FOURTH DIVISION
June 16, 2011

No. 1-08-1799

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	
	)	No. 02 CR 31746 (04)
SIDRONIO ALONSO,	)	
	)	
	)	Honorable
Defendant-Appellant.	)	Bertina E. Lampkin,
	)	Judge Presiding.

JUSTICE SALONE delivered the judgment of the court.
Presiding Justice Lavin and Justice Sterba concurred in the judgment.

ORDER

HELD: The trial court did not err in admitting defendant's videotaped confession or lineup identification into evidence where the confession was knowingly and intelligently made and the lineup was not unduly suggestive; defendant forfeited his claim of error based on a violation of Supreme Court Rule 431(b); the prosecutor's comments in closing argument did not amount to prosecutorial misconduct; and defendant's multiple murder convictions for killing a single person violate the one-act, one-crime doctrine.

Following a jury trial, defendant Sidronio Alonso was convicted of four counts of first degree murder and sentenced to a 50-year prison term. On appeal, defendant raises five claims of error. Specifically, defendant contends that: (1) the trial court erred in denying his motion to suppress his inculpatory statements where he was not competent to waive his *Miranda* rights; (2) the trial court erred in denying his motion to suppress the eyewitness identification evidence where the lineup was unduly suggestive and unreliable; (3) the trial court failed to strictly comply with Supreme Court Rule 431(b), thereby denying him an impartial jury; (4) the prosecutor was permitted to make improper arguments regarding the defense expert witness, and shift the burden of proof, and; (5) his multiple murder convictions for killing a single person violate the one-act, one-crime doctrine. For the following reasons, we affirm the judgment of the trial court as to defendant's convictions and remand the case for sentencing on the most serious conviction.

BACKGROUND

Defendant and his co-defendants[1] were charged with eight counts of first degree murder for their roles in the shooting death of Jose Estrada. Prior to trial, defendant was ordered to undergo a behavior clinical examination and was found competent to stand trial. Thereafter, he filed a motion to suppress his videotaped statement, and his lineup identification by State witness Meliton Martinez.

Motion to Suppress Inculpatory Statement

[1]Co-defendants, who include Juan Alvarez, Celestino Chavez, and Urbano Perez, appeared at separate trials.

Dr. Ricardo Weinstein testified for the defense at the hearing and at trial regarding defendant's competence in making statements to the police. Dr. Weinstein testified that he administered several intelligence tests to defendant and personally interviewed him in Spanish without an interpreter, regarding his understanding of the terms used in the *Miranda* warning. Defendant's test scores indicated that his intelligence fell within the range of mild mental retardation. Dr. Weinstein testified as follows regarding his interview with defendant:

"Mr. KATZ [Defense Counsel]: Can you tell us specifically what answers he gave you to lead you to know this conclusion?

DR. WEINSTEIN: For instance, I asked him if somebody tells you that you have a right to remain silent asks you what your name is, what can you do?

ANSWER: I have to tell them my name.

QUESTION: Why do you have to tell them your name?

ANSWER: Perhaps because I am ignorant. I lack knowledge. How can they tell me that I have the right to remain silent and then they ask me questions? I have to, and because they are the authority.

QUESTION: What does it mean that whatever you say can be used against you?

ANSWER: How can they say that it's going to be used against me and say that if I tell them what they want it would help me. I get confused. My mind goes from backwards to forward.

QUESTION: What does it mean that you have the right to remain silent?

ANSWER: That I have to remain silent.

QUESTION: What does it mean to have the right to remain silent?

ANSWER: I shouldn't talk, but if they accuse me of something, then I have to tell them what they say.

QUESTION: If they tell you you have the right to remain silent and they ask you your name, what should you do?

ANSWER: I have to tell them my name.

QUESTION: Why?

ANSWER: Because they are asking me.

QUESTION: What does it mean that you have the right to have an attorney present?

ANSWER: That I have the right to have an attorney.

QUESTION: For what purpose?

ANSWER: I don't know for what purpose. I never had an attorney.

QUESTION: What could an attorney do?

