2015 IL App (1st) 131102-U
No. 1-13-1102

SECOND DIVISION
September 29, 2015

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IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

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| THE PEOPLE OF THE STATE OF ILLINOIS, | ) | Appeal from the Circuit Court |
| | ) | of Cook County. |
| Plaintiff-Appellee, | ) | |
| | ) | |
| v. | ) | No. 09 CR 8387 |
| | ) | |
| MALCOLM HAMPTON, | ) | |
| | ) | Honorable Maura Slattery Boyle |
| Defendant-Appellant. | ) | Judge Presiding. |

JUSTICE SIMON delivered the judgment of the court.
Justices Neville and Hyman concurred in the judgment.

**O R D E R**

¶ 1 *Held*: The comments made by the State in the closing arguments and in rebuttal did not deny defendant's right to a fair trial. The trial court did not abuse its discretion when sentencing defendant. One of defendant's two convictions for first degree murder is vacated pursuant to the one act, one crime doctrine.

¶ 2 Following a jury trial, defendant Malcolm Hampton was convicted of two counts of first degree murder and received two consecutive sentences of 30 years of imprisonment. On appeal, defendant argues that: (1) the State made improper prejudicial comments during the closing arguments that warrant a new trial; (2) the trial court abused its discretion when imposing defendant's sentence; and (3) one conviction for first degree murder should be vacated under the one act, one crime doctrine. Having considered all of defendant's arguments, we affirm.

¶ 3 BACKGROUND

¶ 4 Defendant was charged by indictment with six counts of first degree murder for the shooting death of Steven Eaton. The jury found defendant guilty of first degree murder and that defendant personally discharged a firearm causing the victim's death.

¶ 5 Michael Mannion testified at trial as follows. In April 2009, he worked for and owned a plumbing company located at 5419 West Division Street, next to Davis Park where the shooting took place. Mannion was working on April 3, 2009 at about 4 p.m. when he heard five or six gunshots. He walked into the alley and saw people running and jumping over a fence. He saw the victim stumble and fall on the basketball court in Davis Park. He ran to the victim and saw bullet holes in the victim's face and body. He grabbed a jacked from someone and put it near the victim's head. Mannion called 911, stayed and talked with the victim until paramedics arrived. Mannion did not see who shot the victim and stated that the victim did not have a gun with him. Mannion's business had four outdoor surveillance cameras installed that were recording day and night. On April 4, 2009, a Chicago police officer retrieved footage from the time of the shooting the day before.

¶ 6 Kishawn Brownlee testified to the following. He testified that he did not remember where he was or what he was doing on April 3, 2009. He testified that he did not remember going to the station to speak with police about the shooting that he saw in Davis Park. He could not recall viewing a line-up or identifying anyone in the line-up. He could not recall speaking with ASA Karin Swanson and Detective Adams or giving a statement and signing it. Brownlee recognized his signature on a statement, but claimed that he did not read or sign it.

¶ 7 ASA Swanson testified about the statements that Brownlee, accompanied by his father, Gregory Woulard, made on April 6, 2009, when they came to the police station following the shooting. Brownlee told ASA Swanson that he saw the shooting and later identified defendant as the shooter out of a line-up. Brownlee gave a statement to ASA Swanson where he stated the following. On April 3, 2009, around noon, he was playing basketball in Davis Park with several boys. Defendant, who had dreadlocks and wore a white jacket, came out and told him that his game was not that good. Brownlee had never seen defendant before. Shortly thereafter, defendant started arguing with the victim, calling him a "bitch" and saying that "the ecstasy pills did not work." Minutes later, Brownlee heard gun shots, turned and saw defendant pointing a gun at the victim. Brownlee saw defendant shoot the victim with a black gun. He heard about eight gun shots and saw defendant shoot the victim five times.

¶ 8 Terrance Bingham testified to the following facts. He was 25 years old and had one burglary conviction. On April 3, 2009, at about 4 p.m. he got into a van near Division Street and Central Avenue with his friends Jonathan Howard, Brandon Nichols, and Miles Cross to go to Davis Park to play basketball. They all started smoking marijuana. Shortly after they arrived, he heard gunshots and started running. He testified that he did not see who the shooter was. Bingham acknowledged meeting with an ASA on April 6, 2009, but stated that he was pressured by detectives to sign a statement identifying defendant as the shooter. Bingham testified that the police told him everything to say and that he only identified defendant in a line-up based on a photograph the police had previously shown him.

