No. 128269

IN THE

SUPREME COURT OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, -vs- REGINALD LANE, Defendant-Appellant.	)))))))))))	Appeal from the Appellate Court of Illinois, No. 1-18-2672. There on appeal from the Circuit Court of Cook County, Illinois, No. 07 CR 8129. Honorable Carl B. Boyd, Judge Presiding.

BRIEF AND ARGUMENT FOR DEFENDANT-APPELLANT

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NATURE OF THE CASE

Reginald Lane was convicted of first degree murder and intentional homicide of an unborn child, following a bench trial, and was sentenced to two terms of natural life.

This is a direct appeal from the judgment of the court below. No issue is raised challenging the charging instrument.

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ISSUE PRESENTED FOR REVIEW

Whether a conviction for intentional homicide of an unborn child – an offense separate and distinct from murder, and not involving a statutorily-defined victim – is sufficient to trigger the multiple-murder sentencing statute, which requires a natural life sentence for defendants "found guilty of murdering more than one victim."

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STATUTES AND RULES INVOLVED

720 ILCS 5/9-1.2. Intentional homicide of an unborn child.

[. . .]

(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 [. . .] 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.

730 ILCS 5/5-8-1. Natural life imprisonment; enhancements for use of a firearm; mandatory supervised release terms.

[. . .]

(a)(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/Ch. V. Sentencing. Article 1. General Definitions.

Sec. 5-1-1. Meanings of Words and Phrases.

For the purposes of this Chapter, the words and phrases described in this Article have the meanings designated in this Article, except when a particular context clearly requires a different meaning.

730 ILCS 5/5-1-22. Victim.

"Victim" shall have the meaning ascribed to the term "crime victim" in subsection (a) of Section 3 of the Rights and Crime Victims and Witnesses Act.

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725 ILCS 120 - Rights of Crime Victims and Witnesses Act

Sec. 3. The terms used in this Act shall have the following meanings:

(a) “Crime victim” [. . .] means: (1) 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[.]

5 ILCS 70/1.36. Born alive infant.

(a) In determining the meaning of any statute [. . .], 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.

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STATEMENT OF FACTS

Following a bench trial, Reginald Lane was found guilty of first degree murder and intentional homicide of an unborn child for the fatal shooting of his girlfriend, Jwonda Thurston, who was three months pregnant. (R. 1409-10). The trial court sentenced Lane to two concurrent natural life sentences based on its belief that a natural life sentence was mandatory. (R. 1491-1492).

Prior to sentencing, defense counsel filed a "motion to prohibit a natural life sentence," arguing that intentional homicide of the unborn child was not murder, so the statute requiring a natural life sentence for two murder victims was not triggered. (C. 479-480); 730 ILCS 5/5-8-1(a)(1)(c)(ii) ("For first degree murder - 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 [. . .] is found guilty of murdering more than one victim."). Defense counsel argued that Lane had been found guilty of murdering one statutorily-defined victim, Jwonda Thurston: "My client has not been convicted of murdering multiple victims. My client was convicted of murdering Miss Thurston. My client was convicted of the homicide of someone else." (R. 1422). Therefore, the statute requiring mandatory natural life for the "murder" of more than one victim, did not apply in this case. (R. 1422).

The State argued in response that the "penalty" section of the intentional homicide of an unborn child statute, 720 ILCS 5/9-1.2(d), states that "the penalty for intentional homicide of an unborn child shall be the same as first degree murder." (R. 1424). Thus, because the penalty for murder includes mandatory natural life when there is more than one victim, a natural life sentence is mandatory under the circumstances of this case. (R. 1424).

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The trial court ruled that a natural life sentence was mandatory, citing *People v. Kuchan*, 219 Ill. App. 3d 739 (1st Dist. 1991). The *Kuchan* defendant killed a pregnant woman, was found guilty of first degree murder and intentional homicide of an unborn child, and was sentenced to a natural life and a concurrent term of 40 years, respectively. (R. 1427). The trial court, here, stated that "because it was not improper to impose natural life for those offenses [in *Kuchan*], the court is of the same opinion it is not improper for this court to impose a sentence of natural life for first degree murder as well as the intentional homicide of an unborn child." (R. 1427-1428).

At sentencing, the court found several factors in mitigation, including Lane's remorsefulness during his statement in allocution and his early exposure to crime and abuse. (R. 1490). The court also found that "defendant's life has not been a bed of roses," because he was separated from his father and raised by his mother who had substance abuse issues, which resulted in Lane being involved with DCFS at a young age. (R. 1489). In aggravation, the court found that the conduct caused serious harm and death, and that the sentence was necessary to deter others. (R. 1490-1491). The court sentenced Lane to two concurrent natural life terms, noting specifically that, in its view, natural life was mandatory. (R. 1491-1492).

In a motion to reconsider sentence, Lane argued that the trial court erred in finding that a sentence of natural life was required. (C. 490). The motion was denied. (R. 1498).

On appeal, Mr. Lane again challenged his sentence. Lane argued that (1) the plain language of the multiple-murder sentencing statute, interpreted in accordance with relevant statutory definitions, demonstrates that a natural life sentence was not mandatory, because he was not found guilty of murdering more

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than one statutorily-defined victim; and (2) to the extent that the applicable statutes are ambiguous, a number of canons of statutory interpretation support his contention that he was not found guilty of murdering more than one statutorily-defined victim, and that any ambiguity should be construed in his favor.

The appellate court held that the plain language of 720 ILCS 5/9-1.2(d), directing that "the sentence for intentional homicide of an unborn child shall be the same as for first degree murder," reflected the legislature's intent to punish intentional homicide of an unborn child with the same severity as first degree murder and triggered the multiple murder sentencing statute, which applies when a defendant has been "found guilty of murdering more than one victim." 730 ILCS 5/5-8-1(a)(1)(c)(ii); *People v. Lane*, 2022 IL App (1st) 182672, ¶43. The court found persuasive a prior appellate court decision *People v. Shoultz*, 289 Ill. App. 3d 392 (4th Dist. 1997), which addressed the same issue raised by Lane. The *Shoultz* court noted that the intentional homicide of an unborn child statute, which directs that the sentence for that offense "shall be the same as for first degree murder," bars imposition of the death penalty. *Lane*, 2022 IL App (1st) 182672, ¶43, citing *Shoultz*, 289 Ill. App. 3d at 398. Thus, "the legislature chose to except only the death penalty and not mandatory natural life imprisonment, as sentencing options applicable to the feticide statute." *Id.*; *Shoultz*, 289 Ill. App. 3d at 398.

The appellate court here recognized a "dearth of relevant authority on this issue" and noted that, in several instances, defendants convicted of "both first degree murder and intentional homicide of an unborn child," were not subject to a mandatory natural life sentence pursuant to the multiple-murder sentencing statute. *Id.* at ¶¶38-41 (citing cases). The court nevertheless "[found] no ambiguity in the statutes." *Id.* at ¶43.

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The court also found "further support for the legislature's intent in the plain language of the statutes" defining the offenses of first degree murder and intentional homicide of an unborn child. *Id.* at ¶44; 720 ILCS 5/9-1(a)(1)-(2); 720 ILCS 5/9-1.2(a). Because "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," it therefore "shows 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." *Lane*, 2022 IL App (1st) 182672, ¶44.

Lastly, the appellate court held that Lane waived his argument on appeal that an unborn child is not a "victim," as defined in the Unified Code of Corrections (730 ILCS 5/5-1-22) and the Rights of Crime Victims and Witnesses Act (725 ILCS 120/3) because his "arguments below and the trial court's ruling were based solely on whether defendant's conviction for intentional homicide of an unborn child satisfied section 5-8-1(a)(1)(c)(ii)'s provision that defendant was found guilty of more than one murder." *Lane*, 2022 IL App (1st) 182672, ¶45. The court stated that, nonetheless, that argument was unpersuasive because "section 9-1.2 of the Criminal Code criminalizes the homicide of an unborn child irrespective of harm to the mother," and "this contention is essentially an argument that his convictions violate the one-act, one-crime rule." *Id.* at ¶46.

This Court granted leave to appeal on May 25, 2022, and the present appeal follows.

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ARGUMENT

I. Because Reginald Lane was not found guilty of the "murder" of more than one statutorily-defined "victim," the multiple-murder sentencing statute does not apply.

Reginald Lane was convicted of first degree murder and intentional homicide of an unborn child and was sentenced to what the trial court believed was a mandatory term of natural life. The plain language of the multiple-murder sentencing statute requires a natural life sentence where the defendant has been "found guilty of *murdering more than one victim*." 730 ILCS 5-8-1(a)(1)(c)(ii) (emphasis added). Intentional homicide of an unborn child is not murder, nor is an unborn child a "victim" as that term is defined in the Unified Code of Corrections. Because Lane was not found guilty of the "murder" of more than one "victim," the multiple-murder sentencing statute did not apply and this Court should remand for resentencing. Alternatively, should this Court conclude that the statutory language is ambiguous – a contention supported by a significant number of cases in which defendants convicted of first degree murder and intentional homicide of an unborn child were not sentenced to natural life – a number of rules of statutory interpretation direct that the multiple-murder sentencing statute be construed in Lane's favor, likewise requiring resentencing.

No facts are in dispute and the issue in this case turns purely on statutory construction. The construction of a statute is a question of law, which is reviewed *de novo*. *People v. Jackson*, 2011 IL 110615, ¶12.

A. Reginald Lane was not subject to a mandatory natural life sentence because he was not found guilty of "murdering" more than one victim, as required by the plain language of the multiple-murder sentencing statute and relevant definitions.

The primary objective of statutory construction is to ascertain and give

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effect to the intent of the legislature, as reflected by the language of the statute, given its plain and ordinary meaning. *Jackson*, 2011 IL 110615, ¶12. A court must view the statute as a whole, construing words and phrases in light of other relevant statutory provisions and not in isolation. *In re Ryan B.*, 212 Ill. 2d 226, 232 (2004). Each word, clause, and sentence of a statute must be given a reasonable meaning, if possible, and should not be rendered superfluous. *Jackson*, 2011 IL 110615, at ¶12. Where a statute is clear and unambiguous, a court shall not resort to other aids of statutory construction. *People v. Jones*, 223 Ill. 2d 569, 580 (2006).