ANSWER: He could look at the file and tell me if what they are accusing me of was true or false. I told them I didn't have money for an attorney. I did not understand that the government would pay for one. I only learned that I was going to get an attorney for free after I was in jail. I never had any legal problems before so I never dealt with an attorney before.

THE COURT: Can I stop you for just one second? Is this a quote?

DR. WEINSTEIN: Yes, your Honor.

THE COURT: You could go on. All of the answers to your questions that you

are reading are quotes from what he said?

DR. WEINSTEIN: Yes, sir.

THE COURT : You could go on.

DR. WEINSTEIN: Mr. Alonso also commented, and this is a quote again, 'I was afraid they were going to torture me. In Mexico we hear that here they have the electric chair.' Then he further said, quote, 'I was afraid that if I did not talk, they were going to make me talk by force. The Latin policemen told me to say that I did it and to involve the others in the crime and that that was going to help me.'"

Dr. Weinstein also reviewed the videotaped interview, provided by the State, and did not find any problems with accuracy of the Spanish translation done by the interviewing officer. Defendant's test scores, along with his responses during the interview, led Dr. Weinstein to conclude that defendant did not understand the *Miranda* warnings given to him.

Dr. Susan Messina, a clinical psychologist employed by Forensic Clinical Services of the circuit court of Cook County testified that she also interviewed defendant, through a Spanish interpreter. In preparation for her evaluation of defendant, Dr. Messina reviewed police reports, defendant's videotaped police interview, and examined a previous psychiatric evaluation of the defendant done by a psychiatrist in her office. Over the course of the three-hour evaluation, Dr. Messina questioned defendant on his interpretation of each of the *Miranda* warnings. When she asked defendant what the right to remain silent means, defendant responded, "It means not to say anything." Dr. Messina then asked defendant the meaning of "anything you say can be used against you," and he responded by saying, "That I could say things against myself if I answer questions and whatever I said, they could use it against me." Dr. Messina also asked defendant

what it meant to have a right to a lawyer, and he stated, "I never - it meant that somebody could have been there with me to advise me, but that was the first time I came across a lawyer or the function of a lawyer before." She stated that defendant did not exhibit any cognitive deficits during her evaluation. As a result, Dr. Messina did not perform any intelligence testing on defendant. In Dr. Messina's opinion, defendant "had the ability to comprehend his *Miranda* warnings."

After hearing testimony from the expert witnesses and reviewing the videotaped confession, the trial court found that the totality of the circumstances established that defendant knowingly and voluntarily waived his *Miranda* rights. The court relied on its observation that during the videotaped statement, defendant did not exhibit any kind of fear or distress, at times used sophisticated language, and stated that he understood all of his *Miranda* rights. The trial court stated that it found Dr. Messina's testimony more credible than that of Dr. Weinstein. The trial court went on to state that, "It's clear he understands, he understood his right. I have absolutely no doubt whatsoever, taking all of the facts into situation [*sic*], that this man understood his *Miranda* warnings, and he gave up his rights knowing what they were, and a very short period of time after he had been arrested."

Motion to Suppress Lineup Identification

At the hearing on defendant's motion to suppress the lineup identification, Chicago police detective David Evans testified that a lineup was conducted on August 16, 2002. Participants in the lineup included defendant, two co-defendants, and two fillers. Eyewitness Meliton Martinez, told police that he witnessed two individuals running from the scene of the crime to a van parked on the street. He described these individuals as Hispanic males, one of whom was wearing a blue

hat. Evans testified that during the lineup, he was the only officer present in the room. All five participants were Hispanic males and the two fillers were taller than defendant and co-defendants. Evans testified that a photograph was taken of the lineup. Martinez was only able to identify defendant and Perez from their rear profiles. After the lineup, Martinez told police that he never saw the individuals' faces and was only able to identify them by their height and weight. The officers then noted that this was a tentative identification.

On those facts, defendant requested that the identification be suppressed because it was unreliable and suggestive, where defendant was the shortest participant in the line up. The trial court denied defendant's motion to suppress his lineup identification, finding that it was not suggestive. The court noted that the reliability of the identification would be weighed by the trier of fact.

Voir Dire

During *voir dire*, the trial court asked the prospective jurors questions surrounding their ability to be impartial. Defendant never objected to any of the trial court's questions, nor did he raise an issue regarding *voir dire* in his post-trial motion.

The trial court advised the first panel of prospective jurors as follows:[2]

> "The next group of questions I'm going to ask you, I'm also going to be asking as a group, but this time I'm calling on the people who say no. That is because we are discussing issues of law. I'm going to talk to you about the law, and I want to make sure you understand the concepts, the

[2] Although the trial court questioned two panels regarding their ability to be impartial, defendant exclusively challenges the court's statements to the first panel.

legal concepts we are talking about, and that you accept those concepts, so those will be the questions I ask. After I explain something, I will ask if you understand it, and if you do, I want you to nod your head up and down so everyone can see that you're answering yes. And I will ask you if you accept it. And if you do, I want you to nod head your head up and down. If you don't accept it, or understand, raise your hand and I will call on you to explain anything further, if you need further explanation.

***

A person accused of a crime is presumed to be innocent of the charge or charges against them. That presumption remains with them throughout every stage of the trial and during your deliberations upon your verdict. It's not overcome unless from the evidence that comes from this witness stand that you're convinced beyond a reasonable doubt of the person's guilt.

Does everyone understand that?

Everyone is indicating yes. And does everyone accept?

Everyone indicating yes.

The State has the burden of proving the defendant guilty beyond a reasonable doubt. That burden remains on the State throughout the case. The defendant is not required to prove his innocence, nor, is he required to present any evidence on his own behalf. Does everyone understand that? Everyone is indicating they understand and accept that.

If the defendant chooses to testify in this case, you should judge his testimony in the same manner as you would judge the testimony of any other witness. If the defendant chooses not to testify, you must not use that in any way in arriving at your decision. Does everyone understand that?

Everyone is indicating yes.

And does everyone accept that.

Again, everyone is indicating, yes, they accept that."

Closing Argument

In its rebuttal, the State argued that Dr. Weinstein's compensation should be considered by the jury in determining his credibility. Defendant objected, but was overruled. Defendant, on appeal, claims error based on the colloquy as follows:

"MR. PAPA [Assistant State's Attorney]: Can you take into account that Dr. Weinstein was paid $20,000 – well, around $20,000? Of course you can. Absolutely you can. The judge will tell you that. You can take into account a witness' interest in his testimony. Absolutely. That means essentially, folks, he is not an independent witness.

MR. NIESEN [Defense Counsel]: Objection.

THE COURT: That objection is overruled.

MR. PAPA: He was paid by the defense $20,000 for that.

MR. NIESEN: Objection that he was paid for that.

THE COURT: He said that, counsel. Objection overruled.

MR. PAPA: Doctor Messino [*sic*], she is not our doctor. She told you. She just isn't. She is not employed by the state's attorney's office. She is employed with the chief judge. She is, by any definition that you can come up with, an independent witness. She is. She is not paid by us, by the State, by the defense. She's got no interest whatsoever, zero. She is a trained expert in psychology and she told you."

The State went on to argue:

"[Dr. Messina] interviewed the defendant. He had no cognitive deficits, no impairment whatsoever that would lead her to even have to do an I.Q. test. So he grew up in a poor neighborhood. I mean, really, again, without making light of the situation, so what? How many people grew up in poor neighborhoods who have one parent, who did not have prenatal care? None of that excuses murder. None of it does. It just doesn't."

Defendant also claims error based on the State's rebuttal regarding the sufficiency of the evidence and the burden of proof. Defendant, however, failed to object to these issues at trial. In reference to the sufficiency of the evidence, the State argued:

"Ms. Niesen talks about there is no physical evidence. Actually in the opening statement they told you there was going to be no physical evidence in this case that links Sedronio [*sic*] Alonso to the murder of Jose Estrada. You have now all heard the evidence. That is not a true statement. That's not the evidence in this case. There is actual physical evidence that links Sedronio [*sic*] Alonso, that proves beyond a reasonable

doubt that he is the person who shot and killed Jose Estrada. She wants no DNA, no fingerprints, no gunshot residue, whatever that is."

In reference to its burden of proof, the State argued:

"Without a question, it is our burden of proof beyond. It is. You know what, folks, it is not a special burden of proof because of the charge of first degree murder. It's not a special burden of proof because Sedronio [*sic*] Alonso is from Mexico or because he is special.

It's the same burden of proof, not only in this courtroom, for every type of case. It's the same burden of proof in every courtroom in the building, in every courtroom throughout the county of Cook, through every criminal courtroom in the state of Illinois and in the United States.

This is nothing. This case is nothing special in terms of the burden of proof. It is our burden and we gladly accept it and, you know what, folks, we proved the defendant guilty beyond a reasonable doubt. Absolutely we proved it, him guilty. "

DISCUSSION

Defendant has raised five issues on appeal. Whether: (1) the trial court erred in denying defendant's motion to suppress his inculpatory statements where he was not competent to waive his *Miranda* rights; (2) the trial court erred in denying defendant's motion to suppress the eyewitness identification evidence where the lineup was unduly suggestive and unreliable; (3) the trial court denied him an impartial jury by failing to strictly comply with Supreme Court Rule

431(b); (4) the prosecutor committed misconduct by making improper arguments regarding the defense expert witness and the burden of proof, and; (5) his multiple murder convictions for killing a single person violate the one-act, one-crime doctrine. We will address each of these issues in turn.

Motion to Suppress Statement

Defendant first contends that the trial court erred in denying his motion to suppress statements because he was not competent to waive his *Miranda* rights. Specifically, the defendant asserts that his low I.Q. rendered him unable to understand the *Miranda* warnings, such that he could not knowingly and intelligently waive them.

On review, a trial court's ruling regarding a motion to suppress presents a mixed question of law and fact and will only be reversed when it is found to be manifestly erroneous. *People v. Braggs*, 209 Ill. 2d 492, 505 (2003). We accord great deference to the the trial court's factual findings. *Braggs*, 209 Ill. 2d at 505. We reverse factual findings only where they are against the manifest weight of the evidence; however, we review *de novo* the ultimate question of whether trial court's ruling was erroneous. *Braggs*, 209 Ill. 2d at 505. Resolving conflicts in testimony at a suppression hearing is within the province of the trial court and we will not substitute our judgment for that of the trier of fact, where the issue involves conflicting evidence. *People v. Benoit*, 240 Ill. App. 3d 185, 188 (1992). In considering whether a defendant knowingly and intelligently waived his *Miranda* rights, the courts must consider the totality of the circumstances, including the characteristics of the defendant and the details of the interrogation. *People v. Phillips*, 226 Ill. App. 3d 879, 886 (1992).

When a defendant moves to suppress his statement the State must prove, by a

preponderance of the evidence, that the confession was voluntary. 725 ILCS 5/114-11(d) (West 2006); *In re G.O.,* 191 Ill. 2d 37, 49 (2000). Voluntariness requires proof that the defendant made a knowing and intelligent waiver of his privilege against self-incrimination and his right to counsel. *Braggs*, 209 Ill. 2d.505. As our supreme court explained intelligent knowledge, in the *Miranda* context means "the ability to understand the very words used in the warnings. It need not mean the ability to understand far-reaching legal and strategic effects of waiving ones' right, or to appreciate how widely or deeply an interrogation may probe, or to withstand the influence of stress or fancy; but to waive rights intelligently and knowingly, one must at least understand basically what those rights encompass and minimally what their waiver will entail." *People v. Bernasco*, 138 Ill. 2d 349, 363 (1990).

In the present case, we do not find that trial court's factual findings were against the manifest weight of the evidence. The trial court heard and observed the testimony of both expert witnesses, in addition to reviewing the videotaped interview of defendant. Regarding the witnesses, the trial court explained that it found Dr. Messina to be a credible witness and further explained that Dr. Weinstein's testimony was not credible. The court also relied on its own observations of defendant, and the sophisticated language he used in reaching its conclusion that he knowingly and voluntarily waived his rights.