¶ 9 Bingham acknowledged that he testified differently during the grand jury proceedings on April 7, 2009. He spoke with ASA Tene McCoy Cummings before his grand jury testimony and

he told the ASA that he was treated well by the police. Bingham acknowledged that during the grand jury proceedings, he testified that he saw defendant, also known by the name of "Kiki" cussing, arguing with the victim and then ultimately pulling out a gun and shooting the victim.

¶ 10 At defendant's trial, during cross examination, Bingham stated that the police arrested him and took him to the station. He testified that he wore handcuffs while speaking with detectives. Bingham stated that detectives chained him to the wall and he felt that he was forced to identify defendant as the shooter. He stated that the only reason for testifying at the grand jury was because he was subpoenaed.

¶ 11 ASA Swanson testified regarding the statement that Bingham made on April 6, 2009. Bingham told ASA Swanson that he had known defendant for over two years. Bingham stated that he saw defendant at the basketball court wearing a white jacket and wearing his hair in dreadlocks. Bingham stated that he saw defendant arguing with the victim on the other side of the basketball court. Bingham told ASA Swanson that he pointed what he assumed was a gun at the victim because of the way his hand was pointed at the victim. Bingham saw defendant shoot the victim three or four times. Bingham started to run and then heard more gunshots. ASA Swanson testified that Bingham never told her that the police made him say anything. ASA Swanson testified that Bingham did not tell her that he was handcuffed at any time nor did he say that he only signed a statement so he could leave.

¶ 12 ASA Tene McCoy Cummings testified regarding Bingham's grand jury testimony, which was consistent with his handwritten statement.

¶ 13 Brian Nichols testified to the following. On the afternoon of April 3, 2009, he was riding in a van and smoking marijuana with Jonathan Howard, Bingham, and Miles Cross. When they

arrived at Davis Park, he heard some gunshots and saw people running away. Nichols stated that he did not remember who the shooter was. He also denied knowing defendant or a person named "Kiki." He denied seeing a person wearing a jacket with fur on the collar.

¶ 14 Nichols recognized his signature on a statement but claimed that the police made him implicate defendant in the crime. Nichols testified that the police told him, in the presence of an ASA, to initial some changes and sign some pictures. The police picked him up off a street when he was walking his dog and took him to the station to give his statement. Next, Nichols testified that he did not recall testifying before the grand jury. Nichols stated that he did not recall testifying that he saw defendant pull out a black gun in the park, and shoot at the victim four or five times, and denied remembering the substance of his statement or his grand jury testimony. He denied seeing defendant in court or identifying him in a line-up.

¶ 15 ASA Swanson testified regarding the statement that Nichols made on April 6, 2009, where Nichols identified defendant as the shooter. Nichols told ASA Swanson that after arriving at the park, he saw defendant across the basketball court wearing a white jacket with fur on the collar. Nichols stated that, at the time of the shooting, he had known defendant for a month. Nichols heard three gun shots and looked over and saw defendant firing the gun four or five more times at the victim. Nichols stated that no one else was armed and that he ran away after the shooting. Nichols stated that he identified defendant in line-up. Nichols told ASA Swanson that he was treated well by the police, that no threats or promises were made to him and that he was giving his statement voluntarily.

¶ 16 ASA McCoy Cummings testified that she spoke with Nichols on April 14, 2009, and that he was cooperative. ASA McCoy Cummings testified that Nichols never told her that the police

were forcing him to testify. ASA Cummings testified regarding Nichols' grand jury testimony, which was consistent with his handwritten statement.

¶ 17 Jonathan Howard testified at trial to the following. He was previously incarcerated based on a conviction for aggravated battery of a police officer. On April 3, 2009, between 3 and 4 p.m. he, Nichols, Bingham and Miles Cross arrived at Davis Park after driving his van there. Everyone was smoking weed while driving to Davis Park. Howard testified that he saw a man wearing a white "hoody" jump over a fence, pull out a gun and shoot at another man on the basketball court. Howard initially denied knowing defendant or the victim. Later he testified that he saw "Kiki's" face at the park and identified him in court as defendant. Howard testified that he spoke with police a couple of days after the shooting and, that later, on April 14, 2009, he testified before the grand jury. Howard also testified that he saw defendant in the park the day when the shooting took place with a person named Meaty.

