

2026 IL App (2d) 240570-U
No. 2-24-0570
Order filed October 20, 2026

NOTICE: This order was filed under Illinois Supreme Court Rule 23(b) and is not precedential except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee,

v.

JOSE S. AGUIRRE, Defendant-Appellant.

Appeal from the Circuit Court of Lake County.
Honorable D. Christopher Lombardo, Judge, Presiding.
No. 21-CF-1495

JUSTICE McLAREN delivered the judgment of the court.
Presiding Justice Kennedy and Justice Schostok concurred in the judgment.

ORDER

¶ 1 *Held:* The State presented sufficient evidence to prove defendant guilty beyond a reasonable doubt of aggravated DUI; defendant's claim of error in allowing expert testimony is foreclosed by both forfeiture and the invited-error doctrine; defendant's conviction of one count aggravated driving under the influence resulting in death is affirmed, and defendant's remaining convictions and sentences arising out of the same single act of driving under the influence are vacated under the one-act, one-crime rule; affirmed as modified.

¶ 2 A jury found defendant, Jose S. Aguirre, guilty of eight counts of aggravated driving while under the influence (DUI) causing death (625 ILCS 5/11-501(a), (d)(1)(F) (West 2020)) and one count (Count XIII) of aggravated DUI causing great bodily harm (625 ILCS 5/11-501(a), (d)(1)(C) (West 2020)). After merging certain counts, the trial court sentenced defendant to two ten-year terms and one one-year term of imprisonment, all to be served concurrently. The trial court also

imposed a total of \$1,959 in costs, fines and assessments. On appeal defendant argues that: 1) he was not proven guilty beyond a reasonable doubt of aggravated DUI causing great bodily harm, 2) the trial court erred when it allowed an expert in accident reconstruction and occupant kinematics to opine that defendant drove the vehicle at the time of the crash, 3) the trial court improperly sentenced defendant under the one-act, one-crime doctrine, and 4) he was denied a waiver of fees. We affirm in part, vacate in part, and remand.

¶ 3

I. BACKGROUND

¶ 4 A grand jury indicted defendant on nine counts of aggravated DUI, four counts of reckless driving relating to a single-vehicle accident resulting in the death of two passengers, Edgar Herrera and Juan Renteria-Becerra, and the great bodily harm of another passenger, Jorge Trevino. The accident occurred on September 27, 2020, at approximately 3:21 a.m. Those charges included two counts of aggravated driving under the influence (DUI) involving death (625 ILCS 5/11-501(a)(2), (d)(1)(F) (West 2020)) and aggravated DUI involving great bodily harm (*id.* § 11-501(a)(2), (d)(1)(C)). The court granted the State’s motion to *nolle prosequi* the reckless driving counts and the case proceeded to a jury trial.

¶ 5 At trial, Sergeant Robert Robinson of the Round Lake police department testified that he was on patrol in the area just before the accident. At around 3:20 a.m. Robinson saw defendant’s Chevy Traverse travelling south at a “high rate of speed,” meaning “well over the posted 30-mile-an-hour speed limit.” The Chevy Traverse ran through a red light and turned onto Hart Road. It travelled at “such [a] high rate of speed” that it bounced when it drove over a railroad crossing. The vehicle ran through another red light as it turned right onto Route 134. In pursuit of the Chevy, Robinson “clocked” the vehicle at 111 miles-per-hour in a 45-mile-an-hour zone and activated his lights and siren. The Chevy quickly accelerated and increased its distance from Robinson. He

ended his pursuit because he recorded the vehicle's license plate and was concerned about the risk to other motorists, but he continued in the same direction as the Chevy.

¶ 6 Near the T-intersection of Route 134 and Main Street, Robinson saw gravel on the road and dust in the air. At 3:22 a.m. Robinson saw red taillights when he checked the nearby wooded area. After calling for backup and emergency assistance, Robinson eventually reached the Chevy through the thick brush and trees. The vehicle was flipped over on its roof, and a tree was on top of it. Three bodies were in the vehicle. "One body was at the front driver's portion of the vehicle, and two bodies were in the rear part of the vehicle."

¶ 7 During cross examination Sergeant Robinson testified that he believed Trevino crawled 200 feet from the crash.

¶ 8 Cesar DeLaTorre testified that on September 26, 2020, he lived on Brierhill Drive in Round Lake. Earlier that day, DeLaTorre's family threw a birthday party for his sister-in-law. Herrera attended because he was dating DeLaTorre's other sister-in-law. When the birthday party ended at around 10:30 p.m. DeLaTorre and Mr. Herrera stayed up "chilling in the garage." Sometime between 11:00-11:30 p.m., Herrera invited some people over. Defendant arrived with Trevino. A third person later arrived but Trevino could not recall that person's name. Defendant and the others drank and snorted cocaine, but DeLaTorre denied doing the same.

¶ 9 DeLaTorre testified that between 12:30-1:00 a.m., defendant drove away from his garage in a Chevy Traverse. Herrera and Trevino accompanied defendant. The men returned 15 minutes later with Renteria-Becerra and another man. Defendant, Trevino, and Herrera continued to drink and snort cocaine. At around 3:15 a.m., defendant, Trevino, Herrera, and Renteria-Becerra left DeLaTorre's garage for the final time to go buy some more cocaine. When the four men entered the Chevy Traverse, defendant got in the driver's seat, Trevino sat in the front passenger's seat,

Herrera sat in the back seat behind defendant, and Renteria-Becerra sat in the backseat behind Trevino. Defendant drove off.

¶ 10 Trevino, who at the time of his testimony was in custody for a federal firearms conviction, testified that he did not receive any kind of deal in exchange for his testimony. Trevino, the only surviving passenger in the crash, testified that a few hours before the crash he was at his cousin Santos' home. They were drinking and "looking for some [cocaine] to do." Through a text message, defendant invited Trevino and Santos to his apartment. In the parking lot of defendant's apartment building, the three men drank beer and snorted cocaine. Then Herrera phoned Trevino to invite them to a nearby garage party at DeLaTorre's home, Herrera's brother-in-law. Defendant drove Trevino and Santos to the party in his white Chevy Traverse SUV. At the party defendant, Trevino, Herrera, and Santos drank alcohol and snorted cocaine. Sometime after midnight, Renteria-Becerra called Trevino. Renteria-Becerra was at A.J.'s Bar nearby and was concerned that he was about to get into a bar fight. Defendant drove Trevino, Herrera, and Santos to AJ's Bar. When they arrived at the bar everything was calm, so defendant, Trevino, Herrera, Santos, and Renteria-Becerra drank a few beers and then defendant drove everyone back to DeLaTorre's garage party in his white Chevy Traverse.

¶ 11 According to Trevino, everyone continued drinking at DeLaTorre's garage party. Eventually, Herrera asked defendant to drive him to pick up more cocaine from one of his friends. Defendant agreed to drive Herrera to buy cocaine from a dealer at a CVS.

¶ 12 Defendant, Trevino, Herrera, and Renteria-Becerra entered defendant's Chevy Traverse. Only defendant drove his Chevy Traverse the night of the accident. Trevino never asked defendant to drive the Chevy Traverse. Santos remained at the garage party. Defendant sat in the driver's seat, Trevino sat in the front passenger seat, Herrera sat in the backseat behind defendant, and

Renteria-Becerra sat in the backseat behind Trevino. They were “all intoxicated and on coke.” After they left the CVS, defendant began to drive them all to a bar called the Rail House. On the way to the Rail House defendant was speeding on Route 134. A police officer tried to pull the defendant over. Defendant “decided to step on it” and Herrera and Renteria-Beccara tried to fasten their seatbelts.

¶ 13 Trevino recalled “passing a little bridge thing,” being lifted out of his seat, and then feeling gravel from the shoulder of the road. “[T]hat’s all [Trevino] remembered until [he] woke up” on the ground. When Trevino woke, everything was “pitch black” and he heard a “horrible choking sound.” He crawled toward a light, crossed over railroad tracks, fell to the ground and could not get up. As a man walked by with his dog, Trevino asked for help and to call family. The man alerted police who were nearby and an ambulance took Trevino to Condell Hospital in Libertyville.

¶ 14 During cross-examination Trevino testified that two days after the crash he told police that he did not remember anything between drinking at the garage party and waking up in the hospital. Trevino did not tell the police that defendant was driving right after the accident occurred because he did not want to be a “snitch.” Trevino testified:

“[B]ut now it doesn’t bother me. You know, I was hoping [defendant] would take responsibility for his actions. He didn’t. He didn’t want that. I seen [sic] how much the families were suffering. So I decided to come in and take action into my own hand [sic], tell my side of the story.”

Trevino denied that after the crash he hid from police in the grassy area near the railroad tracks. He explained that he fell and could not get up and dragged himself toward “the light.” Trevino also denied telling the passerby, “No cops.”

¶ 15 The parties stipulated that Trevino was found lying in the grass a short distance away from the crash site. The parties stipulated that paramedics observed a five-centimeter laceration to Trevino's "right lower forehead," he received facial sutures for the lacerations, and he suffered an acute right nasal bone fracture. Trevino testified that the laceration bled significantly.