Defendant, nevertheless, contends that the trial court erred in accepting the testimony of Dr. Messina over that of his own expert. As noted, we give great deference to the credibility determinations made by the trial court. We are not persuaded by defendant's contention that because Dr. Weinstein performed more tests, his testimony is more credible. Defendant's argument fails to establish that the opposite conclusion is clearly evident or that relying on the

trial courts own observations and the testimony of Dr. Messina is unreasonable, arbitrary or not based on the evidence presented, such that its ruling would be considered against the manifest weight of the evidence. *People v. Deleon*, 227 Ill. 2d 322, 332 (2008).

Having found that the factual findings of the court are not against the manifest weight of the evidence, we next review whether, under those facts, the trial court's ruling was erroneous. *Benoit*, 240 Ill. App. 3d at 188. We find no error in admitting defendant's inculpatory statement where he knowingly, intelligently, and voluntarily waived his right against self-incrimination and his right to have an attorney present. *Benoit*, 240 Ill. App. 3d at 188.

Motion to Suppress Line-up Identification

Defendant next contends that the trial court erred in denying his motion to suppress the lineup identification because it was unduly suggestive and unreliable. Defendant argues that the lineup was impermissibly suggestive because he was the shortest participant in the lineup. He further claims the lineup was unreliable where the eyewitness was only able to confirm that defendant, viewing him from behind, fit the description of the person he saw fleeing the scene of the shooting.

On review, a trial court's ruling on a motion to suppress will not be reversed unless it is manifestly erroneous. *People v. Turnage*, 162 Ill. 2d 299, 305 (1994). The factual findings of the trial court are accepted unless they are against the manifest weight of the evidence; however, we review *de novo* the purely legal question of whether the ruling under those facts was proper. *Turnage*, 162 Ill. 2d at 305. In order for a court to suppress an identification, it must find that: (1) the confrontation was unduly suggestive, and (2) the identification was not independently reliable. *People v. Lacy*, 407 Ill. App. 3d 442, 459 (2011). A pre-trial confrontation is unduly

suggestive when, considering the totality of the circumstances, it gives rise to a very substantial likelihood of an unreliable identification. *People v. Gabriel,* 398 Ill. App. 3d 332, 348 (2010). Where a court finds that the confrontation was unduly suggestive, the State then must prove that the identification was independently reliable in order for the identification to be admissible. *Lacy*, 407 Ill. App. 3d at 459.

Here, defendant contends that the lineup was unduly suggestive because he was the shortest participant in the lineup, he was the only person without shoe laces, and one of the fillers had sunglasses in his shirt pocket. We are not persuaded that these differences implicated defendant in the murder. Initially, we note that the eyewitness was not able to conclusively identify defendant as the person he saw fleeing the scene of the shooting. Instead, he indicated that defendant's build was similar to that of one of the people he saw fleeing the shooting. Moreover, the record belies defendant's claim that the above factors implicated him, where the eyewitness was unable to even partially identify defendant from the front, where the shoe laces and sunglasses were visible.

We likewise reject defendant's claim that the lineup was unduly suggestive because he was the shortest participant. This court has repeatedly held that lineups are not suggestive because the witnesses are not identical, noting that, "[t]he theme running through all these examples is the strength of suggestion made to the witness. Through some specific activity on the part of the police, the witness is shown an individual who is more or less spotlighted by the authorities." *Gabriel*, 398 Ill. App. 3d at 349, (quoting *People v. Johnson,* 149 Ill. 2d 118, 147 (1992) internal quotation marks omitted).

Here, the eyewitness description to the police was limited, in that he saw two Hispanic

males, one wearing a blue hat. In the lineup, all participants were Hispanic males and none wore hats. As such, the police could not 'spotlight' defendant with the factors defendant claims are suggestive, because they were not provided to them before the lineup. Under these circumstances, we find no error in the trial court's denial of defendant's motion to suppress where defendant failed to establish that the lineup was suggestive. *Gabriel*, 398 Ill. App. 3d at 349. We need not address the reliability of the identification, given that defendant failed to meet his threshold burden. *Lacy*, 407 Ill. App. 3d at 459.

Rule 431(b) Admonishments

Defendant next contends that his conviction must be reversed where the trial court failed to strictly comply with Supreme Court 431(b) (Ill. S. Ct. R. 431(b) (eff. May 1, 2007)). The rule reads, in pertinent part:

> "The court shall ask each potential juror, individually or in a group, whether that juror understands and accepts the following principles: (1) that the defendant is presumed innocent of the charge(s) against him or her; (2) that before a defendant can be convicted the State must prove the defendant guilty beyond a reasonable doubt; (3) that the defendant is not required to offer any evidence on his or her own behalf; and (4) that the defendant's failure to testify cannot be held against him or her; however, no inquiry of a prospective juror shall be made into the defendant's failure to testify when the defendant objects." Ill. S. Ct. R. 431(b) (eff. May 1, 2007).

Thus, Rule 431(b), as amended, imposes a *sua sponte* duty on the circuit court to question each potential juror as to whether he or she understands and accepts the enumerated principles. Such questioning is no longer dependent upon a request by defense counsel. Where an issue concerns compliance with a supreme court rule, our review is *de novo*. *People v. Williams*, 358 Ill. App. 3d 363, 369 (2005).

We initially note that defendant did not object during *voir dire*, nor did he include this issue in his written post-trial motion. Therefore, he forfeited the issue for review. *People v. Enoch*, 122 Ill. 2d 176, 189 (1988). He now contends that the forfeiture rule should be relaxed because this error concerns a substantial right and denied him a fair trial and reviewed under the second prong of plain error review. However, our supreme court recently rejected this argument, concluding that the violation of Supreme Court Rule 431(b) does not constitute the deprivation of a substantial right, which would warrant relaxing the procedural default. *People v. Thompson*, 238 Ill. 2d 598, 614-15 (2010). Accordingly, we conclude, as did the court in *Thompson*, that plain error review is inapplicable and defendant has forfeited review of this issue. *Thompson*, 238 Ill. 2d at 615.

Prosecutorial Misconduct

The defendant next contends that the State committed misconduct by making improper arguments during its rebuttal. Specifically, defendant contends that the State improperly argued that the jury should consider Dr. Weinstein's compensation when considering the credibility of his opinion, while improperly bolstering Dr. Messina's credibility because she was not a hired consultant. Defendant further contends that the State's argument shifted the burden of proof to the defendant. In response, the State maintains that defendant failed to preserve all of the

alleged errors because he only objected to two statements made regarding Dr. Weinstein at trial and his post-trial motion made only general allegations of prosecutorial misconduct.

To preserve an issue for review, a defendant must raise an objection at trial and in a written post-trial motion. *People v. Moss*, 205 Ill. 2d 139, 168 (2002). Failure to raise an issue in a written motion results in forfeiture of that issue on appeal. *People v. Enoch*, 122 Ill. 2d 176, 186 (1988). The plain error rule serves as an exception to the procedural default of forfeiture and is only available where: (1) the evidence is so closely balanced that the error likely caused the conviction, or (2) the errors were so substantial that they impugn the integrity of the judicial process because they denied defendant a fair trial. *Moss*, Ill. 2d at 168.

We first address the issue of forfeiture, and in doing so find that all of defendant's claims have been forfeited. First, we note that the record support's the State's contention that defendant only objected to the statements regarding Dr. Weinstein made during rebuttal and did not object to the other claims raised on appeal. In addition, defendant's post-trial motion merely alleged that "the Assistant State's Attorney made prejudicial, inflammatory and erroneous arguments in closing argument designed to arouse the prejudices and passions of the jury, thereby prejudicing the defendant's right to a fair trial." Defendant did not allege which specific arguments were improper.

In *Moss*, our supreme court reviewed the issue of whether a general allegation in a post-trial motion, when combined with an objection at trial was sufficient to preserve the error, and held that it was insufficient. *Moss*, 205 Ill. 2d at 168. In that case, defendant's post-trial motion claimed that the prosecutor "made prejudicial inflammatory and erroneous statements in closing argument designed to arouse the prejudices and passions of the court[,]" without any reference

to specific statements. *Moss*, 205 Ill. 2d at 168. Given the striking similarity of the post-trial motion in *Moss* and defendant's post-trial motion, we find that *Moss* controls and that, following *Moss*, defendant forfeited his claims of error. *Moss*, 205 Ill. 2d at 168*; People v. Jackson*, 391 Ill. App. 3d 11, 38 (2009).

Defendant now contends that the errors should be reviewed for plain error, under both the closely balanced and substantial right prongs of the analysis. In order to address defendant's contentions under plain error, we must first determine whether a clear or obvious error occurred at all. *People v. McLaurin*, 235 Ill. 2d 478, 488 (2009). Our supreme court has instructed us that, "[p]rosecutors are afforded wide latitude in closing argument and challenged remarks must be viewed in the context of closing arguments as a whole." *People v. Kirchner*, 194 Ill. 2d 502, 549 (2000). On review, a prosecutor's comments will constitute reversible error only when they engender 'substantial prejudice' against the defendant, such that it is impossible to determine whether the jury verdict was the result of the comments or the evidence. *Kirchner*, 194 Ill. 2d at 549.

Here, we find that the State's comments regarding the credibility of the experts was not improper argument. It is axiomatic that argument regarding an expert witnesses' compensation, if based in evidence, constitutes a challenge to the credibility of the expert and possible bias of the witness. *People v. Hickey*, 178 Ill. 2d 256, 291 (1997). Such was the case here, where Dr. Weinstein's fee was elicited during trial, and nothing in the prosecutor's argument suggested that defendant was suborning perjury. *Hickey*, 178 Ill. 2d at 291, citing *People v. Hudson*, 157 Ill. 2d 401, 445 (1993).

Similarly, we find no error in the prosecutor's comments regarding the burden of proof.

We recognize that comments by a prosecutor that indicate that the State's burden of proof is merely a pro forma requirement are improper. *People v. Meeks*, 382 Ill. App. 3d 81, 87 (2008). However, a prosecutor's comments that he welcomes the burden of proof and that it is the same burden of proof across the entire criminal court's system are not improper. *Meeks*, 382 Ill. App. 3d at 87.

Here, as in *Meeks*, the prosecutor stated that the burden of proof in this case is the same as in all criminal prosecutions and that he felt that the State had met their burden. We find that defendant's reliance on *People v. Martinez*, 76 Ill. App. 3d 280 (1979) is misplaced because it is factually inapposite. In *Martinez*, the prosecutor commented that defendants were "being found guilty beyond a reasonable doubt every day of the week[,]" which the court found implied that it was a mere formality. *Martinez*, 76 Ill. App. 3d at 285. By contrast, the prosecutor in this case argued that the burden in this case is the same burden for all types of crimes and that it was not a more difficult burden merely because defendant was charged with murder. When viewed in the context of the entire argument of both parties, we find that the prosecutor's comments were not improper and did not shift the burden of proof. *Meeks*, 382 Ill. App. 3d at 87.

One-Act, One-Crime Violation

Finally, defendant contends, and the State agrees, that his four convictions for the murder of a single victim violate the one-act, one-crime doctrine. The one-act, one-crime doctrine prohibits multiple convictions for the same physical criminal act. *People v. Crespo*, 203 Ill. 2d 335 (2001); *People v. King*, 66 Ill. 2d 551, 566 (1977). Where the charge is murder, multiple convictions cannot be sustained for the murder of a single person. *People v. Mack*, 105 Ill. 2d 103 (1984) (vacated on other grounds). Upon a finding that the one-act, one-crime

doctrine has been violated, sentence should be imposed on the most serious offense and the remaining offenses should be vacated. *People v. Artis*, 232 Ill. 2d 156, 170 (2009). Where, as here, defendant received multiple convictions for the same criminal conduct and none of the criminal convictions carry a more severe punishment or require a more culpable mental state than the others, this court should remand the matter to the trial court for such a determination in sentencing. *Artis*, 232 Ill. 2d at 177. Accordingly, we remand this cause to the trial court for determination as to which first degree murder conviction will be retained. *People v. Artis*, 232 Ill. 2d at 179.

CONCLUSION

For the foregoing reasons, the judgment of the circuit court of Cook County is affirmed and this cause is remanded for further proceedings consistent with this order.

Affirmed in judgment; cause remanded for sentencing.