The statutory language at issue here is clear. Section 5-8-1(a)(1)(c)(ii) of the Unified Code of Corrections mandates a natural life sentence "for first degree murder" when a defendant is "found guilty of *murdering* more than one *victim*." 730 ILCS 5/5-8-1(a)(1)(c)(ii) (emphasis added). Lane was found guilty of first degree murder and intentional homicide of an unborn child. The statute defining the latter offense directs that "[t]he sentence for intentional homicide of an unborn child shall be the same as for first degree murder." 720 ILCS 5/9-1.2(d). The sentence for first degree murder can either be for a determinate term of 20 to 60 years (60 to 100 years if an extended term is imposed) or for "natural life as provided in Section 5-8-1." 730 ILCS 5/5-4.5-20. By its plain terms, then, a conviction for intentional homicide of an unborn child is subject to the same sentencing range as a conviction for first degree murder. It does not mean, however, that a conviction for intentional homicide of an unborn child is to be treated as a conviction for first degree murder for all sentencing purposes, including the multiple murder sentencing statute, which applies only when the defendant has been found guilty of "murdering" more than one victim.

Intentional homicide of an unborn child remains separate and distinct from

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first degree murder. Merely 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[]." 730 ILCS 5/5-8-1(a)(1)(c)(ii). The offenses are not synonymous. *See also People v. Pullen*, 192 Ill. 2d 36, 44-45 (2000) (noting that a court is "not at liberty to rewrite a statute in the guise of interpreting it," before finding that an offense being treated differently for sentencing purposes does not ultimately "change the character of the crime[] [. . .] [actually] committed").

Indeed, the two offenses are treated differently in other areas of the Unified Code of Corrections. *See*, *e.g.*, 730 ILCS 5/3-6-3(a)(2)(i)-(ii) (providing that a prisoner serving a sentence for first degree murder shall receive no sentence credit, while a prisoner serving a sentence for intentional homicide of an unborn child serves his or her sentence at 85 percent). Furthermore, as will be discussed further below, "victim" does not include unborn fetuses. As such, Section 5-8-1(a)(1)(c)(ii) does not apply here because Lane was not "found guilty of *murdering* more than one *victim*." 730 ILCS 5/5-8-1(a)(1)(c)(ii) (emphasis added).

Despite this clear language limiting application of the multiple-murder sentencing statute to actual first degree murders, the appellate court held that the statutes unambiguously require imposition of a natural life sentence for a defendant convicted of both first degree murder and intentional homicide of an unborn child. The appellate court relied heavily on *People v. Shoultz*, 289 Ill. App. 3d 392 (4th Dist. 1997). *Lane*, 2022 IL App (1st) 182672, ¶¶30-38. *Shoultz*, however, is poorly reasoned and its conclusion called into question by recent amendments to the relevant statutes.

The *Shoultz* defendant was convicted of first degree murder and intentional

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homicide of an unborn child, was sentenced to natural life and, like Lane, argued that the multiple-murder sentencing statute did not apply to him. *Shoultz*, 289 Ill. App. 3d at 397-398. The court looked to earlier cases discussing the multiple-murder sentencing statute, including *People v. Magnus*, 262 Ill. App. 3d 362 (1st Dist. 1994), which addressed whether a defendant convicted of one count of first degree murder and one count of second degree murder was subject to mandatory natural life sentences pursuant to a previous, but similar, multiple-murder sentencing statute. The *Magnus* court found the phrase "murdering more than one victim" ambiguous in that it could either apply only to multiple first degree murders or to all classes of murder, including second degree. *Magnus*, 262 Ill. App. 3d at 366. *Magnus* construed the multiple-murder statute as applying only to multiple first degree murders, reasoning that (1) when the multiple murder-natural life sentence statute was adopted, there was only one category of murder because second degree murder was designated voluntary manslaughter; and (2) rules of statutory construction mandate that ambiguities in penal sentences be resolved in favor of the defendant. *Id*. at 366-367.

In contrast, the *Shoultz* court found that no such ambiguity existed in regard to first degree murder and intentional homicide of an unborn child because, unlike the second degree murder statute, the intentional homicide of an unborn child statute contains an "express direction" mandating that "sentencing [. . .] be imposed 'the same as for first degree murder.'" *Shoultz*, 289 Ill. App. 3d at 398 (quoting 720 ILCS 5/9-1.2(d)). The court then concluded:

> Since the feticide statute mandates application of the first degree murder penal scheme, we find no ambiguity under that statute's natural life imprisonment penalty merely because it references 'murder.' If the legislature did not contemplate that the clause 'found guilty of murdering more than one victim' in the

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> sentencing provisions for first degree murder would encompass feticide, 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.' 720 ILCS 5/9-1(b)(3) (West 1994). Both clauses reference 'murder,' yet the legislature chose to except only the death penalty, and not mandatory natural life imprisonment, as sentencing options applicable to the feticide statute." *Id*. at 398.

As a threshold matter, *Shoultz* and the appellate court here placed undue weight on the legislature's decision to exempt convictions for intentional homicide of an unborn child from the death penalty. The *Shoultz* court concluded, without any support, that there "would have been no reason" for the legislature to "expressly exempt the death penalty" unless it "did not contemplate that the clause 'found guilty of murdering more than one victim' [. . .] would encompass feticide." *Id*.

Of course, at the time *Shoultz* was decided, the death penalty section of the first-degree murder statute contained a number of other aggravating factors that could arguably apply to intentional homicide of an unborn child. *See* 720 ILCS 5/9-1(b)(4), (5), (6), (7), (10), (11), (13), and (14) (1994) (enumerating a number of aggravating factors triggering death penalty eligibility that could apply to the unlawful killing of an unborn child); *see also* Ill. Rev. Stat. 1982, ch. 38, ¶9-1(b)(4)-(6).

More importantly, the *Shoultz* court failed to account for the political context surrounding the passage of the original feticide statute, and the legislature's unease with the death penalty being newly re-instated in response to this Court's decision in *People ex rel. Rice v. Cunningham*, 61 Ill. 2d 353, 362 (1975). *See also People ex rel. Carey v. Cousins*, 77 Ill. 2d 531, 535 (1979) (detailing the new death penalty procedures established in response to the invalidation of earlier provisions relating to the imposition of the death penalty). At the time that the initial feticide statute was passed, the General Assembly was well aware of the pending challenges to

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the Death Penalty Act and whether certain changes to the law would make it more or less likely that this Court would rule the entire act to be unconstitutional. *See* State of Ill. 82nd General Assembly, House Tr. (June 24, 1982, at 25) (noting that the Death Penalty Act has "been involved in interminable appeals" and positing that changing the death penalty procedure from the electric chair to lethal injection might make it more likely that this Court might affirm pending challenges to the imposition of the death penalty); State of Ill. 82nd General Assembly, Senate Tr. (May 19, 1981, at 85) (expressing concern that creating additional death-penalty eligible offenses had "go[ne] too far and the whole death penalty [statute] will be declared unconstitutional"). As such, the appellate court incorrectly concluded that there could be no other "reason for [the legislature] to expressly exempt the death penalty" if it did "not contemplate that the clause 'found guilty of murdering more than one victim' [. ..] would encompass feticide." *Shoultz*, 289 Ill. App. 3d at 398.

Furthermore, *Shoultz* and the appellate court here mischaracterized the scope of the relevant statute. *Shoultz*, for instance, states that the intentional homicide statute requires application of "the first degree murder penal scheme," a conclusion echoed by the appellate court here, which repeatedly states that this offense "shall be sentenced 'the same as for first degree murder.'" *Lane*, 2022 IL App (1st) 182672, ¶¶26, 38 (quoting 720 ILCS 5/9-1.2(d)). This distorts the plain language of 720 ILCS 5/9-1.2(d), which contains no reference to "penal schemes" and certainly does not state that intentional homicide of an unborn child is to be "sentenced" identically to murder in all contexts. Rather, the plain language of the statute makes it clear that the *sentence* for intentional homicide of an unborn child "shall be the same as for first degree murder," not that a *conviction* for

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intentional homicide of an unborn child is synonymous with being "found guilty of murder[]." 730 ILCS 5/5-8-1(a)(1)(c)(ii).

Additionally, the assertion that "[i]f the legislature did not contemplate that the clause 'found guilty of murdering more than one victim' in the sentencing provisions for first degree murder would encompass feticide, there would have been no reason to expressly exempt the death penalty," *Shoultz*, 289 Ill. App. 3d at 398, is counterbalanced by the fact that the intentional homicide of an unborn child statute also includes mandatory firearm enhancements that mirror those in the first degree murder sentencing statute. *Compare* 730 ILCS 5/5-8-1(a)(1)(d) and 720 ILCS 5/9-1.2(d)(2)-(4). If the legislature *did* contemplate that 730 ILCS 5/5-8-1 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.

The plain language of 730 ILCS 5/5-8-1(a)(1)(c)(ii) expressly requires the imposition of a natural life sentence when a person is convicted of *murdering* two or more victims. Second degree murder – the offense addressed in *Magnus* – is a mitigated form of murder. *See* 720 ILCS 5/9-2(a). Intentional homicide of an unborn child is not murder and is not referred to as such anywhere in the criminal code or the Unified Code of Corrections. Had *Shoultz* properly applied the rationale of *Magnus*, it would have necessarily held that the phrase "murdering more than one victim," found to be ambiguous in the second-degree murder context, is equally so when applied to an offense that is both separate and distinct from murder, and not merely a mitigated form of murder.

Indeed, the two offenses are treated as separate and distinct in other provisions of the Unified Code of Corrections. For purposes of sentence credit,

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a prisoner serving a sentence for first degree murder "shall receive no sentence credit" pursuant to 730 ILCS 5/3-6-3(a)(2)(i). On the other hand, a prisoner serving a sentence for intentional homicide of an unborn child serves his or her sentence at 85 percent. 730 ILCS 5/3-6-3(a)(2)(ii). In describing the effect of Illinois' truth-in-sentencing law, the House sponsor made a clear distinction between murder and *other violent offenses*: "[M]urderers will serve 100% of their sentences. [While the bill] further provides that various other violent crimes will require an offender to serve 85% of their sentences." State of Ill. 89th General Assembly, House Tr. (May 21, 1995, at 4). The legislature's understanding that murder is a separate and distinct offense from all of the "various other violent crimes" is reflected in it being the only offense whose sentence must be served at 100 percent.

Additionally, the *Shoultz* court's analysis fails to consider, or mention, that historically, the killing of an unborn child was not considered murder and that, in response to this Court's decision in *Greer*, the legislature explicitly did not include the killing of an unborn child within the definition of murder but instead created a completely separate offense. *See People v. Greer*, 79 Ill. 2d 103, 111 (1980) (holding that, historically, an unborn fetus not an "individual" within the meaning of the murder statute, and that without the legislature "expressly including a fetus within the definition of the victims of homicide or by passing a separate feticide statute," this Court could not "create a new offense"). Finally, as will be discussed in detail below, *Shoultz* was decided before a recent amendment to the intentional homicide of an unborn child statute wherein the legislative history unequivocally establishes that it was never meant to be treated interchangeably with first degree murder.

The appellate court's reliance on *People v. West*, 323 Ill. App. 3d 858 (1st Dist. 2001) is likewise misplaced where *West* dealt with statutes different *in name*

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only but that were otherwise identical. *See Lane*, 2022 IL App (1st) 182672, ¶¶35-38. The *West* defendant pled guilty to murder in 1978 and, in 1986, was found guilty of first degree murder and sentenced to a term of mandatory natural life. 323 Ill. App. 3d at 859-860. He challenged his sentence, arguing that his prior conviction was for "murder," not first degree murder, and therefore the multiple-murder statute should not apply. *Id*. at 860. The *West* court compared the 1978 "murder" statute with the 1986 first degree murder statute and found that the two versions were "identical," except that the newer statute used the term "second degree murder" instead of "voluntary manslaughter." *Id*. at 860-861. Accordingly, the court found that "when [the] defendant pled guilty to murder in 1978, he admitted he committed a crime identical to that named 'first degree murder' in the present statutes." *Id*. at 861. Thus, by "defining first degree murder to include conduct identical to that named 'murder' under the statute in effect when defendant pled guilty to murder, the legislature unambiguously indicated an intention to treat convictions for murder under the prior statute as convictions for first degree murder." *Id*.

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 is reversing centuries of common law jurisprudence by creating a completely new offense, and decreeing that the sentence for this historically distinct offense "shall be the same as for first degree murder." 720 ILCS 5/9-1.2(d).

Echoing *West*, the appellate court here also found that the "almost identical" language of the murder and intentional homicide of an unborn child statute was yet further evidence of the legislature's intent to treat intentional homicide of an unborn child "as another form of first degree murder." *Lane*, 2022 IL App (1st)

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182672, ¶44. The ways in which the two statutes are different is much more consequential than, as the court put it, "the exception that the offender knew the individual was pregnant." *Id*. No, the more consequential difference is that intentional homicide of an unborn child, by definition, requires the death of an unborn child. And, historically, conduct that would otherwise be considered murder if it resulted in the death of an individual but which instead resulted in the death of an unborn child, was categorically different. *Greer*, 79 Ill. 2d at 111. When dealing with two offenses that were historically viewed as categorically different, the *Magnus* court's finding of ambiguity is far more persuasive than the appellate court's reference here to the two offenses being "almost identical." *Lane*, 2020 IL App (1st) 182672, ¶44.

B. An unborn child is not a "victim" for purposes of the multiple-murder sentencing enhancement of the Unified Code of Corrections.

There is yet another reason why the multiple-murder sentencing statute, which applies when the defendant is found guilty of murdering more than one victim, does not apply. An unborn child, or fetus, is not a statutorily-defined "victim." 730 ILCS 5/5-8-1(a)(1)(c)(ii). A "victim" is defined, for purposes of the Unified Code of Corrections, 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." 730 ILCS 5/5-1-22; 725 ILCS 120/3(a). Thus, the definition of "victim" provided in the Code plainly specifies that a victim must be a "person." *People v. Thornton*, 286 Ill. App. 3d 624, 635 (2nd Dist. 1997). In contrast, the appellate court has held that, for purposes of the intentional homicide of an unborn child statute, "[i]t is unnecessary to prove the unborn child is a person or a human being," and that "[t]he statute only requires

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proof that, whatever the entity within the mother's womb is called, it had life and [. . .] it no longer does." *People v. Ford*, 221 Ill. App. 3d 354, 372 (4th Dist. 1991). Ultimately, "[t]he name given to that entity is irrelevant to liability under the [intentional homicide of an unborn child] statute." *Id*. However, for purposes of the multiple-murder sentencing enhancement in the Unified Code of Corrections, it is, in fact, necessary "to prove the unborn child is a person or human being" in order for the defendant to have been "found guilty of murdering more than one victim." 730 ILCS 5/5-8-1(a)(1)(c)(ii). Therefore, in the eyes of the law, a fetus cannot be a victim of murder unless the fetus is born alive. *People v. Ehlert*, 274 Ill. App. 3d 1026, 1037 (1st Dist. 1995).

Furthermore, the Statute on Statutes directs that use of "[t]he word 'person,' 'human being,' 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); *see also* 5 ILCS 70/1 (providing that "[i]n the construction of statutes, [the Statute on Statutes] shall be observed, unless such construction would be inconsistent with the manifest intent of General Assembly or repugnant to the context of the statute."); *see also Doe A. v. Diocese of Dallas*, 234 Ill. 2d 393, 406 (2009) (holding that, when on point, the Statute on Statutes, controls as the default standard, absent a clear legislative directive otherwise).

The Statute on Statutes' definition of "born alive infant" mirrors the definition in federal law defining the words "person," "human being," and "individual." Federal law directs that "[i]n determining the meaning of any act of Congress, [. . .] 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 development." 1 U.S.C. §8(a). As such, under federal law, the term "human being" does not include

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a "fetus," and thus, the federal definition of murder, which requires the "unlawful killing of a human being," excludes the killing of an unborn fetus. *See* 18 U.S.C. §1111(a)*;* 18 U.S.C. §1841(a)(2)(C)*; see also Gomez Fernandez v. Barr*, 969 F.3d 1077, 1087-1088 (9th Cir. 2020) (noting that Congress enacted a separate offense for the killing of an unborn child and, although Congress tied the punishment for the intentional killing of an unborn child to that of first degree murder, it "conspicuously did not use the term 'murder,' as it has in other criminal provisions," such that merely having the same penalty "does not transform the offense of killing an unborn child into a violation of the federal murder statute").

When the legislature clearly models statutory language after federal law, this Court has interpreted the statute in a manner consistent with the federal law. *People v. Donoho*, 204 Ill. 2d 159, 174-175 (2003). As such, here in Illinois, an unborn child, or fetus, is not a "natural person," nor an "infant [. . .] who is born alive," and therefore is not a "victim" for purposes of the multiple-murder sentencing statute. 5 ILCS 70/1.36(a); 725 ILCS 120/3(a); 730 ILCS 5/5-1-22. And although intentional homicide of an unborn child statute directs that the sentence for intentional homicide of an unborn child shall be the same as for first degree murder, the sentencing provision does not transform this offense "into a violation of the [. . .] murder statute." *Gomez Fernandez*, 969 F.3d at 1088. Accordingly, under the plain and ordinary meaning of section 5-8-1(a)(1)(c)(ii), Lane was not subject to a mandatory sentence of natural life because he was not found guilty of more than one murder, and because he was not found guilty of murdering more than one victim.

The appellate court did not directly address the statutory definition of "victim" below, but characterized this claim – that an unborn child is not a statutorily-defined

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"victim" – as "essentially an argument that his convictions violate the one-act, one-crime rule," a notion which "has been considered and rejected by the supreme court in *People v. Shum*, 117 Ill. 2d 317, 363-364 (1987)." *Lane*, 2022 IL App (1st) 182672, ¶46.

This is inaccurate. Lane makes no claim that intentional homicide of an unborn child may not be punished separately from first degree murder. Because "the taking of the life of a fetus is not murder," *Shum*, 117 Ill. 2d at 364, then – for purposes of a one-act, one-crime analysis – intentional homicide of an unborn child is not a lesser included offense of murder, and they are separate and distinct offenses with unique elements. *Id.*, at 363-364.

However, this Court's conclusion in *Shum* that "[s]ince there were two victims involved and feticide is not a lesser included offense of murder, both convictions may stand," does not speak to whether an unborn child is a "victim" for purposes of the multiple-murder sentencing statute. 730 ILCS 5/5-8-1(a)(1)(c)(ii); *see also People v. Hartfield*, 2022 IL 126729, ¶73 (noting that "the number of victims may control in a one-act, one-crime analysis," but does not necessarily control in other areas of statutory construction, particularly in "a unit of prosecution analysis").

The appellate court found that Lane waived the argument that an unborn child is not a "victim" as defined in section 5-1-22 of the Unified Code of Corrections and section 3 of the Rights of Crime Victims and Witnesses Act because his "arguments below and the trial court's ruling were based solely on whether defendant's conviction for intentional homicide of an unborn child satisified section 5-8-1(a)(1)(c)(ii)'s provision that defendant was found guilty of more than one murder." *Lane*, 2022 IL App (1st) 182672, ¶45.

However, defense counsel's post-trial motion specifically argued that the

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Unified Code of Corrections limits a mandatory life sentence "to the murder of two (2) or more people" and that Lane "was only convicted of the murder of one person." (C. 480). Furthermore, during argument on Lane's post-trial motion, counsel asserted that Lane was only guilty of murdering one victim, Jwonda Thurston, and was guilty of intentional homicide of the unborn child. (R. 1422). Specifically, counsel argued that Lane was "not [. . .] convicted of murdering multiple victims" and that, therefore, the statute requiring mandatory natural life for the "murder" of more than one victim did not apply. (R. 1422). The issue is thus preserved where counsel argued that the multiple-murder sentencing enhancement did not apply, both because Lane was not found guilty of two murders and because Lane was not found guilty of murdering more than one victim.

Regardless, the statutory definition of "victim" and its meaning in the context of the multiple-murder sentencing statute is inextricably intertwined with the statutory interpretation issue presented in this case, such that it should be considered. *See People v. Heider*, 231 Ill. 2d 1, 18 (2008) ("In circumstances such as these, where the trial court clearly had an opportunity to review the same essential claim that was later used on appeal, this Court has held that there was no forfeiture"); *see also In re Rolandis G.*, 232 Ill. 2d 13, 37 (2008) (noting that failure to properly preserve or raise an issue is not a jurisdictional bar to this Court's ability to review a matter and review of such an issue will be appropriate when that issue is inextricably intertwined with other matters properly before the court).

In conclusion, the plain language of the statute criminalizing intentional homicide of an unborn child makes clear that "[t]he *sentence* for intentional homicide of an unborn child shall be the same as for first degree murder." 720 ILCS 5/9-1.2(d)(1) (emphasis added). The offense itself remains separate and distinct from

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first degree murder and a conviction for one is not synonymous with a conviction for the other. Furthermore, the plain language of relevant definitions likewise establish that a "victim" is "any natural person" 725 ILCS 120(3)(a), and that the word "person" includes "every infant member of the species homo sapiens who is born alive at any stage of development." 5 ILCS 70/1.36(a). Accordingly, the imposition of a sentence of mandatory natural life was improper where Lane was not "found guilty of murdering more than one victim." 730 ILCS 5/5-8-1(a)(1)(c)(ii)

C. Alternatively, should this Court conclude that the relevant statutes are ambiguous, a number of canons of statutory interpretation support Lane's contention that convictions for first degree murder and intentional homicide of an unborn child do not require a natural life sentence.

By its plain and ordinary meaning, a conviction for intentional homicide of an unborn child does not trigger the multiple-murder sentencing statute because a person convicted of this offense has not been found guilty of "murdering" a statutorily-defined "victim." However, should this Court conclude that the relevant sentencing statutes are ambiguous, or unclear, a number of canons of statutory interpretation should lead this Court to construe the statute's narrowly and in Lane's favor.

If a statute is unclear or ambiguous, meaning susceptible of more than one reasonable reading, then a court may resort to other sources to aid its inquiry. *People v. Rinehart*, 2012 IL 111719.

The intentional homicide of an unborn child statute directs that the sentence for the offense "shall be the same as for first degree murder, except that [. . .] the death penalty may not be imposed." 720 ILCS 5/9-1.2(d)(1). The statute exempts the death penalty as a possible sentence and also includes firearm enhancements that mirror those in Section 5-8-1. *Compare* 730 ILCS 5/5-8-1(a)(1)(d) and 720

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ILCS 5/9-1.2(d)(2)-(4). It is therefore unclear whether the legislature – by requiring that the sentence for this offense be the same as for first degree murder – necessarily intended to treat it as if it were a conviction for first degree murder in all circumstances except for the death penalty, or intended that a conviction for intentional homicide of an unborn child qualifies as a "murder" of a "victim" under the multiple-murder sentencing provision of Section 5-8-1, or intended that Section 5-8-1 would not apply to convictions for intentional homicide of an unborn child.

The appellate court here held that the legislature intended to treat intentional homicide of an unborn child "as another form of first degree murder." *Lane*, 2022 IL App (1st) 182672, ¶44. If, indeed, intentional homicide of an unborn child is to be to be sentenced as if it were first degree murder in all circumstances except for the death penalty, then additional questions would arise related to other sentencing provisions of the Unified Code of Corrections. For example, the habitual criminal statute requires a natural life sentence for any person convicted of murder or a Class X offense "who has been twice convicted in any state or federal court of an offense that contains the same elements of an offense now [. . .] classified in Illinois as a Class X felony, [. . .] or first degree murder." 730 ILCS 5/5-4.5-95(a)(1), (5). Does it then follow that such a conviction would require a natural life sentence as an habitual offender? Similar questions would likewise arise when looking to the sentencing guidelines for individuals with prior felony firearm-related convictions, which provide that a prior conviction for "first degree murder under Section 9-1 or similar offense under the Criminal Code of 1961" is a "qualifying predicate offense" wherein any subsequent conviction for unlawful use of a weapon or aggravated unlawful use of a weapon subjects the defendant to an enhanced term of imprisonment of between seven and fourteen years. 730 ILCS 5/5-4.5-

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110(a)(C), (b), (c)(1) (2022).

While these sentencing schemes are not at issue in this case, they reflect the ambiguity created by the legislature in merely stating that the "sentence shall be the same as for first degree murder" without any further clarification or guidance. Like the sentencing statutes at issue in this case, there is a significant difference between imposing a *sentence* that is the same as for first degree murder upon an offender found guilty of intentional homicide of an unborn child and treating a *conviction* for intentional homicide of an unborn child *as synonymous with a conviction for first-degree murder*.

The assertion that the statutes are, at the very least, ambiguous is supported by the many cases in which defendants, like Lane, were convicted of first degree murder and intentional homicide of an unborn child but were not sentenced to natural life. *See Lane*, 2022 IL App (1st) 182672, ¶¶38-41, citing *People v. Campos*, 227 Ill. App. 3d 434, 438 (1st Dist. 1992); *People v. Tijerna*, 381 Ill. App. 3d 1024, 1039 (1st Dist. 2008); *People v. Alvarado*, 2012 IL App (1st) 103784-U, ¶18; *People v. Thomas*, 2020 IL App (1st) 170310, ¶51; *People v. Minkens*, 2020 IL App (1st) 172808; and *People v. Kuchan*, 219 Ill. App. 3d 739 (1st Dist. 1991)). Ironically in *Kuchan*, the case specifically relied upon by the circuit court as "almost directly on point," (R. 1426), the defendant received a natural life sentence for murder (based on brutal and heinous conduct), and a concurrent term of 40 years for intentional homicide of an unborn child. 219 Ill. App. 3d at 742.

Lending further support to the notion that the statutes at issue are subject to more than one reasonable interpretation, in none of the above-cited cases did the State challenge any of the sentences either as void pursuant to *People v. Arna*, 168 Ill. 2d 107 (1995) or via a writ of *mandamus* as violating mandatory sentencing

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requirements. *See People v. Castleberry*, 2015 IL 116916, ¶¶26-27 (noting that, despite abrogation of the void-sentence rule, the State may challenge, via writ of *mandamus*, criminal sentencing orders where it is alleged that the circuit court violated a mandatory sentencing requirement).

Because the statutes are so frequently misapplied, and susceptible of more than one reasonable reading, then this Court may resort to other sources to aid its inquiry in interpreting the relevant statutes. *Rinehart*, 2012 IL 111719, ¶26. Such sources include looking to legislative history, or relying on the maxim of *in pari materia*, under which two statutes concerning the same subject must be considered together in order to produce a harmonious whole. *Id.*

Several tools of statutory interpretation support Lane's claim that the statutes are ambiguous and must be construed leniently in his favor. The history of the passage of the first feticide statute, as well as the current statute creating the offense of intentional homicide of an unborn child, establish that intentional homicide of an unborn child was always understood as an offense directed against the pregnant mother and is not otherwise synonymous nor interchangeable with the offense of first degree murder. Furthermore, the legislative history of a recent amendment to the intentional homicide of an unborn child statute, as well as amendments to other related statutes, also support Lane's contentions that he was not found guilty of murdering more than one victim, as is required to trigger a mandatory life sentence under section 5-8-1(a)(1)(c)(ii). And, finally, both the rule of lenity and the rule against broad application of statutes in derogation of the common law should guide this Court to narrowly construe the relevant statutes in Lane's favor.

1. History of the first feticide statute in Illinois:

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As this Court recognized in *People v. Greer*: "The extent to which the unborn child is to be accorded the legal status of one already born is one of the most debated questions of our time, and one to which we do not find any completely consistent response." 79 Ill. 2d 103, 114 (1980). This Court likewise recognized that "[a]t common law the killing of a fetus was not murder unless the child was born alive and then expired as a result of the injuries previously sustained." *Id*. at 111. Accordingly, this Court held that an unborn fetus is not an 'individual' within the meaning of the murder statute, and that without the legislature "expressly including a fetus within the definition of the victims of homicide or by passing a separate feticide statute," this Court could not "alter [the decisional law of this country] or create a new offense." *Id*. at 111, 116. This Court specifically pointed to divergent approaches to the issue. *Id*. at 111. California "expressly included a fetus within the definition of victims of homicide," whereas Michigan created "a separate feticide statute," which treated the killing of an unborn child as manslaughter instead of murder. *Id*.; *see also* Cal. Penal Code sec. 187 (defining "murder" as the "unlawful killing of a human being, *or a fetus*, with malice aforethought") (emphasis added); Mich. Comp. Laws Ann. sec. 750.322 (deeming "the wilful killing of an unborn quick child by any injury to the mother of such child, *which would be murder if it resulted in the death of such mother*, [to be] manslaughter") (emphasis added).

a. The Illinois General Assembly's attempt at the California approach.

Following this Court's decision in *Greer*, the General Assembly first attempted to adopt the California approach by directly amending the murder statute and the definition of "individual" to include a viable human fetus, "therefore [rendering

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a viable fetus] capable of being murdered under Illinois law." State of Ill. 81st General Assembly, House Tr. (May 13, 1980, at 78-79); *see also* House Bill 3314 (81st General Assembly). Despite, as one representative put it, "bend[ing] over backwards for [the] Bill," State of Ill. 81st General Assembly, House Tr. (May 21, 1980, at 189-190), the bill failed. State of Ill. 81st General Assembly, House Tr. (May 13, 1980, at 89). The sponsor of the bill moved for reconsideration upon an addition of an amendment. *Id.* at 119.

The amended bill sought to extend the California approach by including a fetus, regardless of viability, in the definition of "individual" throughout the criminal code, rather than just within the murder statute, which, the sponsor conceded, would impose criminal liability on pregnant mothers who engage in reckless conduct. State of Ill. 81st General Assembly, House Tr. (May 21, 1980, at 179, 183, 185-186).This amendment did not pass. *Id.* at 188.

HB 3314 was similarly unsuccessful in the Senate. During debate the Senate sponsor explained that to address concerns regarding the murder of a fetus being death penalty eligible, the offense of murder as it relates to a fetus "will no longer qualify as a multiple murder, and therefore will no longer qualify for the death penalty." State of Ill. 81st General Assembly, Senate Tr. (June 23, 1980, at 158). The sponsor likewise explained that he could not accommodate a proposed amendment from "the Right to Life people," which attempted to remove the viability standard and cover the murder of a fetus from conception, because to do so would "make[] the criminal law entirely unworkable." *Id.* at 160. The bill failed to garner enough votes to pass as did a later amendment which removed the viability standard and included a fetus from conception within the definition of "individual" in the murder statute. State of Ill. 81st General Assembly, Senate Tr. (June 26, 1980,

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at 52).

b. The successful passage of feticide as a separate offense from murder understood to be an offense against pregnant mothers .

After the 81st General Assembly failed to pass a bill that would have expanded murder to include the killing of an unborn fetus, the 82nd General Assembly instead created the separate offense of feticide. *See* Public Act 82-303; Senate Bill 192 (82nd General Assembly). The Senate sponsor explained that the bill was meant to "guard[] the safety of women who are carrying their children" and "offer some assurances to pregnant mothers, that they can expect to carry that child full term without fear of aggravated assault [. . .] resulting in loss of that child." 82nd General Assembly, Senate Tr. (May 19, 1981, at 198). Similarly, the House sponsor declared that the bill "addresses a very serious gap in the law of third party [assault] on pregnant women." 82nd General Assembly, House Tr. (June 18, 1981, at 161).

2. The current intentional homicide of an unborn child statute, still understood to be an offense directed against pregnant mothers.

In 1986, the General Assembly amended the Criminal Code to remove the viability requirement in the previous feticide statute and created the intentional homicide of an unborn child statute, as we now know it today. Sponsors of the bill in both chambers maintained, as they had sponsors of the original feticide bill, that it remained an offense directed against pregnant mothers. The Senate sponsor of Senate Bill 1942, which would be become Public Act 84-1414, explained that removing the viability requirement made it possible to criminally prosecute "an individual who may perpetrate harm to a pregnant woman, possibly killing her and also kill the unborn child." 84th General Assembly, Senate Tr. (May 13, 1986, at 66). Other than the offense now applying from conception, rather than

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from viability, the sponsor understood the offense to be the same as the original statute creating the offense of feticide. *Id.* at 74. Similarly, the House sponsor likewise explained that SB 1942 deals with "criminal acts [. . .] performed by people who have no interest that can override the interest of the mother," and that SB 1942 protects "the interest of the mother [. . .] because this [b]ill deals with wanted pregnancies." 84th General Assembly, House Tr. (June 23, 1986, at 84). Senate Bill 1942 was successfully passed by both chambers and became effective on September 19, 1986, creating the current offense of intentional homicide of an unborn child.

3. The Reproductive Health Act and recent amendments to the intentional homicide of an unborn child statute reinforce the General Assembly's ongoing intent that it remains an offense directed against pregnant mothers.

But this was not the last pronouncement on the offense of intentional homicide of an unborn child. The Reproductive Health Act, which, among other things, amended the intentional homicide of an unborn child statute, makes clear that "[a] fertilized egg, embryo, or fetus does not have independent rights under the laws of this State." 775 ILCS 55/1-15(c). Furthermore, the "Act applies to all State laws, [. . .] whether statutory or otherwise and whether adopted before or after [the Act's] effective date." 775 ILCS 55/1-30. The legislative debate that preceded the passage of the Reproductive Health Act also provides clear guidance on the legislature's intent as it relates to the intentional homicide of an unborn fetus statute. During debate of the bill which became the Reproductive Health Act, the House sponsor stressed that it did not affect existing statues criminalizing harming an unborn fetus: "The bill does not change the current laws that allow for prosecution of third parties who commit criminal acts against a pregnant person

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[. . .]. These laws are based on the actions against the pregnant woman and the rights of the parent. None of these laws establish or grant independent rights to fertilized eggs, embryos, or the unborn." State of Ill. 101st General Assembly, House Tr. (May 29, 2019, at 15). The Senate sponsor made nearly identically identical remarks. State of Ill. 101st General Assembly, Senate Tr. (May 31, 2019, at 205).

The legislative intent of the criminal statute, both at its inception and as it stands currently, is to criminalize the conduct as it pertains to the pregnant mother. The unborn child, or fetus, is not the "victim" of the offense. Under such circumstances, the debate around the Reproductive Health Care Act, at least as it pertained to the intentional homicide of an unborn child statute, clarified the legislature's intent that the offense of intentional homicide of an unborn child not be treated as murder with a victim separate from the mother. Accordingly, Lane was not found guilty of murdering more than one victim. *See People v. Lieberman*, 201 Ill. 2d 300, 323 (2000) (noting that the legislature should not be precluded from clarifying its earlier intent when it makes clear the subsequent amendment is a clarification, rather than a substantive change in the law).

4. The prohibition against broad application of statutes in derogation of the common law and the rule of lenity each independently direct courts to construe the relevant statutes narrowly and in Lane's favor.

Two well-established rules of statutory construction both independently direct this Court to narrowly construe the relevant statutes in Lane's favor. First, a statute that represents a departure from the common law must be narrowly construed in favor of those against whom it is directed. *People v. Dabbs*, 239 Ill. 2d 277, 289 (2010). Likewise, the rule of lenity directs that reviewing courts should

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resolve any ambiguity in criminal statutes in the defendant's favor. *Hartfield*, 2022 IL 126729, at ¶69.

In holding that an unborn fetus is not an "individual" within the meaning of the murder statute, this Court in *Greer* noted that "[a]t common law the killing of a fetus was not murder unless the child was born alive and then expired as a result of the injuries previously sustained." 79 Ill. 2d at 111. In response, the General Assembly unsuccessfully attempted to expressly overturn centuries of common law jurisprudence by directly amending the murder statute to include a fetus within its definition of "individual." *Supra*, at 27-28. Of course, the legislature was unable to do so and, instead, created the separate and distinct offense of feticide, while only stating that the "sentence" for the new offense "shall be the same as for first degree murder." 720 ILCS 5/9-1.2(d).

However, if the penalty section of the intentional homicide of an unborn child statute is to be construed as making the offense completely synonymous and interchangeable with first degree murder such that a conviction for the former equates to"murdering [. . .] one victim," 730 ILCS 5/5-8-1(a)(1)(c)(ii), then it would directly overturn centuries of common law jurisprudence. *See Greer*, 79 Ill. 2d at 111 (recognizing that, dating back to the writings of Sirs Edward Coke, Matthew Hale, and William Blackstone, at common law the killing of a fetus was not murder unless the child was first born alive). Such an expansive interpretation of the statute, however, would "ignore[] the well-established rule that statutes in derogation of the common law are to be strictly construed in favor of persons sought to be subjected to their operation." *In re W.W.*, 97 Ill. 2d 53, 57 (1983). Further, a court cannot construe a statute in derogation of the common law beyond what the words of the statute expresses or beyond what is necessarily implied from what is

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expressed. *People v. Adams*, 211 Ill. 2d 32, 69 (2004). Accordingly, when construing statutes in derogation of the common law, a court will not presume that an innovation thereon was intended further than the innovation which the statute specifies or clearly implies. *Id*. As such, Illinois courts have limited all manner of statutes in derogation of the common law to their express language, in order to effect the least – rather than the most – change in the common law. *Id*.

Although creating the offense of feticide is itself a departure from the common law, to construe the penalty statute of the current feticide statute as synonymous with murder would be to "presume that an innovation [of the common law] was intended further than the innovation which the statute specifies or clearly implies." *Adams*, 211 Ill. 2d at 32; *see also Cadwallader v. Harris*, 76 Ill. 370, 372 (1875) (noting that "statutes are not to be presumed to alter the common law farther than they expressly declare."). Accordingly, where the General Assembly failed to expressly include the killing of an unborn child within the definition of murder, and instead created the separate offense of feticide, this Court should not then presume that the legislature actually altered the common law further than it was able to expressly declare.

Similarly, this Court should likewise "employ[] the doctrine of lenity to resolve any ambiguity in criminal statutes in the defendant's favor," and resist the impulse to speculate regarding legislative intent, especially when dealing with penal statutes. *Hartfield*, 2022 IL 126729, ¶69. The appellate court's recognition of the many "instances where the defendant is convicted of both first degree murder and intentional homicide of an unborn child, [and] the trial court does not impose a sentence of natural life imprisonment," *Lane*, 2022 IL App (1st) 182672, at ¶38, necessarily supports Lane's contention that the statutes at issue are ambiguous,

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or susceptible to more than one reasonable reading. *Rinehart*, 2012 IL 111719, ¶26.

Accordingly, where the legislature has failed to expressly define the intentional homicide of an unborn child as the murder of a statutorily-defined victim, sufficient to trigger the multiple-murder sentencing enhancement of the Unified Code of Corrections, this Court should apply the rule of lenity and conclude that Lane was not "found guilty of murdering more than one victim." 730 ILCS 5/5-8-1(a)(1)(c)(ii).

D. Conclusion

The offense of intentional homicide of an unborn child is separate and distinct from first degree murder. Merely because the sentence for intentional homicide of an unborn child is the same as for first degree murder does not mean that it is murder under the multiple-murder sentence statute. The relevant definitions at issue also establish that the word "victim," for purposes of the Unified Code of Corrections, does not include fetuses or unborn children. Therefore, Lane was not subject to a mandatory natural life sentence due to being "found guilty of murdering more than one victim." 730 ILCS 5/5-8-1(a)(1)(c)(ii).

Alternatively, to the extent any ambiguity still exists as to whether intentional homicide of an unborn child may be used interchangeably with "murder," that ambiguity should be construed narrowly and resolved in Lane's favor, both because of the rule of lenity but also because the prohibition against broad application of statutes in derogation of the common law.

A new sentencing hearing is required when a trial court's misapprehension of the minimum sentence arguably influenced the sentencing decision. *People v. Eddington*, 77 Ill. 2d 41, 48 (1979). Accordingly, where the trial court here

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specifically found several factors in mitigation before imposing what it believed to be a mandatory natural life term, this Court should vacate Lane's sentences for first degree murder and intentional homicide of an unborn child and remand for a new sentencing hearing on both counts.

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CONCLUSION

For the foregoing reasons, Reginald Lane, defendant-appellant, respectfully requests that this Court reverse the judgment of the appellate court and remand the case for a new sentencing hearing.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages or words contained in the Rule 341(d) cover, the Rule 341(h)(1) table of contents and statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342, is 36 pages.

/s/Talon K. Nouri
TALON K. NOURI
Assistant Appellate Defender

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IN THE CIRCUIT COURT OF COOK COUNTY

PEOPLE OF THE STATE OF ILLINOIS	)	CASE NUMBER	07CR0812901
V.	)	DATE OF BIRTH	07/17/81
REGINALD S LANE	)	DATE OF ARREST	03/24/07
Defendant		IR NUMBER 1304926	SID NUMBER 044926800

ORDER OF COMMITMENT AND SENTENCE TO
ILLINOIS DEPARTMENT OF CORRECTIONS

The above named defendant having been adjudged guilty of the offense(s) enumerated below is hereby sentenced to the Illinois Department of Corrections as follows:

Count	Statutory Citation	Offense	Sentence	Class
001	720-5/9-1(A)(1)	MURDER/INTENT TO KILL/INJURE	YRS. 000 MOS.00	M
	and said sentence shall run concurrent with count(s) ___ ___ ___ ___			
019	720-5/9-1.2(a)(1)	INTENT/HOMICIDE/UNBORN CHILD	YRS. 000 MOS.00	M
	and said sentence shall run concurrent with count(s) ___ ___ ___ ___			
___	___	___	YRS. ___ MOS. ___	___
	and said sentence shall run (concurrent with)(consecutive to) the sentence imposed on:			
___	___	___	YRS. ___ MOS. ___	___
	and said sentence shall run (concurrent with)(consecutive to) the sentence imposed on:			
___	___	___	YRS. ___ MOS. ___	___
	and said sentence shall run (concurrent with)(consecutive to) the sentence imposed on:			

On Count ___ defendant having been convicted of a class _ offense is sentenced as a class x offender pursuant TO 730 ILCS 5/5-5-3(C)(8).

On Count ___ defendant is sentenced to an extended term pursuant to 730 ILCS 5/5-8-2.

The Court finds that the defendant is entitled to receive credit for time actually served in custody for a total credit of 4234 days as of the date of this order. Defendant is ordered to serve years Mandatory Supervised Release.

IT IS FURTHER ORDERED that the above sentence(s) be concurrent with the sentence imposed in case number(s) ___ ___ ___
AND: consecutive to the sentence imposed under case number(s)
___ ___ ___ ___

ENTERED
SIXTH MUNICIPAL DISTRICT
CIRCUIT COURT COOK COUNTY
OCT 26 2018
DOROTHY BROWN
CLERK OF CIRCUIT COURT

IT IS FURTHER ORDERED THAT COUNT 1 AND 19 SENTENCED TO NATURAL LIFE. COUNT 2 MERGES INTO COUNT 1 AND COUNTS 17 AND 18 MERGES INTO COUNT 19 COUNTS 3,27,29 FNG 5/31/18
ALL OTHER COUNTS NOLLE PROS ON 5/31/18

IT IS FURTHER ORDERED that the Clerk provide the Sheriff of Cook County with a copy of this Order and that the Sheriff take the defendant into custody and deliver him/her to the Illinois Department of Corrections and that the Department take him/her into custody and confine him/her in a manner provided by law until the above sentence is fulfilled.

DATED OCTOBER 26, 2018
CERTIFIED BY K LAFAYETTE
DEPUTY CLERK
VERIFIED BY ___

ENTER: 10/26/18

JUDGE: BOYD, CARL B. 2073

CCG N305

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IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT - CRIMINAL DIVISION

PEOPLE OF THE STATE OF ILLINOIS,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No.: 07CR 8129
	)	
REGINALD LANE,	)	
	)	
Defendant.	)	

FILED
D6-107
DEC 17 2018
DOROTHY BROWN
CLERK OF THE CIRCUIT COURT
OF COOK COUNTY, IL

PRO-SE NOTICE OF APPEAL

An appeal is taken from the order or judgment described below.

(1) Court to which appeal is taken: Appellate.

(2) Name of appellant and address to which notices shall be sent:

Name: REGINALD LANE
c/o Illinois Department of Corrections

If appellant is indigent and has no attorney, does he want one appointed?
YES.

(3) Date of judgment or order: December 10, 2018.

(4) Offense of which convicted: MURDER

(5) Sentence: NATURAL LIFE

By: [signature]

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2022 IL App (1st) 182672

No. 1-18-2672

Opinion filed February 2, 2022

Third Division

IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 07CR8129
	)	
REGINALD LANE,	)	Honorable
	)	Carl B. Boyd,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE BURKE delivered the judgment of the court, with opinion.
Presiding Justice Gordon and Justice McBride concurred in the judgment and opinion.

OPINION

¶ 1 Following a bench trial, defendant Reginald Lane was found guilty of the first degree murder of Jwonda Thurston (Jwonda) and the intentional homicide of her unborn child, after fatally shooting Jwonda in the head during a confrontation with police. At a subsequent sentencing hearing, the circuit court sentenced defendant to two concurrent terms of natural life imprisonment.

¶ 2 On appeal, defendant does not contest the sufficiency of the evidence to sustain his conviction but asserts that the trial court erred in finding that he was subject to mandatory natural life sentencing because he was found guilty of murdering more than one victim. See 730 ILCS 5-8-1(a)(1)(c)(ii) (West 2016) ("For first degree murder, the court shall sentence the defendant to a

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term of natural life imprisonment if the defendant, at the time of the commission of the murder, had attained the age of 18, and is found guilty of murdering more than one victim."). Defendant contends that the plain language of the statute contemplates the murder of more than one victim, that defendant's intentional homicide of the unborn child was not a murder, and that the unborn child was not a victim, as those terms are defined in the relevant statutory sections. Defendant contends that we should therefore remand this matter for a new sentencing hearing. For the reasons that follow, we affirm the judgment of the circuit court.

¶ 3 I. BACKGROUND

¶ 4 A. Trial Evidence

¶ 5 The facts from defendant's trial are not in dispute. The record shows that in March 2007, defendant drove Jwonda and her three children to Jwonda's sister, June Thurston's (June), apartment in Riverdale, Illinois. At the time, defendant knew that Jwonda was three months pregnant with his child. That night, Jwonda had plans to meet a friend of hers, Natasha Johnson, while June watched the children. However, according to June, when defendant and Jwonda arrived at June's apartment, defendant told Jwonda that he did not want her to go out. Defendant told Jwonda that if she left the apartment, he would "kill her." When Jwonda did not arrive to meet Johnson, Johnson called her to ask where she was. During the phone call, Johnson could hear arguing in the background. Johnson drove to June's apartment.

¶ 6 When Johnson arrived, she saw Jwonda crying in the corner of the room, and defendant was in front of her "arguing." Johnson went to Jwonda to console her and told Jwonda they could leave if she wanted to leave. Defendant said that Jwonda was not going anywhere. Johnson tried to push Jwonda toward the door, but she would not leave. Johnson's phone rang, and she answered, but then defendant took her phone and told everyone to sit down. Johnson saw that defendant had

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a gun in his hand. After about an hour, Johnson left the apartment. Defendant told Johnson that if she contacted police he would hurt Jwonda.

¶ 7 Johnson drove away from the apartment and then flagged down Riverdale police officer Mark Kozeluh. Johnson told Officer Kozeluh what was happening in the apartment. From inside the apartment, June, who was standing with defendant, could see that Johnson was talking to the police outside. Defendant told June that, if Johnson told the police what was happening inside the apartment, he was going to kill Jwonda. Defendant called Johnson's cellphone and asked her why she contacted the police because he told her to not talk to police after she left.

¶ 8 Officer Kozeluh called for backup, and three other officers responded to the call. Two of the officers went to the front door of the apartment, and two went to the backdoor. Two of the officers knocked on the front door and identified themselves as police. Through the door, June told the officers that she needed to get dressed. June testified that she was already dressed but that she lied to police because defendant said that, if she opened the door and let the police in, he was going to kill Jwonda. June told defendant to leave through the back door and that she would not tell the police anything.

¶ 9 Defendant grabbed Jwonda by the neck and pointed the gun at the back of her head. He started to move Jwonda toward the back door. As Jwonda, being pushed by defendant, approached the backdoor, the two officers standing outside told her to raise her hands, which she did. Defendant then shot Jwonda in the back of the head. Defendant ran into the bathroom of the apartment, where he was arrested later that morning.

¶ 10 Defendant testified on his own behalf that he did not threaten anyone that evening. He testified that he did not intentionally shoot Jwonda but that he was startled by the appearance of the officers. When he heard the officers outside the door, he attempted to throw his gun away from

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him, but when he pulled it out of his pocket, it accidentally discharged, and the bullet struck Jwonda.

¶ 11 Following closing argument, the court found defendant guilty of the first degree murder of Jwonda and the intentional homicide of her unborn child. The court also found that, during the commission of those offenses, defendant personally discharged a firearm that resulted in great bodily harm or death. The court found that the State's witnesses testified credibly, while defendant's credibility was "highly questionable" and he "lack[ed] veracity throughout the majority, if not all, of his testimony."

¶ 12 B. Sentencing

¶ 13 Prior to sentencing, defense counsel filed a "Motion to Prohibit a Natural Life Sentence." In the motion, counsel noted that a natural life sentence is mandatory under section 5-8-1 of the Code where a defendant is found guilty of murdering more than one victim. 730 ILCS 5/5-8-1(a)(1)(c)(ii) (West 2016). Counsel asserted that, because defendant was convicted of first degree murder and intentional homicide of an unborn child, he was not convicted of "murdering" more than one victim. Counsel contended that defendant was therefore not subject to mandatory natural life sentencing.

¶ 14 In arguing on the motion before the trial court, defense counsel contended that defendant was not convicted of murdering two victims. Rather, he was convicted of murdering Jwonda and the homicide of "someone else." Defense counsel noted that homicide and murder are two separate offenses with different penalties and different applications.

¶ 15 In response, the State pointed out that the intentional homicide of an unborn child statute provides that the penalty for the offense "shall be the same as first degree murder." See 720 ILCS 5/9-1.2(d) (West 2016). The State asserted that "we have the first degree murder of Miss Jwonda,

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and we have the penalty that shall be the same as first degree murder" for the intentional homicide of the unborn child. The State contended that defendant would therefore be subject to a sentence of mandatory natural life.

¶ 16 Defense counsel replied that the fact that the statute provides that the sentence for intentional homicide of an unborn child shall be the same as for first degree murder is a different consideration than whether defendant was *convicted* of murder.

¶ 17 In ruling on the motion, the court relied on *People v. Kuchan*, 219 Ill. App. 3d 739 (1991). The court briefly recited the facts of that case, noting that the defendant in that case choked the mother to death when she was seven months pregnant. The defendant was found guilty of first degree murder and intentional homicide of an unborn child. The trial court imposed a term of natural life imprisonment, and this court affirmed. The circuit court concluded that "[b]ecause it was not improper to impose natural life for those offenses, the court is of the same opinion it is not improper for this court to impose a sentence of natural life for first degree murder as well as the intentional homicide of an unborn child." The court therefore denied defendant's motion.

¶ 18 At defendant's sentencing hearing, the parties first discussed the applicable sentencing range. Defense counsel again objected to the suggestion that defendant was subject to a mandatory sentence of natural life imprisonment under the theory that he was found guilty of murdering more than one victim. Defense counsel distinguished *Kuchan*, noting that the trial judge in that case sentenced the defendant to natural life because the offense was "accompanied by exceptional[ly] brutal or heinous behavior indicative of wanton cruelty." Defense counsel also argued that, for the purposes of the intentional homicide of an unborn child statute (720 ILCS 5/9-1.2 (West 2016)), the definition of "person" does not include the pregnant woman whose child is killed. Defense counsel asserted that therefore the mother should not be included when the unborn child dies in

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determining whether more than one person is murdered. Defense counsel maintained that this was a single act and a single gunshot, and the fact that the unborn child died was simply a product of the mother dying. Defense counsel continued that "[t]wo victims should mean two separate acts." The State responded by again citing the language of the statute that the intentional homicide of an unborn child shall be sentenced the same as first degree murder. The court concluded the oral argument by stating, "I believe the legislature has resolved that issue, and case law has also addressed this very same issue, so we shall proceed to sentencing."

¶ 19 In arguing in aggravation, the State asserted that defendant should be sentenced to natural life imprisonment because he caused the death of more than one victim. The State also noted that defendant caused serious bodily harm and had a prior history of delinquency and, because Jwonda was pregnant at the time, she was considered a person with a physical disability under the law.[1]

¶ 20 In mitigation, defense counsel argued that defendant had a very difficult upbringing. Defendant's mother was a drug addict and had problems with mental health. Defendant's father was a police officer but did not live with him. Defense counsel further argued that this was a situation where defendant's emotions got the best of him and he did not kill Jwonda in cold blood. Defense counsel represented that defendant was "remorseful, contemplative, subdued, sad." Defendant spoke at length in allocution, apologizing to Jwonda's family, recognizing that he failed his family and acknowledging that he made an inexcusable mistake.

¶ 21 In determining defendant's sentence, the court acknowledged that defendant's life had not been "a bed of roses," based on his separation from his father, his mother's drug addiction, and defendant's involvement with the Department of Children and Family Services. The court

[1]We note that defense counsel contested the State's characterization of pregnant women as disabled persons.

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observed that, despite all of that, defendant was gainfully employed at the time of the incident. The court noted defendant's level of remorse and acceptance, which the court found was "unusual" in situations such as this one. In aggravation, the court noted that defendant's conduct caused serious harm. The court observed that defendant was in a committed relationship with Jwonda, who he knew was pregnant. The court noted that Jwonda was the mother of three additional children, "all tender and young in age."

¶ 22 The court recounted that it had found defendant guilty of first degree murder and intentional homicide of an unborn child. "The law says that in a situation such as this that I must impose natural life. **** [I]n this instance the statute is 730 ILCS 5/5-8-1(a)(i)(c)[(ii)], requires me to sentence you to natural life on both." The court thus sentenced defendant to two concurrent terms of natural life imprisonment. Defendant filed a motion to reconsider, in which he argued that the court erred in finding that a term of natural life was required by statute. The court denied the motion. This appeal follows.

¶ 23 II. ANALYSIS

¶ 24 On appeal, defendant solely contends that the trial court erred in finding that he was required to be sentenced to a term of natural life imprisonment based on the first degree murder of Jwonda and the intentional homicide of her unborn child. Defendant asserts that the plain language of the statutes at issue supports his contention that he was not found guilty of murdering more than one victim. Defendant asserts that intentional homicide is not synonymous with murder and that the unborn child was not a "victim" as the term is defined in the Unified Code of Corrections and related statutes. Defendant further contends that, in the event we find the statute to be ambiguous, several tenets of statutory interpretation support his contentions.

¶ 25 A. Statutes

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¶ 26 Before we may address the merits of defendant's claim, we must first review the statutes at issue here. First, section 9-1.2 of the Criminal Code of 2012 (Criminal Code) provides that a person who commits the offense of intentional homicide of an unborn child shall be sentenced "the same as for first degree murder." 720 ILCS 5/9-1.2(d) (West 2016). The lone exception to this sentencing scheme is that the death penalty may not be imposed. 720 ILCS 5/9-1.2(d)(1) (West 2016). Subsection (d) further provides for sentencing enhancements that may be imposed if the defendant uses a firearm in the commission of the offense. 720 ILCS 5/9-1.2(d)(2)-(4) (West 2016).

¶ 27 Next, section 5-8-1 of the Unified Code of Corrections provides that, for first degree murder, the court "shall" sentence the defendant to a term of natural life imprisonment if the defendant is "found guilty of murdering more than one victim." 730 ILCS 5/5-8-1(a)(1)(c)(ii) (West 2016).

¶ 28 B. Murdering More Than One Victim

¶ 29 Defendant contends that the circuit court erred in finding that the confluence of the two statutes cited above required that defendant be sentenced to a mandatory term of natural life imprisonment. Defendant asserts that, although section 9-1.2 provides that a person who commits the offense of intentional homicide of an unborn child shall be sentenced the same as for first degree murder, this does not thereby transform a conviction for intentional homicide of an unborn child into a conviction for murder. Defendant maintains that section 5-8-1(a)(1)(c)(ii) applies only where a defendant is convicted of two murders, not one murder and one intentional homicide. Defendant also contends that the circuit court erred in relying on *Kuchan*, where the circumstances in that case are distinguishable from the case at bar.

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¶ 30 The State responds that the court properly sentenced defendant to a mandatory natural life term of imprisonment. The State maintains that this court's decision in *People v. Shoultz*, 289 Ill. App. 3d 392 (1997), is dispositive of the issue before us.

¶ 31 We will first examine this court's ruling in *Shoultz*, which the State asserts is controlling. In *Shoultz*, the defendant, as defendant was here, was convicted of first degree murder and the intentional homicide of an unborn child. *Id.* at 393. The circuit court sentenced defendant to a term of natural life imprisonment. *Id.* On appeal to this court, the defendant alleged, *inter alia*, that the circuit court erred in finding that he was subject to mandatory natural life sentencing pursuant to section 5-8-1(a)(1)(c)(ii). *Id.* at 397. Like the intentional homicide of an unborn child statute in the case at bar, the previous version of the intentional homicide of an unborn child statute also provided that the " 'sentence for intentional homicide of an unborn child shall be the same as for first degree murder, except that the death penalty may not be imposed.' " *Id.* at 397 (quoting 720 ILCS 5/9-1.2(d) (West 1994)).

¶ 32 In addressing the defendant's claim, the *Shoultz* court reviewed this court's ruling in *People v. Magnus*, 262 Ill. App. 3d 362 (1994). In *Magnus*, the defendant was convicted of one count of first degree murder and one count of second degree murder. *Id.* at 364. The question on appeal was whether the defendant was subject to mandatory natural life sentencing pursuant to an earlier, but similar, version of section 5-8-1(a)(1)(c)(ii). *Id.* at 365. The court determined that the defendant was not subject to mandatory natural life sentencing because the statute applied only to multiple first degree murders. *Id.* at 366-67.

¶ 33 The *Shoultz* court distinguished *Magnus*, finding that the intentional homicide of an unborn child statute contained a provision specifically directing that the sentence imposed be the same as

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for first degree murder. *Shoultz*, 289 Ill. App. 3d at 398. The court noted that there was not a similar provision in the second degree murder statute at issue in *Magnus*. *Id.* The court reasoned:

> "Since the feticide statute mandates application of the first degree murder penal scheme, we find no ambiguity under that statute's natural life imprisonment penalty merely because it references 'murder.' If the legislature did not contemplate that the clause 'found guilty of murdering more than one victim' in the sentencing provisions for first degree murder would encompass feticide, 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.' 720 ILCS 5/9-1(b)(3) (West 1994). Both clauses reference 'murder,' yet the legislature chose to except only the death penalty, and not mandatory natural life imprisonment, as sentencing options applicable to the feticide statute." *Id.*

The court concluded that the statute was unambiguous and the court could not read into the statute an exception that was not explicitly provided by the legislature. *Id.* The court therefore affirmed the circuit court's imposition of a natural life sentence. *Id.* at 399.

¶ 34 The State maintains that *Shoultz* is controlling and we should not depart from the reasoning therein. We observe that few cases outside of *Shoultz* have addressed the question raised in that case and in the case at bar. Other cases, however, like *Magnus*, have explored the question of whether the defendant may be subject to mandatory life sentencing where he commits first degree murder and a second offense similar to, but not precisely, first degree murder.

¶ 35 For instance, *People v. West*, 323 Ill. App. 3d 858, 859 (2001), concerned a previous version of section 5-8-1(a)(1)(c)(i) of the Unified Code of Corrections (730 ILCS 5/5-8-1(a)(1)(c)(i) (West 1998)). That section provided that the circuit court shall sentence a defendant

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to a term of natural life imprisonment where defendant is convicted of a first degree murder and had previously committed "first degree murder under any state or federal law." 730 ILCS 5/5-8-1(a)(1)(c)(i) (West 1998).[2] In *West*, the defendant pled guilty to a charge of murder in 1978. *West*, 323 Ill. App. 3d at 859. In 1986, the defendant was found guilty of another murder and sentenced to death. *Id.* The defendant appealed the second conviction and sentence. *Id.* at 860. Our supreme court affirmed the conviction but remanded to the trial court for the imposition of a sentence other than death. *Id.* On remand, the trial court held that the precursor to section 5-8-1(a)(1)(c)(i) mandated that defendant be sentenced to a term of natural life imprisonment. *Id.* Defendant again appealed from his sentence. *Id.* On appeal, this court framed the issue as a question of statutory interpretation. *Id.* at 859. The court set out the question as:

> "When the legislature prescribed a sentence of natural life in prison for a first degree murder committed by a person who had previously committed 'first degree murder under any state or federal law' (730 ILCS 5/5-8-1(a)(1)(c)(i) (West 1998)), did the legislature mean the sentencing provisions to apply only if the state had named the prior conviction as one for 'first degree murder'?" *Id.*

The court observed that in 1986, the legislature renamed the offense of murder to first degree murder. *Id.* The court observed that the legislature also amended the sentencing provision for murder, and the amended statute provided that if the defendant, who is convicted of first degree murder, had previously been convicted of first degree murder under any state or federal law, then

[2]The current version of the statute provides that the court shall sentence a defendant convicted of first degree murder to a term of natural life imprisonment if the defendant "has previously been convicted of first degree murder under any state or federal law." 730 ILCS 5/5-8-1(a)(1)(c)(i) (West 2016).

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the court shall sentence the defendant to a term of natural life imprisonment when the death penalty is not imposed. *Id.* at 859-60 (citing 730 ILCS 5/5-8-1(a)(1)(c)(i) (West 1998)).

¶ 36 The defendant argued that in 1978 he pled guilty to "murder," not to first degree murder, and therefore section 5-8-1(a)(1)(c)(i) should not apply. *Id.* at 860. The court compared the version of the "murder" statute that was in effect at the time defendant pled guilty with the definition of first degree murder and found that the two sections were "identical," except in how the newer section used the term "second degree murder" instead of "voluntary manslaughter." *Id.* at 860-61. The court determined that, when defendant pled guilty to murder in 1978, "he admitted he committed a crime identical to that named 'first degree murder' in the present statutes." *Id.* at 861.

¶ 37 The defendant contended that the legislature could have provided that any conviction under a law substantially similar to the first degree murder statute would qualify for a mandatory natural life sentence, as the legislature did for the death penalty statute, but the legislature did not unambiguously establish the intention to mandate life imprisonment for offenders convicted of " 'murder' " rather than " 'first degree murder.' " *Id.* The *West* court observed that the court was presented with a similar question in *Shoultz*. *Id.* The *West* court found that in *Shoultz*, the court found that "the statutory scheme, which imposed the same penalties for feticide as for first degree murder, unambiguously showed the intention to treat feticide as a form of murder for the Unified Code of Corrections." *Id.* The *West* court determined that the same result was warranted where the "legislature unambiguously expressed an intention to treat murder convictions under the prior statute as convictions for first degree murder under the current statute." *Id.*

¶ 38 The combination of *Shoultz* and *West* would therefore suggest that the trial court here was correct in finding that defendant was subject to mandatory life sentencing where he was convicted of both first degree murder and intentional homicide of an unborn child, which shall be sentenced

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the same as first degree murder. We must recognize, however, that one reason for the dearth of relevant authority on this issue is due to the fact that in some instances where the defendant is convicted of both first degree murder and intentional homicide of an unborn child, the trial court does not impose a sentence of natural life imprisonment, and the issue of a mandatory natural life sentence does not appear to be raised, even though authority such as *Shoultz* and *West* would suggest that such sentence should be mandatory under section 5-8-1(a)(1)(c)(ii). For instance, in *People v. Campos*, 227 Ill. App. 3d 434, 438 (1992), the defendant was convicted of the first degree murder of his wife and the intentional homicide of an unborn child. The court did not sentence defendant to a mandatory term of natural life but instead sentenced defendant to concurrent terms of 35 years' imprisonment for each offense. *Id*; see also *People v. Tijerina*, 381 Ill. App. 3d 1024 (2008) (defendant convicted of first degree murder and intentional homicide of an unborn child and sentenced to consecutive terms of 60 and 40 years' imprisonment; *People v. Alvarado*, 2012 IL App (1st) 103784-U, ¶ 18 (same).

¶ 39 Similarly, there are cases where the defendant is convicted of first degree murder and intentional homicide of an unborn child, is sentenced to natural life imprisonment, but such sentence does not appear to be mandatory based on the confluence of sections 5-8-1(a)(1)(c)(ii) and 9-1.2, and thus the issue is not raised on appeal. See, *e.g.*, *People v. Thomas*, 2020 IL App (1st) 170310; *People v. Minkens*, 2020 IL App (1st) 172808.

¶ 40 Then there is the matter of *Kuchan*, 219 Ill. App. 3d 739, cited by the trial court as its justification for imposing defendant's sentence here. In *Kuchan*, the defendant was found guilty of murder and intentional homicide of an unborn child and sentenced to an extended term of natural life imprisonment, with a concurrent sentence of 40 years for the intentional homicide of an unborn child. *Id.* at 740. On appeal, the defendant contended, *inter alia*, that the trial court erred in

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imposing a natural life sentence for murder. *Id.* at 740-41. The facts from the defendant's trial showed that he choked his wife to death when she was seven months pregnant. *Id.* at 741. The defendant left his deceased wife's body in the bathroom of their apartment for three days while defendant continued to live there. *Id.* The trial court imposed a sentence of natural life, finding that the offense was " 'accompanied by exceptionally brutal or heinous behavior indicative of wanton cruelty.' " *Id.* at 746 (quoting Ill. Rev. Stat. 1987, ch. 38, ¶ 1005-5-3.2(b)(2)). This court agreed with the trial court's finding that " 'this crime was so vile and repulsive as to almost defy description.' " *Id.* at 747. The court concluded that the trial court properly imposed a sentence of natural life. *Id.*

¶ 41 Relying on *Kuchan*, the trial court here found that, because it was "not improper" for the trial court in *Kuchan* to impose a natural life sentence, then it would not be improper in the case at bar. However, the question defendant raised in the trial court and on appeal is not a matter of the propriety of a natural life sentence, but whether such sentence was mandatory under the circumstances. The trial court's comments at sentencing leave no doubt that it determined that it was required to sentence defendant to a term of natural life imprisonment. *Kuchan*, however, did not involve a mandatory life sentence and thus represents another situation, like *Thomas* and *Minkens*, cited above, where the defendant is convicted of first degree murder and intentional homicide of an unborn child and a sentence of natural life is imposed, but there is no discussion, either in the trial court or in this court, of whether such a sentence is mandatory based on the statutes involved.

¶ 42 Defendant maintains that the distinction is crucial here because the trial court found significant mitigating factors that could have led it to impose a sentence of less than natural life if it had properly determined that such a sentence was not mandatory. Defendant points out that the

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trial court noted that defendant appeared to be genuinely remorseful during his statement in allocution and the court mentioned his troubled upbringing, including his mother's drug addiction and his relationship with his father. Defendant asserts that the trial court determined that it was unable to consider those mitigating factors because it erroneously determined that the minimum sentence it could impose was natural life imprisonment.

¶ 43 We find defendant's contentions unpersuasive and find no basis to depart from the well-reasoned decision in *Shoultz*. We find no ambiguity in the statutes and hold that the plain language of section 9-1.2(d) of the Criminal Code and section 5-8-1(a)(1)(c)(ii) of the Unified Code of Corrections require 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. The language in section 9-1.2(d) 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. 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. As the *Shoultz* court recognized, "the legislature chose to except only the death penalty, and not mandatory natural life imprisonment, as sentencing options applicable to the feticide statute." *Shoultz*, 289 Ill. App. 3d at 398.

¶ 44 We find further support for the legislature's intent in the plain language of the statutes. Section 9-1.2 of the Criminal Code 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:

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

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

(3) knew that the individual was pregnant." 720 ILCS 5/9-1.2(a) (West 2016).

Similarly, section 9-1 provides:

"(a) A person who kills an individual without lawful justification commits first degree murder if, in performing the acts which cause the death:

(1) he or she either intends to kill or do great bodily harm to that individual or another, or knows that such acts will cause death to that individual or another; or

(2) he [or she] knows that such acts create a strong probability of death or great bodily harm to that individual or another[.]" 720 ILCS 5/9-1(a)(1)-(2) (West 2016).

Thus, 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. Both statutes contemplate the offender's intent to cause death or do great bodily harm or the offender's knowledge that the acts create a strong probability of death or great bodily harm. Indeed, the intentional homicide of an unborn child statute does not even require intent to harm the unborn child, so long as the offender intended to harm the pregnant mother while knowing that she was pregnant. This shows the legislature's intent to treat intentional homicide of

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an unborn child as another form of first degree murder. As in *West*, we find 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. Thus, where the offense of intentional homicide of an unborn child is to be sentenced the same as first degree murder and where defendant was found guilty of intentional homicide of an unborn child and first degree murder, pursuant to section 5-8-1(a)(1)(c)(ii) of the Unified Code of Corrections, the trial court was required to sentence defendant to a term of natural life imprisonment.

¶ 45 We note that defendant also raises an alternate argument as to why section 5-8-1(a)(1)(c)(ii) should not apply in this case. Defendant points out that the statute refers to the murder of more than one "victim." Defendant asserts that an unborn child is not a "victim" as that term is defined in section 5-1-22 of the Unified Code of Corrections (730 ILCS 5/5-1-22 (West 2016)) and section 3 of the Rights of Crime Victims and Witnesses Act (725 ILCS 120/3 (West 2016)). We observe that defendant did not raise this argument before the trial court. It is well settled that an issue is waived on appeal unless a defendant both makes an objection at trial and raises the issue in a posttrial motion. *People v. Enoch*, 122 Ill. 2d 176, 186 (1988). Defendant'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 section 5-8-1(a)(1)(c)(ii)'s provision that defendant was found guilty of more than one murder. Defendant does 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. See, *e.g.*, *People v. Owens*, 129 Ill. 2d 303, 316 (1989).

¶ 46 Even if we were to consider defendant's alternate contention, we would nonetheless find it unpersuasive. First, we observe that section 9-1.2 of the Criminal Code criminalizes the homicide of an unborn child irrespective of harm to the mother. Thus, when an offender commits intentional

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homicide of an unborn child and also commits the offense of first degree murder of the mother, there are two separate victims. In addition, this contention is essentially an argument that his convictions violate the one-act, one-crime rule. See *People v. Almond*, 2015 IL 113817, ¶ 47 ("Under [the one-act, one-crime rule] a defendant may not be convicted of multiple offenses based on the same physical act."). Despite defendant's protestations at oral argument before this court, this contention has been considered and rejected by the supreme court in *People v. Shum*, 117 Ill. 2d 317, 363-64 (1987). In *Shum*, like defendant here, the defendant contended that he could not be convicted of both feticide and the killing of the pregnant mother because the feticide arose from the "single physical act" of killing the mother. *Id.* at 363. The supreme court rejected the defendant's contention, finding: "Our statute defining murder does not require the death of a fetus. [Citation.] In fact, we have held that taking the life of a fetus is not murder under our current statute. [Citation.] Since there were *two victims* involved and feticide is not a lesser included offense of murder, both convictions may stand." (Emphasis added.) *Id.* at 364. Thus, our precedent is clear that, where defendant commits the first degree murder of the pregnant mother and the intentional homicide of an unborn child, there are two distinct "victims." We therefore find no error and we affirm the judgment of the circuit court.

¶ 47 III. CONCLUSION

¶ 48 For the reasons stated, we affirm the judgment of the circuit court of Cook County.

¶ 49 Affirmed.

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No. 1-18-2672

Cite as:	*People v. Lane*, 2022 IL App (1st) 182672
Decision Under Review:	Appeal from the Circuit Court of Cook County, No. 07-CR-8129; the Hon. Carl B. Boyd, Judge, presiding.
Attorneys for Appellant:	James E. Chadd, Douglas R. Hoff, and Talon K. Nouri, of State Appellate Defender's Office, of Chicago, for appellant.
Attorneys for Appellee:	Kimberly M. Foxx, State's Attorney, of Chicago (John E. Nowak, Veronica Calderon Malavia, and Daniel Piwowarczyk, Assistant State's Attorneys, of counsel), for the People.

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No. 128269

IN THE

SUPREME COURT OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, -vs- REGINALD LANE, Defendant-Appellant.	)))))))))))	Appeal from the Appellate Court of Illinois, No. 1-18-2672. There on appeal from the Circuit Court of Cook County, Illinois , No. 07 CR 8129. Honorable Carl B. Boyd, Judge Presiding.

NOTICE AND PROOF OF SERVICE

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Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct. On October 28, 2022, the Brief and Argument was filed with the Clerk of the Supreme Court of Illinois using the court's electronic filing system in the above-entitled cause. Upon acceptance of the filing from this Court, persons named above with identified email addresses will be served using the court's electronic filing system and one copy is being mailed to the defendant-appellant in an envelope deposited in a U.S. mail box in Chicago, Illinois, with proper postage prepaid. Additionally, upon its acceptance by the court's electronic filing system, the undersigned will send 13 copies of the Brief and Argument to the Clerk of the above Court.

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