¶ 16 Roger Barrette, an expert in accident reconstruction and the sub-discipline of occupant kinematics, testified regarding his training, knowledge, and experience in those fields. The State tendered Barrette as an expert witness. Defense counsel declined to question Barrette regarding his qualifications and told the court that he did not object to the State's tender of Barrette as an expert in the field at issue.

¶ 17 Barrette testified that based on the totality of his accident reconstruction analysis, defendant was the driver and was at fault for the accident. Barrette's opinion was informed by multiple sources, including black box data obtained from the Chevy, photographs of the vehicle, witness interviews, and medical and/or autopsy reports for all four occupants. After he cross-referenced this information with "injury data" for all four occupants, Barrette concluded that defendant's left-side injuries corresponded with those typically sustained by a driver at the Chevy's "primary impact point." Barrette concluded that, given Trevino's injuries, Trevino sat in the passenger seat at the time of the accident.

¶ 18 Barrette's conclusions aligned with those of the investigating officers who also identified defendant as the driver. Barrette's analysis was not affected by the DNA evidence recovered from the vehicle because in a rollover crash involving unrestrained occupants, individuals can be thrown "anywhere in the vehicle" and impact various areas.

¶ 19 During cross-examination, Barrette testified that he could not exclude Trevino from being the driver of the Chevy when the accident occurred. Defendant's injuries were consistent with what

he would expect from an unrestrained front-seat passenger “if he went into the steering wheel.” Investigating officers concluded that defendant was the driver after they interviewed Trevino. The officers told Barrette that defendant was seen driving the Chevy “within 10 minutes of the accident.” Barrette concluded defendant was the driver because:

“[I]t was relayed to [Barrette] that [the investigating officers] were satisfied that [defendant] was the driver. [Barrette] looked at the injuries and said ‘yeah, the injuries are consistent with [defendant] being the driver.’ ”

¶ 20 The State presented a stipulation that a paramedic would testify that he arrived at the crash site at around 4:18 am and saw defendant “in the front driver’s seat area unrestrained by a seat belt with his upper torso hanging outside the driver’s door in the mud and with the rest of his body being inside the vehicle in the driver’s area of the vehicle.” The parties also stipulated that blood and urine samples showed defendant’s BAC was 0.121 and that he had cocaine metabolites in his system.

¶ 21 Defendant presented a stipulation between the parties that stated:

“Ari Briskman of the Lake County Sheriff’s Office responded to Condell Hospital on 9/27/2020, at 5:25 a.m., and met Jorge Trevino in the emergency department. [Briskman] asked Trevino ‘Who was driving the vehicle at the time of the crash?’ Trevino answered ‘I can’t remember.’ Briskman asked Trevino[,] ‘Were you driving the vehicle at the time of the crash?’ Trevino said ‘No.’ ”

The parties also stipulated that Trevino’s BAC was 0.05 and that he tested positive for cocaine and opiates.

¶ 22 Defendant called Douglas Johnson, the passerby who saw the crash while out walking his dog. Johnson “saw a car [driving] at a hundred-plus miles an hour slam into the trees.” He heard

sirens and went home to stay out of the way and then went back to the scene. On the north side of the railroad, Johnson's dog discovered Trevino lying in the weeds. Trevino "looked pretty mangled." When Johnson asked Trevino if he was okay and said he would get help, Trevino replied, "no cops, no cops, let me die."

¶ 23 Sergeant Kenneth Lupi of the Round Lake police department testified that he spoke with Trevino shortly after the accident. Trevino spoke inaudibly and then said, "back seat." Lupi asked Trevino if he was in the back seat and Trevino replied, "Yeah, man." During cross-examination, Lupi testified that when Trevino spoke, he moaned and seemed to be in pain.

¶ 24 Defendant testified that before the accident, he was at DeLaTorre's garage party with Trevino, Herrera, Renteria-Becerra, and others. Trevino asked defendant to pick up someone from A.J.'s Bar. Defendant and Trevino drove to the bar, picked up Trevino's friend, drove back to the garage party, and hung out for another hour. Then Trevino asked defendant to pick up another friend at Hilltop Bar. When they approached defendant's Chevy Traverse, defendant told Trevino that he did not know where to go and asked if Trevino wanted to drive. Trevino agreed and drove the Chevy Traverse. Defendant sat in the front passenger seat and Herrera sat behind the driver's seat. Trevino drove through the neighborhood and stopped to let his friend get in the car. This fourth person sat in the car's third row of seats because a baby seat was behind the front passenger seat. Trevino made a U-turn, and defendant does not remember anything after that. Defendant testified that Trevino drove his Chevy Traverse at the time of the accident.

¶ 25 The jury found defendant guilty on all counts. Defendant moved for a new trial, which the trial court ultimately denied. On Counts I and II, the trial court sentenced defendant to two concurrent ten-year terms of imprisonment, and one year imprisonment on Count XIII to be served concurrently. This appeal followed.

¶ 26

II. ANALYSIS

¶ 27

A. Sufficiency of the Evidence

¶ 28 Defendant urges us to reverse all three convictions of aggravated DUI because the State failed to prove beyond a reasonable doubt that he drove the Chevy Traverse at the time of the accident, or in the alternative, reverse his conviction of aggravated DUI causing great bodily harm to Trevino. We address each issue in turn.

¶ 29 When we consider a challenge to a criminal conviction based upon the sufficiency of the evidence, our purpose is not to retry the defendant. *People v. Johnson*, 2026 IL 131337, ¶ 59. Rather, “[w]hen considering a challenge to the sufficiency of the evidence, a reviewing court must determine whether, viewing the evidence in the light most favorable to the prosecution, a rational trier of fact could have found the required elements of the crime beyond a reasonable doubt.” *People v. Sauls*, 2022 IL 127732, ¶ 52. “The weight to be given the witnesses’ testimony, the credibility of the witnesses, resolution of inconsistencies and conflicts in the evidence, and reasonable inferences to be drawn from the testimony are the responsibility of the trier of fact.” *Johnson*, 2026 IL 131337, ¶ 59. Therefore, we will not substitute our judgment for that of the trier of fact on issues involving the weight of the evidence or the credibility of witnesses. *Id.* We will not reverse a conviction unless the evidence is so improbable, unsatisfactory, or inconclusive that it leaves a reasonable doubt of the defendant’s guilt. *People v. Austin M.*, 2012 IL 111194, ¶ 107.

¶ 30 A conviction may be sustained on circumstantial evidence alone if the circumstantial evidence proves the offense’s elements beyond a reasonable doubt. *People v. Galarza*, 2023 IL 127678, ¶ 27. “Circumstantial evidence is proof of facts and circumstances from which the trier of fact may infer other connected facts that reasonably and usually follow according to common experience.” *People v. McAndrew*, 2024 IL App (1st) 230881, ¶ 45. The factfinder “need not,

however, be satisfied beyond a reasonable doubt as to each link in the chain of circumstances,” if all the evidence, taken together, proves the defendant’s guilt. (Internal quotation marks omitted.) *Galarza*, 2023 IL 127678, ¶ 27. Nor must the factfinder disregard inferences flowing normally from the evidence and raise “all possible explanations consistent with innocence” to the level of reasonable doubt. (Internal quotation marks omitted.) *Id.* ¶ 25.

¶ 31 1. Evidence that Defendant Drove Vehicle

¶ 32 Defendant argues that the State failed to prove him guilty beyond a reasonable doubt of aggravated DUI under sections 11-501(d)(1)(C) (causing death) and (d)(1)(F) (causing great bodily harm). Relevant here, the State was required to prove beyond a reasonable doubt that while under the influence of alcohol or cocaine, defendant drove the Chevy Traverse and was involved in a motor vehicle accident. See 625 ILCS 5/11-501(d)(1)(C), (d)(1)(F) (West 2020).

¶ 33 Defendant does not dispute that he was under the influence and that he was involved in a crash. He argues only that the State failed to prove that he drove or was in actual physical control of his Chevy Traverse when the crash occurred. Viewing the evidence in the light most favorable to the State, we conclude that any rational trier of fact could have found the evidence sufficient to prove defendant drove the vehicle when it crashed.

¶ 34 Whether a defendant was in actual physical control of a vehicle is a question of fact. *City of Naperville v. Watson*, 175 Ill. 2d 399, 402 (1997); *People v. Davis*, 205 Ill. App. 3d 431, 435(1990). Factors to consider include whether: (1) the defendant was positioned in the driver’s seat, (2) had possession of the ignition key, and (3) had the physical capability to start the engine and move the vehicle. *Watson*, 175 Ill. 2d at 402. The State may rely on circumstantial evidence to prove that the defendant was guilty of DUI. *People v. Diaz*, 377 Ill. App. 3d 339, 345 (2007). The

observation of a defendant in act of driving is not an indispensable prerequisite for the conviction of DUI. *People v. Niemi*, 256 Ill. App. 3d 904, 910 (1993).

¶ 35 After viewing the evidence in the light most favorable to the State, we conclude that a rational trier of fact could have found beyond a reasonable doubt that defendant was in physical control of the Chevy Traverse at the time of the crash. Defendant testified that he was the registered owner of the Traverse. Trevino, an eyewitness and the only surviving passenger, testified that defendant drove the Chevy Traverse the entire evening. DeLaTorre testified that defendant drove the Chevy Traverse throughout the night, including the last time defendant and the others left DeLaTorre's house, just before the crash. Robinson testified that at the scene of the crash, one body was positioned in the driver's seat area, and two bodies were in the back seat on the driver's side of the vehicle. The parties also stipulated that defendant was observed hanging halfway out the driver's door with his lower body in the driver's area of the vehicle.

¶ 36 Trevino's testimony alone was sufficient to prove the defendant was the driver of the Chevy when it crashed. Testimony of a single witness is sufficient to sustain a conviction. See *People v. Harris*, 2018 IL 121932, ¶ 27 (testimony of single witness is sufficient to convict if positive and credible).

¶ 37 Defendant contends that Trevino's testimony that defendant drove the Chevy was not credible because it was inconsistent and had been impeached. Defendant points out that two days after the accident, Trevino told police that he did not remember anything between drinking at the garage party and waking up in the hospital; Lupi testified that immediately after the crash an injured Trevino told Lupi that he sat in the backseat of the Chevy at the time of the crash; Robinson testified that he believed Trevino crawled 200 feet from the crash; a bystander testified that while lying injured in the grass Trevino said, "no cops."

¶ 38 The discrepancies and inconsistencies defendant points to are issues to be resolved by the jury as the trier of fact. It is the function of the jury as the trier of fact to assess the credibility of the witnesses and to resolve discrepancies and inconsistencies in the evidence. *People v. Jackson*, 2020 IL 124112, ¶ 66.

¶ 39 Continuing his challenge to the sufficiency of the evidence, defendant points to Trevino's alleged motive to fabricate his testimony because he was in federal prison when he identified defendant as the driver. Defendant's challenge addresses the province of the jury. The jury observed Trevino testify and was aware that he was in custody for a federal firearms conviction. The jury, as the trier of fact, was in a much better position than we are to determine Trevino's credibility and the weight to be accorded to his testimony. See *id.* ¶ 69.

¶ 40 Defendant also notes that DeLaTorre's testimony did not establish that defendant drove the Chevy when it crashed because he did not witness the crash and had no way of knowing if the defendant and the passengers had changed seats before the accident. DeLaTorre testified that defendant drove the Chevy when he and the passengers left the garage party at 3:15 a.m. Robinson's testimony established that the accident occurred seven minutes later at approximately 3:22 a.m. No one testified that defendant changed seats with anyone during those seven minutes. As such, we reject defendant's argument as purely speculative.

¶ 41 We grant defendant's motion to cite *People v. Broxton*, 2025 IL App (1st) 231822-U, as additional authority to support his argument that the State failed to prove that he drove the Chevy Traverse when the accident occurred. In *Broxton*, the appellate court held that for purposes of the offenses of leaving the scene of a motor vehicle accident with damage to a vehicle the trial court engaged in speculation when it found that defendant drove the vehicle at issue. *Broxton*, 2025 IL App (1st) 231822-U, ¶ 17. In *Broxton*, no one testified that defendant drove the vehicle at the time

of the accident and there was evidence that another person drove the vehicle. Here, in contrast to *Broxton*, Trevino testified that defendant drove the vehicle at the time of the accident. Therefore, *Broxton* is distinguishable from this case.

¶ 42 Despite defendant's contentions, and his testimony that Trevino drove his Chevy when the accident occurred, the evidence was sufficient to establish defendant's guilt beyond a reasonable doubt. It is not necessary for the jury to find each fact in the chain of circumstances beyond a reasonable doubt. See *People v. Reed*, 2020 IL 124940, ¶ 51 (trier of fact is not required to accept the defendant's version of events and may reject inferences inconsistent with the evidence). Rather, the trier of fact must find only that the evidence taken together supports a finding of the defendant's guilt beyond a reasonable doubt. *Jackson*, 2020 IL 124112, ¶ 70. Further, the trier of fact is not required to disregard inferences that flow normally from the evidence before it, nor need it search out all possible explanations consistent with innocence and raise them to a level of reasonable doubt. *Id.* The accident occurred minutes after defendant drove from DeLaTorre's garage party, which undermines defendant's testimony that he was not the driver. Nothing in the record, except defendant's self-serving testimony, indicates that anyone else drove defendant's Chevy Traverse when the accident occurred.

¶ 43 Taking all the evidence in the light most favorable to the State, the jury could have reasonably concluded that defendant drove the Chevy Traverse when the accident occurred. As the evidence is not so "unreasonable, improbable, or so unsatisfactory as to justify a reasonable doubt of the defendant's guilt," we affirm his convictions of aggravated DUI (625 ILCS 5/11-501(d)(1)(F)(West 2020)), as to Counts I and II (causing the deaths of Herrera and Renteria-Becarra). See *People v. Jackson*, 232 Ill. 2d 246, 281 (2009).