¶ 18 Howard denied telling the grand jury that he saw defendant placing a gun in the victim's face or that he stood over the victim and shot him four or five times. Howard denied identifying defendant in a line-up and stated that the police made him implicate defendant. He testified that the police handcuffed him and left him in a room for hours, and they threatened to take away his van and to close his grandmother's daycare business. At trial, Howard stated that, on June 17, 2010, in a different proceeding he testified that he saw "a guy with a white hoody approach the male and shoot him dead blank."

¶ 19 Howard's testimony before the grand jury was different from his testimony at trial. ASA McCoy Cummings read portions of Howard's testimony before the grand jury. During the grand jury proceedings, Howard testified that he saw Meaty hand what Howard believed was a gun to

defendant and then he saw defendant shooting in the direction of the victim several times. He also testified before the grand jury that he did not see anyone else with a gun and that defendant was wearing a white leather coat. Howard testified that defendant ran away after the shooting and everyone else scattered. ASA Cummings testified that she met with Howard alone and he had never told her that the police threatened to take his van or to close his grandmother's daycare business. ASA McCoy Cummings testified that Howard was cooperative and agreed to testify before the grand jury.

¶ 20 Matwione Matlock testified at trial to the following. Matlock had a drug conviction in 2009 and stated that he was testifying at defendant's trial against his will, having been arrested for failure to appear in a previous proceeding. On April 9, 2009, he along with Howard, Bingham, and Nichols drove to Davis Park and began playing basketball. Matlock testified that he saw defendant and a person named Meaty at the park. He met defendant previously through one of his friends when he tried selling his X-Box game to defendant. He met Meaty through his uncle. Matlock denied that he saw a shooting at the park but stated that he heard shots fired. He ran and grabbed a boy to protect him. Matlock testified that he did not see who was shooting. He could not recall whether defendant was wearing a white Pele coat and he stated that he did not see Meaty hand defendant a gun prior to the shooting. He denied hearing defendant say that the victim "deserved that shit." He stated that he left the park with defendant and Meaty and they all went to a restaurant.

¶ 21 Matlock acknowledged that he spoke with ASA Swanson and Detectives Adams and Czblewski at his home a month after the shooting. He recognized his signature on a handwritten statement but testified that he did not tell them anything and that he could not read cursive. He

also testified that he could not read at all. He testified that he told ASA Swanson that he could not read cursive. He also testified that his mother came and read the statement until he became angry and told her not to read to him anymore. Matlock testified that he made the statement at the police station while he was handcuffed to a wall. He also testified that the day of the shooting, he was intoxicated from smoking five blunts. Matlock testified that he was 17 in 2009, but was only in eighth grade, that he was on disability for bipolar disorder, and that he had never taken the medicine prescribed for his condition.

¶ 22 ASA Swanson testified that she took Matlock's statement at his home on May 6, 2009, in the presence of his mother. Matlock told ASA Swanson that he was in ninth grade and that he could read English. Matlock's statement indicated that Matlock saw defendant and a person named Meaty at the park. Matlock told ASA Swanson that defendant was wearing a white Pele Coat. Matlock told ASA Swanson that Meaty took a black gun from his coat and handed it to defendant. He also told ASA Swanson that defendant shot at a person seven or eight times. Matlock stated that he heard defendant say that the victim "deserved that shit." ASA Swanson testified that Matlock told her that he could not read cursive and Matlock's mother helped him follow along. ASA Swanson testified that Matlock did not tell her that he was bipolar, or that he was not taking his medication. ASA Swanson testified that Matlock was never taken to the police station to give his statement and that he gave the statement at his home in the presence of his mother. When making the statement, Matlock identified defendant in a photo array and did not tell ASA Swanson that he was too intoxicated from marijuana to remember the events of the shooting.

¶ 23 The parties stipulated that the cause of death was multiple gunshot wounds and that the manner of death was homicide. The parties also stipulated that, following defendant's arrest on April 4, 2009, an unrelated shooting took place on May 17, 2009, and the testing on the cartridge cases recovered from the shooting on May 17, 2009, revealed that the cases had been fired from the same firearm used to kill the victim.

¶ 24 The initial testing on the nine cartridge cases recovered and analyzed in this case by the Illinois State Police Crime Lab Forensic Scientist Tonia Brubaker indicated that one of the bullets fired at the victim had not come from the same gun. Upon further review, she testified that all the bullets were fired from the same gun. Joseph Thibauld, Tonia Brubaker's supervisor testified that he analyzed the findings made by Tonia Brubaker and the bullets themselves again and agreed with Brubaker's conclusion that the bullets were fired from the same gun.

¶ 25 Following defendant's arrest, the police officers took defendant to the police station. At the police station, defendant's white leather jacket was placed in an evidence bag and submitted for forensic testing. Forensic testing revealed the presence of gunshot residue on the cuff of the jacket's right sleeve. Defendant filed a motion to suppress the white jacket. The trial court denied the motion and the jacket was admitted into evidence.

¶ 26 Officer Mulkerrin testified regarding defendant's arrest. Detective Adams identified the video and photos from the Mannion Plumbing's video recordings. The video was published with Detective's Adams testimony. Detective Adams testified that the video revealed that about 30 to 40 seconds after people exited a brown van and walked into the park people started running. The prosecution rested and defendant made a motion for a directed verdict which the trial court denied.

¶ 27 Defendant called George Lopez who testified to the following. On April 3, 2009, he lived at 5420 West Haddon Avenue, right across the street from Davis Park and about 75 feet from the basketball court where the victim was shot. That day, he was upstairs in his daughter's room cleaning up her crocodile tank. He looked out the window and noticed that the park was full of kids and adults. Lopez saw a man wearing an orange and gray hooded sweatshirt walking in the alley. Lopez stated that he had seen this man previously and described him as a tall and very thin black man. Lopez saw the man pull out a gun and start to shoot through the fence and then put the gun in his waist and jog away. Lopez testified that he told the police about the events he had witnessed. Lopez said he did not know defendant and that he most recently saw the shooter about three or four months ago. Lopez also testified that he did not see the shooter in court.

¶ 28 On cross-examination, Lopez stated that he heard five or six gunshots and that he saw the shooter's face. He also stated that he had seen the shooter at least 20 times before the shooting and four or five times after the shooting. Lopez acknowledged that he had never called the police to inform them that he saw the shooter or that the police had the wrong person in custody. Lopez denied telling the police that he never actually saw the shooter and he insisted that he described the shooter as wearing an orange and gray hooded sweatshirt and said that he had seen him in the neighborhood before.

¶ 29 In rebuttal, Detective James Gilger testified that he interviewed Lopez after the shooting. Detective Gilger testified that Lopez told him that he heard six gunshots and saw everyone running out of the park. Detective Gilger testified that Lopez did not tell him that he was upstairs cleaning an aquarium and looking out a window. Detective Gilger indicated that Lopez

did not tell him that he saw the shooter's face nor did he say that he had seen the shooter 20 times in the past. Detective Gilger testified that Lopez did not tell him that he had seen the man produce a gun and fire it through a fence into the park. Lopez did not contact Detective Gilger with more information following the initial interview.

¶ 30 Following deliberations, the jury found defendant guilty of first degree murder. The jury also found that defendant personally discharged a firearm causing the victim's death. At the sentencing hearing, defendant presented a witness, retired police officer John Patton, who was a friend of defendant's father that had known defendant his entire life. Patton testified that he never knew defendant to be violent and that he was a good man and a good father. In aggravation, the State presented evidence that defendant was on probation at the time of the murder. The State also pointed out that the shooting took place in daylight at a park when children were present. In mitigation, the defense pointed out defendant's non-violent background and the support of his family. The court sentenced defendant to consecutive terms of 30 years on Count 5 and 30 years on Count 6. This appeal followed.

¶ 31 ANALYSIS

¶ 32 I. Prosecutorial Comments

¶ 33 Defendant contends that, during closing arguments, the prosecutor made improper comments by telling the jury what to think. In addition, defendant argues that, in rebuttal, the prosecutor improperly defined the reasonable doubt standard. Defendant concedes that defense counsel did not object to these errors at trial or raise them in a posttrial motion. The failure to do so generally results in forfeiture of appellate review of the issue, but defendant asks that we review these issues under the plain error rule. Under plain error review, we may reach an

otherwise forfeited issue if a clear and obvious error occurred and (1) the error is so serious that it affected the fairness of the defendant's trial and challenged the integrity of the judicial process, or (2) the evidence is closely balanced. *People v. Adams*, 2012 IL 111168, ¶ 21; See also *People v. Thompson*, 238 Ill. 2d 598, 613-14 (2010). