. 11, only further proves this point. The legislature determined that first degree murder and intentional homicide of an unborn child are not treated the same for purposes of sentence credits, and it made that clear through express language in the relevant statutes. *Id.* (citing 730 ILCS 5/3-6-3(a)(2)(i)-(ii)).

Defendant also notes that the mandatory firearm enhancements in the intentional homicide of an unborn child statute "mirror those in the first degree murder sentencing statute." AT Br. 15. He reasons that "[i]f the legislature *did* contemplate that [the first degree murder sentencing provision] governed all convictions for intentional homicide of an unborn child, then the intentional homicide of an unborn child statute's mandatory firearm enhancements are rendered completely superfluous." *Id.* (emphasis in original). This argument, too, is unpersuasive. The enhancements appear in both provisions because in 1999, the General Assembly passed Public Act 91-404, which added identical firearm enhancements to a number of violent felonies, including first degree murder and intentional homicide of an unborn child. *See* Pub. Act 91-404 (eff. Jan. 1, 2000). Thus, these enhancements do not offer any insight into the question presented by this case—whether the legislature intended that the multiple-murder statute apply to convictions for intentional homicide of an unborn child.

Nor is there any support for defendant's claim that the legislature expressed its intent for the multiple-murder sentencing statute to be limited "to actual first-degree murders," AT Br. 11, by requiring that the defendant be "*found guilty* of murdering" both the pregnant person and their unborn child, 730 ILCS 5/5-8-1(a)(1)(c)(ii) (emphasis added). According to defendant, "[m]erely because the sentence for intentional homicide of an unborn child 'shall be the same as for first degree murder' does not mean that being found

guilty of intentional homicide of an unborn child is the same as being found guilty of murder." AT Br. 11 (cleaned up); *see also id.* at 14-15. As explained, *see supra* pp. 12-15, however, the multiple-murder sentencing provision applies because intentional homicide of an unborn child is the functional equivalent of murder for sentencing purposes. And the meaning of the phrase "found guilty" sheds no light on the question presented by this case—the proper interpretation of the term "murder" in this context.

Defendant also contends that the appellate court failed to take into account the "political context surrounding the passage of the original feticide statute," and thus "placed undue weight on the legislature's decision to exempt convictions for intentional homicide of an unborn child from the death penalty." AT Br. 13. According to defendant, the true reason the legislature exempted the death penalty from the initial feticide statute lies in its "unease with the death penalty being newly re-instated" and its concern that including the death penalty in the feticide statute would make it more likely to be ruled unconstitutional. *Id.* at 13-14. As an initial matter, this argument is irrelevant because the import of this exception is clear from the plain text, as explained, *see supra* pp. 12-13.

In any event, the examples that defendant sets forth do not support that speculative theory. For instance, the excerpt from the May 19, 1981 Senate Transcript relates to an entirely different bill and topic—specifically, Senate Bill 84, which "provides that the death penalty may be imposed for

the murder of a paramedic." State of Illinois, 82nd General Assembly, Senate Tr. at 83 (May 19, 1981). The specific remarks also demonstrate that there is no connection to the feticide statute, let alone the issue presented here:

> For those of us opposed to the death penalty we really should be very grateful to Senator Egan and some others of you because you are now putting the Death Penalty Bill, year by year, into a shape where it is almost certain to be declared unconstitutional. If I had any sense at all, which I don't on this subject, I would vote Yes on . . . this bill, which obviously will pass anyway. But it is . . . it has really gotten to be ludicrous and the only thing that is good about it, is that it almost assures that one of these days, you're doing to go too far and the whole death penalty will be declared unconstitutional.

*Id.* at 85. Likewise, the cited June 24, 1982 transcript is a debate over whether to change the method of execution to lethal injection. State of Illinois 82nd General Assembly, House Tr. at 25 (June 24, 1982). During that debate, Representative Stearney hypothesized that the reason for the substantial number of appeals from death sentences following the enactment of the Death Penalty Act was because using the electric chair is "a very heinous type of killing an individual." *Id.*

Finally, defendant takes issue with the lower court's treatment of two other appellate decisions: *People v. Magnus*, 262 Ill. App. 3d 362 (1st Dist. 1994), and *People v. West*, 323 Ill. App. 3d 858 (1st Dist. 2001). *See* AT Br. 15-18. In *Magnus*, the court concluded that the multiple-murder sentencing statute did not apply to a defendant convicted of first degree murder and second-degree murder. 262 Ill. App. 3d at 365. The court reached that conclusion upon finding that the language "murdering more than one victim"

was capable of two meanings in this context—either that it applied "only to situations involving first degree murders" or that it "includes homicides of either first or second degree"—and thus was ambiguous. *Id.* at 366. The court then turned to the legislative history, which revealed that in 1987, the legislature passed a law through which it intended to change all references to "murder" to "first degree murder." *Id.* at 366-67. Therefore, the court reasoned, "the language 'murdering more than one victim' must be interpreted as mandating a life sentence when defendant is convicted of contemporaneous, multiple first degree murders." *Id.* at 367.

Defendant argues that under the reasoning of *Magnus*, the appellate court should have "held that the phrase 'murdering more than one victim'" was ambiguous when applied to intentional homicide of an unborn child, since that offense "is both separate and distinct from murder." AT Br. 15. This is incorrect. As the appellate court explained, *Magnus* is consistent with the outcome it reached in this case: while there was an ambiguity as to whether second-degree murder fell within the scope of the multiple-murder sentencing statute, there is no ambiguity where the intentional homicide of an unborn child statute "'mandates application of the first degree murder penal scheme.'" A15 ¶ 34 (quoting *Schoultz*, 289 Ill. App. 3d at 398).

In *West*, the defendant argued that mandatory life sentencing under 730 ILCS 5/5-8-1(a)(1)(c)(i)—which requires imposition of a natural life sentence for individuals who previously committed "first degree murder"—

was inappropriate because his first conviction was for "murder," and not "first degree murder." 323 Ill. App. 3d at 859-60. But as the appellate court in *West* explained, the defendant's murder conviction was imposed in 1978, before the legislature "renamed the offense of murder to first degree murder." *Id.* at 859. And because the murder statute criminalized the same conduct as the first degree murder statute, "the legislature unambiguously indicated an intention to treat convictions for murder under the prior statute as convictions for first degree murder." *Id.* at 861.

The appellate court here cited *West* in reaching its conclusion that "the legislature unambiguously expressed an intention to treat convictions under the intentional homicide of an unborn child statute the same as convictions for first degree murder." A22 ¶ 44. According to defendant, such reliance was unwarranted because the "simple renaming of the offense of 'murder' to that of 'first degree murder,' without altering the elements of the offense, is a much clearer reflection of a legislature's intent" than the language at issue in this case. AT Br. 17. But *West* stands for a principle that is equally applicable here—the legislature can intend for offenses to be treated the same for sentencing purposes, regardless of whether they are given the same name. And for all of the reasons just discussed, there are a number of indications that the General Assembly intended to do the same here, including the provision directing that the intentional homicide of unborn

child penalty be the "same" as first degree murder. This court should thus reject defendant's arguments to the contrary.

**2. Defendant failed to preserve his argument based on the term "victim" in the multiple-murder sentencing statute and, in any event, that argument is unpersuasive.**

Defendant also argues that mandatory life sentencing was improper because he was not found guilty of murdering more than one statutorily defined "victim." AT Br. 18. In particular, defendant argues that the term "victim" in the multiple-murder sentencing statute should be defined as "any natural person determined by the prosecutor or the court to have suffered direct physical or psychological harm as a result of a violent crime perpetrated or attempted against that person." 725 ILCS 120/3(a) (defining "victim" for purposes of Crime Victims and Witnesses Act); *see* 730 ILCS 5/5-1-22 (providing that "victim" has same meaning for purposes of sentencing code). And because an unborn child is not a "person" as that term is elsewhere defined, *see, e.g.*, 725 ILCS 120/3(a), the multiple-murder sentencing statute does not apply to his crimes, *see* AT Br. 18-19. This argument should be rejected for several reasons.

At the threshold, the appellate court correctly concluded that defendant failed to raise this argument in the trial court, and "that an issue is waived on appeal unless a defendant both makes an objection at trial and raises the issue in a posttrial motion." A22 ¶ 45 (citing *People v. Enoch*, 112 Ill. 2d 176, 186 (1988)); *see also People v. Reed*, 177 Ill. 2d 389, 394 (1997)

(defendant must raise argument before trial court to preserve it for appeal). Moreover, the appellate court explained, it could not "excuse [defendant's] waiver" because he did "not allege [on appeal] that the trial court committed plain error." A22 ¶ 45; *see also People v. Robinson*, 223 Ill. 2d 165, 173-74 (2006) (party forfeits issues not raised in opening brief).

Here, the defendant's argument before the trial court focused on a single theory: that the multiple-murder sentencing statute was inapplicable because he was convicted of the "first-degree murder of Jwonda Thurston and the intentional homicide of an unborn child, which is not murder." C480. On appeal, defendant argued for the first time that imposition of mandatory life sentencing was improper because an unborn child is not a "victim." A22 ¶ 45.

Defendant asserts that he raised this argument before the trial court, but the statements that he cites are taken out of context. AT Br. 21-22. For instance, defendant contends that the "post-trial motion specifically argued that the Unified Code of Corrections limits a mandatory life sentence 'to the murder of two (2) or more people' and that [he] 'was only convicted of the murder of one person.'" *Id.* (quoting C480). But when viewed in context, it is clear that these statements were made in support of his argument that intentional homicide of an unborn child is not a murder:

> 6. The Illinois sentencing scheme does not always include situations when there are two dead bodies as a result of the defendant's actions—or two victims who die as a result of the defendant's actions. Instead, it specifically limits natural life sentences to the *murder* of two (2) or more people. Here, Defendant was only convicted of the murder of one person.

> 7. Consistent with Defendant's position, support can be found in other statutes. For example, an individual who commits a reckless homicide that leaves two (2) or more victims dead is not required to be sentenced to natural life. 720 ILCS 5/9-3. An individual who causes the death of two (2) or more persons in a drug-induced homicide is not required to be sentenced to natural life. 720 ILCS 5/9-3.3.
>
> 8. Plainly, the Illinois sentencing scheme distinguishes between murder and other forms of homicide when it comes to the sentence. Since Defendant was convicted of just one murder, he is ineligible for natural life imprisonment.

C480-81 (emphasis in original). Similarly, defendant's contention that he raised this argument at the sentencing hearing is not borne out by the record. AT Br. 22. On the contrary, defense counsel made the cited remarks about defendant not having murdered multiple victims in the context of discussing the "distinction between a homicide and murder." R1422; *see also, e.g.*, R1421 (drawing attention to the "definition of the word murder").

Defendant further contends that even if he failed to raise the issue below, this court should consider it because "the statutory definition of 'victim' . . . is inextricably intertwined with the statutory interpretation issue presented in this case, such that it should be considered." AT Br. 22. But even defendant presents this argument as "a separate, alternative argument," *Lintzeris v. City of Chicago*, 2023 IL 127547, ¶ 43, and not an issue that is inextricably intertwined with the "murder" argument presented to the trial court. Finally, as in the appellate court, defendant does not make

a plain error argument, and thus has forfeited it. AT Br. 21-23; *see, e.g.*, *Robinson*, 223 Ill. App. 2d at 173-74.

In any event, the appellate court rightly determined that defendant's unpreserved argument is unpersuasive because, notwithstanding the statutory definitions cited in his brief, there are numerous indications that the General Assembly intended for there to be two "victims" for purposes of sentencing where, as here, a defendant "commits international homicide of an unborn child and also commits the offense of first degree murder of the mother." A17-18 ¶ 46. Indeed, although the General Assembly directed that for purposes of the sentencing chapter in the Criminal Code, the term "'[v]ictim' shall have the meaning ascribed to the term 'crime victim' in subsection (a) of Section 3 of the Rights of Crime Victims and Witnesses Act," 730 ILCS 5/5-1-22, it also provided at the outset of that chapter that the definitions outlined therein would not apply "when a particular context clearly requires a different meaning," *id.* 5/5-1-1; *see also, e.g.*, *People v. Lowe*, 153 Ill. 2d 195, 201 (1992) (concluding that "the term 'victim' has a broader meaning" within the context of the Criminal Code's restitution statute "than given it in the Act"). And here, as now explained, the context shows that the General Assembly did not intend to employ that definition of "victim" for convictions under the intentional homicide of an unborn child statute.

As an initial matter, this Court has already recognized that an unborn child is a victim as defined in the Criminal Code in the context of feticide (the

precursor to intentional homicide of an unborn child) in *People v. Shum*, 117 Ill. 2d 317 (1987). There, a defendant convicted of first degree murder of a pregnant woman and the feticide of her unborn child argued that his "feticide conviction must be reversed because it arose from the single physical act of killing [the pregnant woman]." *Id.* at 363. This court rejected that argument because in "Illinois, it is well settled that separate victims require separate convictions and sentences." *Id.* And in those circumstances, "there were two distinct victims of the defendant's single action, [the pregnant person] and her child." *Id.*; *see also id.* at 364 (referencing the "two victims involved"). Although the legislature has amended this statute many times since this court's decision in *Shum*, *see supra* pp. 15, it has not included language in any of those amendments suggesting that unborn children are not victims in this context.

On the contrary, the language of the intentional homicide of an unborn child statute suggests that the legislature, like the *Shum* court, views the pregnant person and the unborn child as distinct victims in these narrow circumstances. For instance, as the appellate court explained, that statute "criminalizes the homicide of an unborn child irrespective of harm to the mother." A17 ¶ 46; *see also* 720 ILCS 5/9-1.2(a) (offense occurs when an individual "perform[s] acts which cause the death of an unborn child"). Additionally, the requisite intent is satisfied if the defendant "either intended to cause the death of or do great bodily harm to the pregnant individual *or*

*unborn child* or knew that such acts would cause death or great bodily harm to the pregnant individual *or unborn child*." 720 ILCS 5/9-1.2(a)(1) (emphasis added); *see also id.* 5/9-1.2(a)(2) (intent satisfied if defendant "knew that his acts created a strong probability of death or great bodily harm to the pregnant woman *or unborn child*") (emphasis added). In other words, a defendant may be convicted of intentional homicide of an unborn child based solely on harm to the unborn child and without any physical harm (or intended harm) to the pregnant person. In these limited circumstances, although the unborn child is not a "person," the unborn child is nevertheless the victim of the crime.

Defendant's reliance on section 1.36(a) of the Statute on Statutes (the definition of "born alive infant") to rebut the existence of an exception to the general rule that an unborn child cannot be a "victim" is unavailing. AT Br. 19. That statute provides that "[i]n determining the meaning of any statute or of any rule, regulation, or interpretation of the various administrative agencies of this State, the words 'person', 'human being', 'child', and 'individual' shall include every infant member of the species homo sapiens who is born alive at any stage of development." 5 ILCS 70/1.36(a). This section is not controlling for at least three reasons.

First, section 1.36(a) does not define or otherwise reference the term "victim," which is the relevant term for purposes of the multiple-murder sentencing statute. Accordingly, section 1.36(a) could be relevant only if this

court concludes that the definition of "victim" identified in the Criminal Code applies in the context of the multiple-murder sentencing statute. And as just discussed, the plain text of that statute confirms that the General Assembly did not intend for that definition of "victim" to govern in this limited context.

Second, the legislature also provided that this definition does not "affirm, deny, expand, or contract any legal status or legal right applicable to any member of the species homo sapiens at any point prior to being born alive, as defined in this Section." *Id.* 70/1.36(c). On the contrary, as the sponsor made clear, "the purpose of this legislation is to support the principle that any individual who is born alive . . . is entitled to protection under the laws of the State of Illinois. The intent is, just literally, that, to protect newborn infants." State of Illinois, 94th General Assembly, Senate Tr. No. 43 (May 18, 2005). Stated differently, this definition does not reduce the protection afforded unborn children under the criminal law, which treats the intentional and unlawful killing of a fetus without the pregnant person's consent as akin to first degree murder.

Third, the sponsor confirmed that the definition of "born alive infant" would not be used as an interpretive tool in the criminal context:

> SENATOR RAOUL: . . . I want to be clear that this -- this bill will in no way be used to interpret any criminal laws or -- or any -- any -- criminal prosecutions or anything?
>
> PRESIDING OFFICER: (SENATOR DEL VALLE): Senator Haine.

> SENATOR HAINE: Thank you very much, Senator Raoul, for that question. Absolutely not. Absolutely not. That's the legislative intent of this bill.

*Id.* Defendant's attempts to rely on section 1.36(a) to interpret the Criminal Code thus run counter to this legislative intent and should be rejected. *E.g.*, 5 ILCS 70/1 ("In the construction of statutes, this Act shall be observed, unless such construction would be inconsistent with the manifest intent of the General Assembly or repugnant to the context of the statute.").

Defendant also asserts that this court should look to federal law as support for his theory, given the similarity between the definition of "born alive infant" in section 1.36(a) and the federal analogue. AT Br. 19-20. But as just discussed, that definition is not relevant to the question at hand. And in any event, the federal case relied on by defendant is inapposite. *See Gomez Fernandez v. Barr*, 969 F.3d 1077, 1084 (9th Cir. 2020) (federal immigration case that addressed, among other issues, whether the California definition of murder is broader than the federal definition of murder).

In sum, defendant's contention that he did not murder multiple "victims," and thus cannot be sentenced under the multiple-murder sentencing statute, is incorrect.

**3. Defendant's remaining arguments are unpersuasive.**

As a final matter, defendant makes the alternative argument that to the extent the statutory text is ambiguous, the legislative history and canons of statutory interpretation favor his understanding of the multiple-murder sentencing statute. These arguments are unavailing.

Defendant first contends that the legislative history of the feticide statute and the 1986 amendment—which created the intentional homicide of an unborn child statute—demonstrates that these offenses were construed by the legislature as "offense[s] directed against pregnant mothers," and not against unborn children. AT Br. 29. This is incorrect. At the threshold, defendant's lengthy discussion of the failed bills in the 81st General Assembly is irrelevant to the analysis, as those failed bills do not offer insight into the legislative intent on the feticide bill that was ultimately enacted in the 82nd General Assembly. *E.g.*, *People v. Bailey*, 2016 IL App (3d) 140207, ¶ 27 (rejecting reliance on "the legislature's proposed intent" from bills that were not enacted).

In any event, defendant is wrong that the legislators in either the 81st or 82nd General Assemblies were concerned *only* with harm inflicted on pregnant persons or that they considered feticide to be different from murder. AT Br. 27-30. On the contrary, there is substantial testimony demonstrating the General Assembly's interest in protecting *both* pregnant persons and their unborn children. *See, e.g.*, State of Illinois, 82nd General Assembly, House Tr. at 157 (June 18, 1981) (referring to offense as "fetus murder by a third party"); *id.* at 158 (describing bill as "subjecting an individual to this punishment of murder as killing a fetus"); *id.* at 159 (discussing the element of "intent to murder the fetus"); State of Illinois, 82nd General Assembly, House Tr. at 221 (May 13, 1981) (legislation protects "an unborn child who is

murdered"); State of Illinois, 81st General Assembly, House Tr. at 81 (May 13, 1980) (discussing need for legislation to protect fetuses from murder).

The same is true with respect to the 1986 enactment of the intentional homicide of an unborn child statute which, as explained, *see supra* pp. 27-28, makes clear through its text that criminal liability may be imposed based solely on harm to the unborn child. That intent is further borne out by statements made during debate—in particular, during the discussion of the legislature's decision to remove the requirement in the earlier version of the feticide statute that the fetus be viable. *See, e.g.*, State of Illinois, 84th General Assembly, House Tr. at 81 (June 23, 1986) ("This Bill would create a series of crimes against the unborn which are equivalent to crimes against the born."); *id.* ("I cannot support this Bill because of the equation of the intentional homicide of an unborn with the intentional homicide of a human being born alive. Both, under this Bill, would be murder."); State of Illinois, 84th General Assembly, Senate Tr. at 68 (May 13, 1986) (discussing protecting unborn children "for their safety in their . . . life").

