No. 128269

IN THE

SUPREME COURT OF ILLINOIS

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

REPLY BRIEF FOR DEFENDANT-APPELLANT

JAMES E. CHADD
State Appellate Defender

DOUGLAS R. HOFF
Deputy Defender

TALON K. NOURI
Assistant Appellate Defender
Office of the State Appellate Defender
First Judicial District
203 N. LaSalle St., 24th Floor
Chicago, IL 60601
(312) 814-5472
1stdistrict.eserve@osad.state.il.us

COUNSEL FOR DEFENDANT-APPELLANT

E-FILED
4/14/2023 2:32 PM
CYNTHIA A. GRANT
SUPREME COURT CLERK

SUBMITTED - 22301429 - Alicia Corona - 4/14/2023 2:32 PM

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.

In his opening brief, Reginald Lane argued that the plain language of the statutes, as well as the relevant definitions, unambiguously establish that he was not found guilty of the "murder" of more than one "victim," for purposes of the multiple-murder sentencing statute. Op. Br. at 9-23. Alternatively, Lane argued that, should this Court conclude that the relevant statutes are ambiguous, a number of canons of statutory interpretation support his contention that simultaneous convictions for first degree murder and intentional homicide of an unborn child do not require a natural life sentence. Op. Br. at 23-35.

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.

In its response brief, the State de-emphasizes the plain language of the multiple-murder sentencing statute, which provides for a mandatory natural life sentence for those convicted of "*murdering* more than one *victim*." 730 ILCS 5/5-8-1(a)(1)(c)(ii). The State instead focuses on the language of the intentional homicide of an unborn child statute, which directs that the "sentence [. . .] shall be the same as for first degree murder." 720 ILCS 5/9-1.2(d). The State repeatedly asserts that this language makes "clear that intentional homicide of an unborn child is the *functional equivalent* of a 'murder' *for sentencing purposes*," or that intentional homicide of an unborn child is "*akin* to first degree murder." St. Br. at 10, 16, 19, 29 (emphasis added). Similarly, the State emphasizes the appellate court's reasoning

SUBMITTED - 22301429 - Alicia Corona - 4/14/2023 2:32 PM

that the intentional homicide of an unborn child is the *functional equivalent* of first degree murder 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." St. Br. at 13, quoting *People v Lane*, 2022 IL App (1st) 182672, ¶44 (emphasis added).

Of course, the offense of intentional homicide of an unborn child differs significantly from first degree murder in that the former concerns, specifically, the death of an unborn child, "the legal status of [which] [. . .] is one of the most debated questions of our time, and one to which we do not find any completely consistent response." *People v. Greer*, 79 Ill. 2d 103, 114 (1980). When dealing with matters of mandatory natural life sentences, and definitions involving "one of the most debated questions of our time," any assertion of the legislature's intent cannot be based, simply, on two statutes being "almost identical" or "functionally equivalent for sentencing purposes." No, the "legislature has the authority, responsibility, and the ability" to expressly define an offense on its own terms and to clearly establish a sentencing scheme that does not require courts to make the "best guess as to what the legislature wanted." *People v. Hartfield*, 2022 IL 126729, ¶94. Furthermore, treating an offense differently *for sentencing purposes* does not ultimately "change the character of the crime[] [. . .] [actually] committed." *People v. Pullen*, 192 Ill. 2d 36, 44-45 (2000).

Looking to the actual language of the sentencing statutes, including relevant definitions and exemptions, the only consistent conclusion that can be made is that the legislature did not intend for intentional homicide of an unborn child to be synonymous and interchangeable with first degree murder for all aspects

SUBMITTED - 22301429 - Alicia Corona - 4/14/2023 2:32 PM

of the latter's sentencing scheme. As discussed in Lane's opening brief, if the legislature did contemplate that the entirety of the first degree murder sentencing scheme applied *carte blanche* to all convictions for intentional homicide of an unborn child, then the latter's mandatory firearm enhancements would be rendered completely superfluous, as those enhancements already exist within the first degree murder sentencing scheme. Op. Br. at 15; *see also* 720 ILCS 5/9-1.2(d)(2)-(4) and 730 ILCS 5/5-8-1(a)(1)(d).