¶ 44

2. Evidence of Great Bodily Harm to Trevino

¶ 45 Next, defendant argues that the State failed to prove him guilty of aggravated DUI causing great bodily harm (625 ILCS 5/11-501(d)(1)(D) (West 2020)) (Count XIII), because the evidence was insufficient that Trevino suffered great bodily harm due to the accident. We disagree.

¶ 46 Although “great bodily harm” is not susceptible to a precise legal definition, it requires an injury greater and more serious than a simple battery. *People v. Lopez-Bonilla*, 2011 IL App (2d) 100688, ¶ 13. In other words, great bodily harm requires something that goes beyond mere “physical pain or damage to the body, like lacerations, bruises or abrasions.” *People v. Mays*, 91 Ill. 2d 251, 256 (1982). Relevant to the inquiry is “evidence of what injury the victim actually received, the evidence of the nature and extent of the victim's injury, and evidence of the treatment required.” *In re J.A.*, 336 Ill. App. 3d 814, 818 (2003). Whether an injury rises to the level of great bodily harm is a question of fact for the jury. *People v. Figures*, 216 Ill. App. 3d 398, 401 (1991).

¶ 47 Here, the evidence established that Trevino sustained a fractured nasal bone and a five-centimeter laceration above his right eye that required sutures. A bone fracture, obviously, is a more serious injury than a cut, scrape, or bruise. See *Mays*, 91 Ill. 2d at 256. We cannot say that no rational trier of fact could have reached the conclusion that Trevino’s injuries rose to the level of great bodily harm. The evidence, accordingly, was legally sufficient to prove beyond a reasonable doubt that Trevino sustained great bodily harm. Therefore, we hold that the evidence was sufficient to sustain defendant’s conviction of aggravated DUI causing great bodily harm (625 ILCS 5/11-501(d)(1)(D) (West 2020)) (Count XIII).

¶ 48

B. State’s Expert Witness Testimony

¶ 49 Defendant argues that the trial court erred when it allowed Barrette, the State’s expert in accident reconstruction and occupant kinematics, to testify because his testimony 1) was

“unnecessary,” 2) invaded the province of the jury, 3) and improperly bolstered Trevino’s testimony that defendant drove the Chevy Traverse at the time of the accident. Defendant concedes that he neither objected at trial nor raised the issue in his post-trial motion; the alleged error is therefore forfeited. See *People v. Sebby*, 2017 IL 119445, ¶ 48 (“To preserve a purported error for consideration by a reviewing court, a defendant must object to the error at trial and raise the error in a posttrial motion.”). Defendant nevertheless asks us to review the claim under both prongs of the plain-error doctrine or, alternatively, as a matter of ineffective assistance of counsel.

¶ 50 The plain error doctrine is an exception to the general forfeiture rules that allows a reviewing court to address an unpreserved claim of error where a clear or obvious error occurred. *People v. Hartfield*, 2022 IL 126729, ¶ 50. The defendant must show either (1) “a clear or obvious error occurred and the evidence is so closely balanced that the error alone threatened to tip the scales of justice against the defendant, regardless of the seriousness of the error,” or (2) when “a clear or obvious error occurred and that error is so serious that it affected the fairness of the defendant’s trial and challenged the integrity of the judicial process, regardless of the closeness of the evidence.” *Sebby*, 2017 IL 119445, ¶ 48. The burden of persuasion lies with the defendant. *People v. Herron*, 215 Ill. 2d 167, 186 (2005).

¶ 51 Initially, we agree with the State that any alleged error was invited.

“Under the doctrine of invited error, ‘a party cannot complain of error which that party induced the court to make or to which that party consented. The rationale behind this well-established rule is that it would be manifestly unfair to allow a party a second trial upon the basis of error which that party injected into the proceedings.’ ” *People v. Holman*, 2025 IL App (2d) 240513, ¶ 40.

Moreover, invited error “‘does not raise a mere forfeiture to which the plain-error exception might apply; it creates an estoppel that *precludes* plain-error analysis.’ ” (Emphasis added.) *People v. Quezada*, 2024 IL 128805, ¶ 59 (quoting *People v. Holloway*, 2019 IL App (2d) 170551, ¶ 44).

¶ 52 The record here reflects successive instances of affirmative acquiescence by defense counsel to the State’s use of Barrette as an expert witness in accident reconstruction and occupant kinematics and the admission of his testimony. Before trial, defendant was informed of the State’s intent to adduce expert testimony from Barrette regarding, *inter alia*, vehicle occupant kinematics, which relates to the determination of where individuals were located in a vehicle during an accident. The State also produced Barrette’s reports. Defendant did not move to bar Barrette or limit his testimony. At trial, when the State moved the court to qualify Barrette as an expert witness, defense counsel stated, “We don’t have any questions, Judge.” The trial court asked if defense counsel had any objection to the State’s request and defense counsel replied, “No.” Barrette then testified without objection on direct examination, and defense counsel cross-examined him.

¶ 53 This is not a case of an isolated instance of silence or failure to object. Defense counsel repeatedly and expressly consented after being advised that the State intended to present Barrette’s testimony and after receiving Barrette’s qualifications. Defense counsel’s affirmative acquiescence invited any alleged error. See *Quezada*, 2024 IL 128805, ¶ 59 (defense counsel’s express statement that he had “no objection” to the challenged evidence constituted affirmative acquiescence that precluded plain-error review); *People v. Parker*, 223 Ill. 2d 494, 507-08 (2006) (noting that “the record indicates defendant waived any jury instruction issues by affirmatively agreeing to all instructions as submitted to the jury”). On this record, we determine that defense counsel affirmatively acquiesced in the State’s proposed use of Barrette. We therefore hold that defendant’s claim of error is foreclosed by both forfeiture and the invited-error doctrine.

¶ 54 Defendant cites *People v. Harvey*, 211 Ill. 2d 368 (2004), to support his argument that he did not invite the error because he did not affirmatively acquiesce. We note that courts have drawn a distinction between “active participation in the direction of the proceedings” and a mere failure to bring the issue to the trial court's attention. *Id.* at 385. In *Harvey*, our supreme court drew a distinction between “active participation in the direction of the proceedings” and a mere failure to bring the issue to the trial court's attention. *Id.* However, the *Harvey* court held that applicability of the invited error doctrine does *not* depend upon whether a party requests an action rather than expressly acquiescing to it. *Id.* at 381, 398. The court found the invited error doctrine applied where defense counsel expressly agreed to—but did not request—the trial court’s decision to allow “mere fact” impeachment of the defendant. Here, counsel agreed to allow the jury to hear Barrette’s testimony. Therefore, *Harvey* does not support defendant’s argument; rather, it supports our determination that he invited the error and forfeited his plain-error claim.

¶ 55 Defendant also argues in the alternative that his counsel was ineffective when he acquiesced to Barrette’s testimony or failed to object when Barrette opined that defendant drove the Chevy at the time of the accident. The sixth amendment to the United States Constitution grants defendants the right to the effective assistance of counsel. *Strickland v. Washington*, 466 U.S. 668, 685-86 (1984). Under *Strickland*, a defendant arguing ineffective assistance of counsel must show not only that his or her counsel’s performance was deficient but that the defendant suffered prejudice as a result. *People v. Houston*, 226 Ill. 2d 135, 143 (2007). Under the two-prong *Strickland* test, a defendant “must show that (1) his counsel’s performance was deficient in that it fell below an objective standard of reasonableness, and (2) the deficient performance prejudiced the defendant in that, but for counsel’s deficient performance, there is a reasonable probability that the result of the proceeding would have been different.” *Id.* at 144. Because a defendant must

satisfy both prongs of the *Strickland* test, the failure to establish either is fatal to the claim. *Strickland*, 466 U.S. at 687.

¶ 56 Ineffective assistance of counsel is also an exception to the general forfeiture rules. To prevail, a defendant must establish both that (1) his attorney's representation fell below an objective standard of reasonableness and (2) that, but for counsel's deficient performance, the result of the proceeding would have been different. *People v. Patterson*, 192 Ill. 2d 93, 107 (2000) (citing *Strickland*, 466 U.S. at 687, 695). The failure to satisfy either prong precludes a determination of ineffective assistance of counsel; thus, we may resolve defendant's claim on prejudice alone. *Id.*

¶ 57 To establish prejudice a defendant must show "that counsel's performance was objectively unreasonable under prevailing professional norms and that there is a 'reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different.'" (Internal quotation marks omitted.) *People v. Carroll*, 2026 IL 131360, ¶ 67 (quoting *Strickland*, 466 U.S. at 694). "A reasonable probability is a probability sufficient to undermine confidence in the outcome." *Strickland*, 466 U.S. at 694. The question is not whether the challenged evidence was useful to the State, but whether, considering the totality of the evidence before the jury, there is a reasonable probability that the absence of that evidence would have changed the result. See *People v. Donegan*, 2012 IL App (1st) 102325, ¶¶ 47-48 (citing *Strickland*, 466 U.S. at 694-96).

¶ 58 Defendant argues that his counsel erred when he failed to object to Barrette's testimony opining that defendant drove the Chevy Traverse at the time of the accident. Defendant maintains that Barrette's opinion lacked a proper basis because it came, in part, from Trevino. Whether and when to object involves trial strategy; we are highly deferential to trial counsel in these situations. *People v. Perry*, 224 Ill. 2d 312, 344 (2007). Further, any vulnerability relating to an expert

witness's qualifications or basis for an opinion may be explored on cross-examination and will affect the weight of that testimony rather than its admissibility. *People v. Pingelton*, 2022 IL 127680, ¶ 58. Here, trial counsel decided to attack the underlying basis of Barrette's opinion through thorough cross-examination rather than try to exclude the opinion. See *People v. Herring*, 2018 IL App (1st) 152067, ¶ 96. Any weakness in the foundation for that opinion would go only to the weight of that evidence and not its admissibility. See *Pingelton*, 2022 IL 127680, ¶ 58. Because a defendant must satisfy both prongs of *Strickland* and we conclude that defendant failed to make a substantial showing of deficient performance, we need not consider whether he has shown prejudice as a result of defense counsel's representation.

¶ 59 Next, defendant contends that two of his convictions for aggravated DUI violate the one-act, one-crime rule where the trial court imposed three concurrent sentences – one for each victim. Defendant argues that those convictions were improper because all three convictions were based on defendant's single act of driving. We agree with defendant.

¶ 60 The one-act, one-crime rule prohibits convictions for multiple offenses that are based on precisely the same physical act. *People v. Smith*, 2019 IL 123901, ¶ 13 (citing *People v. Coats*, 2018 IL 121926, ¶ 11. Therefore, multiple convictions for aggravated DUI arising from a single motor vehicle accident violate the one-act, one-crime rule, regardless of the number of victims. *People v. Lavallier*, 187 Ill. 2d 464, 469 (1999). This is because “the essential and underlying criminal act remains the same: driving while under the influence.” *Id.*

¶ 61 The State concedes and we accept its concession. Accordingly, we vacate defendant's convictions for aggravated DUI resulting in death, count II, and aggravated DUI resulting in great bodily harm, count XIII. Accordingly, we vacate defendant's convictions for aggravated DUI resulting in the death of Renteria-Becerra (Count II) and great bodily harm of Trevino (Count XIII)

are vacated. We order defendant's mittimus corrected to reflect one conviction for aggravated DUI under Count I of the indictment. See *People v. Gordon*, 378 Ill. App. 3d 626, 642 (2007) (where all three of the defendant's convictions were based on the same underlying act of driving under the influence of alcohol, two counts merged with one, and the appellate court ordered the mittimus corrected to reflect a single conviction).

¶ 62 Finally, defendant argues that the trial court violated his due process rights when it failed to advise him of his right to elect to apply for an assessment waiver under section 124A-20 of the Code of Criminal Procedure of 1963 (Code) (725 ILCS 5/124A-20 (West 2020)). In the alternative, defendant contends that trial counsel provided ineffective assistance by failing to file an assessment waiver.

¶ 63 In *People v. Nibbelin*, 2026 IL 131825, our supreme court recently addressed this issue. We grant the State's motion to cite *Nibbelin* as additional authority. As in *Nibbelin*, defendant here alleges "an error in the imposition of assessments," and therefore his claim is covered by Illinois Supreme Court Rule 472 (eff. Feb. 1, 2024). *Id.* ¶ 22. Rule 472 applies to "Errors in the imposition of *** fines, fees, assessments, or costs." Ill. S. Ct. R. 472(a)(1). The purpose of Rule 472 is to address the problem of defendant's raising the imposition of fees and fines for the first time on appeal. *Nibbelin*, 2026 IL 131825, ¶ 18. Under Illinois Supreme Court Rule 404, defendant's public defender was required to file a certificate with the trial court which then must grant the waiver. See *id.* ¶ 23. We hold that defendant's claims of trial court error and, alternatively, ineffective assistance of counsel "must be pursued by a Rule 472 motion" in the trial court. See *id.* ¶¶ 23, 27. We remand this case *only* so defendant can file a motion under Rule 472(a). See *id.* ¶ 27.

¶ 64

III. CONCLUSION

¶ 65 For the reasons stated, we vacate two of defendant's sentences for aggravated DUI (death) (count II) and his sentence for aggravated DUI (great bodily harm) (count XIII), and remand for defendant to file a motion under Rule 472(a). Otherwise, the judgment of the circuit court of Lake County is affirmed.

¶ 66 Affirmed in part, vacated in part, and remanded.