Defendant next asserts that the legislative debate for the Reproductive Health Act, 775 ILCS 55/1-1 *et seq.*—which was enacted after defendant's conviction and sentence, *see* Public Act 101-13 (eff. June 12, 2019)—supports his position. AT Br. 31. But while the Reproductive Health Act amended certain parts of the intentional homicide of an unborn child statute, *e.g.*, 720 ILCS 5/9-1.2(b), (c) (2020)—it did not alter the penalty provision or otherwise

indicate that unborn children are not victims for the limited purpose of this statute, *e.g.*, State of Illinois, 101st General Assembly, Senate Tr. No. 55 (May 31, 2019) ("I just wanted to bring up a very simple fact which seems to have been sort of overlooked here. Intentional homicide of an unborn child—there is a law. . . . I want to say these are already addressed in law, as they should be.").

In fact, the intentional homicide of an unborn child statute, as well as the appellate court's holding that the multiple-murder sentencing statute applies to it, is consistent with the overriding purpose of the Reproductive Health Act: to set forth "the fundamental rights of individuals to make autonomous decisions about one's own reproductive health." 775 ILCS 55/1-5. When a defendant commits intentional homicide of an unborn child, he or she interferes with those fundamental rights. Furthermore, the intentional homicide of an unborn child statute makes clear that it "shall not apply to acts which cause the death of an unborn child if those acts were committed during any abortion, as defined in . . . the Reproductive Health Act, to which the pregnant individual has consented." 720 ILCS 5/9-1.2(c). In short, nothing in the Reproductive Health Act undermines the appellate court's decision or creates any inconsistencies among the statutes.

Finally, defendant argues that the intentional homicide of an unborn child and multiple-murder sentencing statutes should be construed narrowly under the rule of lenity, AT Br. 33-34, and because "a statute that represents

a departure from the common law must be narrowly construed in favor of those against whom it is directed," *id.* 31. As to the former, this court has rejected the argument "that, once the court identifies an ambiguity in a criminal statute, it must be construed in the defendant's favor." *People v. Gutman*, 2011 IL 110338, ¶¶ 43-44. Rather, "'[t]he rule of lenity applies only if, after seizing everything from which aid can be derived, [the Court] can make no more than a guess as to what [the legislature] intended." *Id.* ¶ 43 (quoting *United States v. Wells*, 519 U.S. 482, 499 (1997)) (internal citations omitted). Here, as explained, there is no need to guess about the General Assembly's intent, given the plain statutory text, the broader statutory context, and the relevant legislative history.

Similarly, while a statute that represents a departure from the common law should be narrowly construed in favor of those against whom it is directed, *People v. Dabbs*, 239 Ill. 2d 277, 288 (2010) (citing *Harris v. Walker*, 119 Ill. 2d 542, 547 (1988)), the touchstone of statutory interpretation is to give effect to legislative intent, *Boyce*, 2015 IL 117108, ¶ 15. And here, for all the reasons discussed, adopting defendant's reading of the statute would thwart the General Assembly's intent in departing from common law to impose the "same" penalty for intentional homicide of an unborn child as for murder.

## CONCLUSION

The Court should affirm the appellate court's judgment.

March 17, 2023

Respectfully submitted,

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**RULE 341(c) CERTIFICATE**

I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages containing the Rule 341(d) cover, the Rule 341(h)(1) statement of points and authorities, the Rule 341(c) certificate of compliance, and the certificate of service is 35 pages.

/s/ Sarah A. Hunger
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**CERTIFICATE OF FILING AND SERVICE**

I certify that on March 17, 2023, I electronically filed the foregoing Brief of Plaintiff-Appellee People of the State of Illinois with the Clerk of the Court for the Illinois Supreme Court using the Odyssey eFileIL system.

I further certify that the other participants in this appeal, named below, are registered service contacts on the Odyssey eFileIL system and so will be served electronically using that system.

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Under penalties as provided by law pursuant to section 1-109 of the Illinois Code of Civil Procedure, I certify that the statements set forth in this instrument are true and correct to the best of my knowledge, information, and belief.

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