The State responds that "these enhancements do not offer any insight into [. . .] whether the legislature intended that the multiple-murder statute apply to convictions for intentional homicide of an unborn child" because the General Assembly added identical firearm enhancements to a number of violent felonies, including first degree murder and intentional homicide of an unborn child. St. Br. at 18. However, the fact that the legislature added these identical enhancements to a number of distinct offenses does, in fact, "offer [. . .] insight into the question presented by this case." St. Br. at 18. The placement of identical firearm enhancements – in both the penalty section of the intentional homicide of an unborn child statute as well as the sentencing section applicable to first degree murders – indicates that the legislature does not view these offenses as identical, with identical comprehensive sentencing schemes. *State v. Mikusch*, 138 Ill. 2d 242, 247-248 (1990) (the legislature is presumed to know of existing statutes when it enacts new statutes).

The State's primary argument is based on the fact that the death penalty was excluded as a punishment for those convicted of intentional homicide of an unborn child. Thus, "the express exception for the death penalty shows that the

SUBMITTED - 22301429 - Alicia Corona - 4/14/2023 2:32 PM

legislature must have contemplated that the clause 'found guilty of murdering more than one victim' [. . .] would encompass intentional homicide of an unborn child." St. Br. at 12-13. Echoing an appellate court decision in *People v. Shoultz*, 289 Ill. App. 3d 392 (4th Dist. 1997), the State concludes that "[o]therwise, 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." St. Br. at 13 (quotations omitted).

But the legislature's exemption of intentional homicide of an unborn child from the death penalty does not automatically compel the conclusion that it did so specifically because of the double-murder death penalty factor. As discussed in Lane's opening brief, 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, including murder for hire, by hijacking, or during the course of another felony. *See* 720 ILCS 5/9-1(b)(4)-(6) (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). The legislature's exclusion of the death penalty does not necessarily reflect its belief that a conviction for intentional homicide of an unborn child would trigger application of the "double murder" death penalty factor; rather, it reflects the legislature's determination that this offense *is not murder*.

Furthermore, as described in Lane's opening brief, there was a fear, when the original feticide bill was being debated, that Illinois's death penalty scheme

SUBMITTED - 22301429 - Alicia Corona - 4/14/2023 2:32 PM

would be found constitutionally infirm. Op. Br. at 13-14. The State seemingly concedes this point, quoting a different legislator expressing concern that expanding the death penalty's eligibility was "putting the [d]eath [p]enalty [b]ill, year by year, into a shape where it is almost certain to be declared unconstitutional." St. Br. at 20 (quoting State of Ill., 82nd General Assembly, Senate Tr. (May 19, 1981, at 83). The legislature's concern with the death penalty's continuing legal viability – which could be further undermined by inclusion of an entirely new triggering offense – is not "a speculative theory." St. Br. at 19.

The State also claims that the placement of the intentional homicide of an unborn child statute "within the first degree murder section of the Criminal Code (section 9-1), and not within the second-degree murder section (section 9-2) [. . .] further demonstrates the legislature's intent to treat intentional homicide of an unborn child as another form of first degree murder, [. . .] and not a lesser crime that should be subject to a less-severe penalty." St. Br. at 14 (quotations omitted). But, the intentional homicide of an unborn child statute *is an entirely separate section* (section 9-1.2) placed directly *between* first and second degree murder. 720 ILCS 5/9-1, 1.2, 2.

Further, intentional homicide of an unborn child *is* a distinct and lesser crime, not merely another form of first degree murder. A sentence for this offense is served at 85%, and the death penalty is not available as punishment. 730 ILCS 5/3-6-3(a)(2)(ii); Ill. Rev. Stat. 1981, chl. 38, par. 9-1.1(d). A person convicted of intentional homicide of an unborn child is subject to the numerical statutory sentencing range of 20 - 100 years, as provided in 730 ILCS 5/5-4.5-20(a)(1) and (2). However, subsection (3) of that same subsection makes clear that a mandatory

SUBMITTED - 22301429 - Alicia Corona - 4/14/2023 2:32 PM

natural life sentence is to be imposed "as provided in [730 ILCS 5/ 5-8-1], which applies only to those convicted of *murdering* more than one victim. 730 ILCS 5/5-8-1(a)(1)(c)(ii). Intentional homicide is not murder, and the unborn child is not a statutorily-defined victim.

The fact that intentional homicide of an unborn child is contained in a separate section is also notable because, as this Court explained in *People v. Greer,* the legislature had the option of adopting the California approach by "specifically includ[ing] the unborn within the potential victims of homicide" or, alternatively, the Michigan approach of "creat[ing] a separate offense of feticide." 79 Ill. 2d 103, 111, 116 (1980). Notably, the Michigan approach treats what would otherwise "be a murder if it resulted in the death of [the] mother," as manslaughter when it results in the "killing of an unborn quick child." Mich. Comp. Laws Ann. sec. 750.322. As detailed in Lane's opening brief, the Illinois legislature was unsuccessful in adopting the California approach , and eventually followed Michigan's lead by creating a separate feticide statute that does not refer to the offense as a murder. Op. Br. at 27-30.

Relying on the appellate court's decision in *People v. Bailey*, 2016 IL App (3d) 140207, the State argues that a legislature's vote on proposed legislation is only relevant if the proposed legislation becomes law: "[F]ailed bills do not offer insight into [. . .] legislative intent." St. Br. at 31. It is true that, in *Bailey*, the appellate court refused to consider "' the legislature's proposed intent' from bills that were not enacted." St. Br. at 31 (quoting *Bailey*, 2016 IL App (3d) 140207, ¶27). However, the "proposed legislation" in *Bailey* was never voted on by the legislature and, critically, "[t]he bill at issue ended in the House *sine die*." *Bailey*,

SUBMITTED - 22301429 - Alicia Corona - 4/14/2023 2:32 PM

2016 IL App (3d) 140207, ¶27. Here, by contrast, the legislature expressly rejected an attempt to amend the murder statute and the definition of "individual" to "[render a viable fetus] capable of being murdered under Illinois Law." State of Ill. 81st General Assembly, House Tr. (May 13, 1980, at 78-79,89); *see also* House Bill 3314 (81st General Assembly). *Bailey* does not support the State's argument that a legislature's vote on proposed legislation is only indicative of its intent if the legislation is passed.

Furthermore, Lane does not rely exclusively on "failed bills" in discerning the legislature's intent in its decision to enact a separate feticide statute. No, in introducing the bill that would become Illinois' original feticide statute, the Senate sponsor noted that the legislature "attempted [. . .] to offer some assurances to pregnant mothers, that they can expect to carry [their] child full term without fear of aggravated assault [. . .] resulting in loss of that child." State of Ill. 82nd General Assembly, Senate Tr. (May 19, 1981, at 198). Additionally, the sponsor specifically referenced past, failed attempts at criminalizing the killing of a fetus, and that the legislature had reviewed "the type of language that the Illinois Supreme Court, in *People v. Greer*, suggested that [we] take a look at last year." State of Ill. 82nd General Assembly, Senate Tr. (May 19, 1981, at 198).

Intentional homicide of an unborn child is not synonymous with first degree murder. It originated as, and remains, a separate and distinct offense from murder. The mere fact that the legislature directed that the sentence for intentional homicide of an unborn child "shall be the same as for first degree murder," does not equate with the two offenses being interchangeable in all respects.

SUBMITTED - 22301429 - Alicia Corona - 4/14/2023 2:32 PM

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

The State argues that the statutory definition of "victim" does not apply here because the "particular context [. . .] clearly requires a different meaning." St. Br. 26 (citing 730 ILCS 5/5-1-1). The State relies on this Court's decision in *People v. Shum*, 117 Ill. 2d 317 (1987), as proof that for purposes of the double-murder sentencing statute, a fetus is indeed a "victim," regardless of the statutory definition of the term. St. Br. at 26-27. This Court held in *Shum* – a one-act, one-crime case – that "[s]ince there were two victims involved and feticide is not a lesser included offense of murder, both convictions may stand." 117 Ill. 2d at 364. However, this Court in *Shum* also made clear that "the taking of the life of a fetus is not murder." *Id.* Furthermore, this Court has likewise reiterated that, although "the number of victims may control in a one-act, one-crime analysis," the same analysis does not necessarily apply in other areas of statutory construction. *People v. Hartfield*, 2022 IL 126729, ¶73. This Court's description of the unborn child in *Shum* as "victim" had nothing to do with application of the multiple-murder sentencing statute and is properly limited to the one-act, one-crime issue that was before the Court.

The State claims, however, that the legislature's failure to amend the feticide statute in the wake of *Shum* – to include language suggesting that unborn children are not victims "in this context" – is evidence that the legislature "views the pregnant person and the unborn child as distinct victims in these narrow circumstances." St. Br. at 27. Interestingly, although the *Shum* defendant was found guilty of both first degree murder and intentional homicide of an unborn child, he was not sentenced to natural life for intentional homicide of an unborn child despite the

SUBMITTED - 22301429 - Alicia Corona - 4/14/2023 2:32 PM

killing of two "distinct victims." *Shum,* 117 Ill.2d at 332-33, 337. However, the legislature took no action, post-*Shum*, to amend the statute to explicitly state that an unborn child qualifies as a victim whose killing would trigger the multiple-murder sentencing statute.

It must also be reiterated that the legislature has, in fact, recently amended the intentional homicide of an unborn child statute and, contrary to the State's assertion otherwise, has, "suggest[ed] that unborn children are not victims in this context." St. Br. at 27. The Reproductive Health Act, expressly states 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 Reproductive Health Act "applies to all State laws [. . .], whether statutory or otherwise and whether adopted before or after the effective date of this Act." 775 ILCS 55/1-30(a). And the House sponsor of the bill explicitly noted that criminal laws, such as intentional homicide of a unborn child, remain offenses allowing "for prosecution of third parties who commit criminal acts against a pregnant person" and "are based on the actions against the pregnant woman and the rights of the parent." State of Ill. 101st General Assembly, House Tr. (May 29, 2019, at 15).

The State seemingly recognizes that intentional homicide of an unborn child is an offense directed against the pregnant mother, noting that the "overriding purpose of the Reproductive Health Act [was to] set forth 'the fundamental rights of individuals to make autonomous decisions about one's own reproductive health,'"and concluding: "When a defendant commits intentional homicide of an unborn child, he or she interferes with those fundamental rights." St. Br. at 33 (quoting 775 ILCS 55/1-5). And, yet, the State nevertheless argues that, "[i]n these limited circumstances, although the unborn child is not a 'person,' the unborn

SUBMITTED - 22301429 - Alicia Corona - 4/14/2023 2:32 PM

child is nevertheless the victim of the crime." St. Br. at 28. Like the State's repeated assertion that it is sufficient that intentional homicide of an unborn child be treated "as akin to first degree murder" or "the functional equivalent of a first degree murder for sentencing purposes," St. Br. at 16, 29, the contention that an "unborn child is not a 'person,'" but is nevertheless a "victim,"is a novel claim, contrary to express statutory definitions, and is not otherwise supported with citation to any similar examples anywhere else in the relevant codes.

On the other hand, there exist a number of cases in which defendants convicted of first degree murder and intentional homicide of an unborn child were not sentenced to natural life pursuant to the double-murder sentencing statute. *See* Op. Br. at 25. The State does not address these cases (which, as argued in Lane's opening brief, demonstrate the ambiguity of the intentional homicide of an unborn child/multiple-murder statutory scheme) and substantially undermines any assertion that "the General Assembly made clear that intentional homicide of an unborn child is the functional equivalent of a 'murder' for sentencing purposes." St. Br. at 9-10.

C. This argument is preserved.

The State, for the first time, argues that Lane has procedurally defaulted the issue of whether a fetus is included within the statutory definition of "victim" for purposes of the double-murder sentencing statute. St. Br. 24-25. The definition of "victim," as well as "murder," are issues so closely related – indeed, they appear in the same sentence of the multiple murder sentencing statute – that they were presented to the appellate court, and to this Court in Lane's opening brief, under

SUBMITTED - 22301429 - Alicia Corona - 4/14/2023 2:32 PM

the single claim that Lane was not found guilty of *murdering* more than one *victim*.[1] 730 ILCS 5/5-8-1(a)(1)(c)(ii), Op Br. at 9; App. Ct. Op. Br. at 12-15. Contentions about the definition of "victim" were not, contrary to the State's assertion, presented as a "separate, alternative argument," either in this Court or below. St. Br. at 25. Further, as argued in the opening brief, the issue – viewed broadly as whether the multiple murder sentencing statute is triggered by a conviction for intentional homicide of an unborn child– was raised in a post-trial motion and argued to the circuit court during the hearing on the motion. (C. 480); (R. 1422); Op. Br. at 21-22. A party may forfeit a claim, but not an argument in support of a claim. *Brunton v. Kruger*, 2015 IL 117663, ¶ 76 ("We require parties to preserve issues or claims for appeal; we do not require them to limit their arguments here to the same arguments that were made below"). Even if trial counsel did not focus on the statutory definition of "victim," the argument, generally, relating to application of the multiple murder sentencing statute, has been preserved.

Additionally, because the State never raised forfeiture below, App. Ct. St. Br. at 14-15, it has, "[i]n effect, [. . .] forfeited its ability to argue forfeiture by the defendant." *People v. McKown*, 236 Ill. 2d 278, 308 (2010).

Should this Court find, however, that any argument relating to the definition of "victim" is forfeited, this Court may nonetheless review the error for plain error, which is properly raisable in a reply brief. *People v. Williams*, 193 Ill.2d 306, 347–48 (2000), *People v. Ramsey*, 239 Ill. 2d 342, 412 (2010).

The foundation of plain-error review is fundamental fairness. *People v. Keene*,

---

[1] Certified e-filed, stamped copies of the parties' appellate court briefs have been filed in this Court pursuant to Ill. S. Ct. Rules 318(c) and 612(b).

SUBMITTED - 22301429 - Alicia Corona - 4/14/2023 2:32 PM

169 Ill. 2d 1, 16-17 (1995). And fundamental fairness requires review of procedurally defaulted errors if those errors affect substantial rights. *Id*. at 17-18; *see also* Ill. S. Ct. R. 615(a) (allowing for review of errors or defects affecting substantial rights although they were not brought to the attention of the trial court). In the sentencing context, a defendant must show either that (1) the evidence at the sentencing hearing was closely balanced, or (2) the error was so egregious as to deny the defendant a fair sentencing hearing. *People v. Hillier*, 237 Ill. 2d 539, 545 (2010); *see also People v. Lewis*, 234 Ill. 2d 32, 47-49 (2009) (finding that plain-error review was appropriate in the sentencing context because fairness during a defendant's sentencing hearing affects the integrity of the judicial process and substantial rights of the defendant).

With regard to the first prong, the circuit 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 Lane's "life ha[d] not been a bed of roses," because he was separated from his father and raised by his mother who had substance abuse issues. As a result, the Department of Children and Family Services intervened in Lane's upbringing at a young age. (R. 1489-1492). The court nevertheless sentenced Lane to two concurrent natural life terms, noting specifically, that in its view, the natural life sentences were mandatory. (R. 1491-1492).

Second-prong plain error also applies, as a trial court's misapplication of law to determine the applicable sentencing range affects the defendant's fundamental right to liberty. *People v. Smith*, 2016 IL App (1st) 140496, ¶15; *see also People v. Hausman*, 287 Ill. App. 3d 1069, 1072 (4th Dist. 1997) (finding that a trial court's misapprehension of the appropriate sentencing constitutes second-

SUBMITTED - 22301429 - Alicia Corona - 4/14/2023 2:32 PM

prong plain error). Accordingly, this Court may review the circuit court's error under both prongs of plain error, because evidence at the sentencing hearing was closely balanced and the circuit court's misapprehension of the applicable sentencing range substantially affected Lane's fundamental right to liberty.

D. 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.

Ultimately, it is unclear whether the State believes the relevant statutes to be unambiguous. While the State argues that "there is no need to guess about the General Assembly's intent," it also argues that this is the case because of "the plain statutory text, the broader statutory context, *and the relevant legislative history*." St. Br. at 34 (emphasis added). If the statutes are unambiguous then there would be no need to "resort to other aids of statutory construction," such as legislative history. *People ex rel. Ill. Dept. of Corrections v. Hawkins*, 2011 IL 110792, ¶¶23-24. Relatedly, the State only nominally addresses Lane's contention that the statutes at issue should be narrowly construed, both under the rule of lenity and because statutes in derogation of the common law must be narrowly construed in favor of those against whom it is directed. Op. Br. at 31-34; St. Br. at 34.

The State agrees that the legislature did depart from common law jurisprudence in creating the offense of intentional homicide of an unborn child, but argues that a narrow construction would "thwart the General Assembly's intent in departing from common law to impose the 'same' penalty for intentional homicide of an unborn child as for murder." St. Br. at 34. The circuit court's ability to impose a sentence within the specified statutory range applicable to first degree murders

SUBMITTED - 22301429 - Alicia Corona - 4/14/2023 2:32 PM

is not at issue in this case. As such, Lane would receive a sentence that would be "the same as for first degree murder." 720 ILCS 5/9-1.2(d). The State, however, asks for a construction of the relevant statutes that "presume[s] that an innovation [of the common law] was intended further than the innovation which the statute specifies or clearly implies." *People v. Adams*, 211 Ill. 2d 32, 69 (2004). Specifically, the State argues that "although the unborn child is not a 'person,' the unborn child is nevertheless the victim of the crime." St. Br. at 28. The legislature did not expressly include an unborn fetus within the definition of 'victim,' and did not amend the offense of first degree murder to include the unlawful killing of an unborn child within its prohibited conduct. Accordingly, the State proffers an expansive reading of the relevant statutes beyond what was necessarily implied from the statutory language, in violation of the well-established rule that statutes in derogation of the common law be held to their express language, in order to effect the least – rather than the most – change in the common law. *Adams*, 211 Ill. 2d at 69.

The State asserts that lenity should not be applied to an ambiguous statute in this case because "there is no need to guess about the General Assembly's intent, given the plain statutory text, the broader statutory context, and the relevant legislative history." St. Br. at 34. Considering that the State's proffered reading of the relevant statutes would render the firearm enhancements in the intentional homicide of an unborn child statute completely superfluous, and that the relevant definitions clearly do not include an unborn child within the definition of "victim," it is questionable how the General Assembly's intent can be considered clear "given the plain statutory text." St. Br. at 34. Likewise, "the broader statutory context," noted by the State includes its misunderstanding that the intentional homicide

SUBMITTED - 22301429 - Alicia Corona - 4/14/2023 2:32 PM

of an unborn child statute is "within the first degree murder section of the Criminal Code [. . .] and not within the second-degree murder [. . .] section[]." St. Br. at 13-14. As discussed, *supra*, the intentional homicide statute is not included within the first degree murder section and is, in fact, a separate offense. And, finally, a comparison of the "relevant legislative history," cited by Lane in his opening brief and by the State in response, establishes that, at a minimum, there was differing opinion regarding the nature of the offense of feticide. *Compare* Op. Br. at 26-29 and St. Br. at 30-32. The rule of lenity is therefore applicable because the rule "applies only if, after seizing everything from which aid can be derived, [the Court] can make no more than a guess as to what [the legislature] intended." St. Br. at 34 (quoting *U.S. v. Wells*, 519 U.S. 482, 499 (1997) (internal quotations omitted)); Op Br. at 33-34.

E. Conclusion

"The extent to which the unborn child is to be accorded the legal status of one already born is one of the most debated question of our time, and one to which we do not find any completely consistent response." *Greer*, 79 Ill. 2d at 114. True to this Court's characterization, when the Illinois legislature grappled with this "most debated question[,]" it too failed to provide "any completely consistent response." *Id*. As currently constructed, the relevant statutes and applicable definitions do not include an unborn fetus within the criminal law's definition of a "victim," and intentional homicide of an unborn child is – by design – not the same as murder. Because Lane was not "found guilty of murdering more than one victim," he was not subject to a mandatory natural life sentence.

Alternatively, should this Court find the statutory scheme ambiguous, a consideration of relevant legislative history, including recent amendments, supports

SUBMITTED - 22301429 - Alicia Corona - 4/14/2023 2:32 PM

a finding that intentional homicide of an unborn child remains an offense aimed at protecting pregnant mothers. Any remaining ambiguity should be construed narrowly and resolved in Lane's favor, both because of the rule of lenity and because of the prohibition against broad application of statutes in derogation of the common law.

SUBMITTED - 22301429 - Alicia Corona - 4/14/2023 2:32 PM

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,

DOUGLAS R. HOFF
Deputy Defender

TALON K. NOURI
Assistant Appellate Defender
Office of the State Appellate Defender
First Judicial District
203 N. LaSalle St., 24th Floor
Chicago, IL 60601
(312) 814-5472
1stdistrict.eserve@osad.state.il.us

COUNSEL FOR DEFENDANT-APPELLANT

SUBMITTED - 22301429 - Alicia Corona - 4/14/2023 2:32 PM

CERTIFICATE OF COMPLIANCE

I certify that this reply brief conforms to the requirements of Rules 341(a) and (b). The length of this reply brief, excluding pages or words contained in the Rule 341(d) cover, the Rule 341(h)(1) statement of points and authorities, the Rule 341(c) certificate of compliance, and the certificate of service, is 17 pages.

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

SUBMITTED - 22301429 - Alicia Corona - 4/14/2023 2:32 PM

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

Mr. Kwame Raoul, Attorney General, 100 W. Randolph St., 12th Floor, Chicago, IL 60601, eserve.criminalappeals@ilag.gov;

Ms. Kimberly M. Foxx, State's Attorney, Cook County State's Attorney Office, 300 Daley Center, Chicago, IL 60602, eserve.criminalappeals@cookcountyil.gov;

Mr. Reginald Lane, Register No. Y32765, Menard Correctional Center, P.O. Box 1000, Menard, IL 62259

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 April 14, 2023, the Reply Brief 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 Reply Brief to the Clerk of the above Court.

/s/Alicia Corona
LEGAL SECRETARY
Office of the State Appellate Defender
203 N. LaSalle St., 24th Floor
Chicago, IL 60601
(312) 814-5472
Service via email is accepted at
1stdistrict.eserve@osad.state.il.us

SUBMITTED - 22301429 - Alicia Corona - 4/14/2023 2:32 PM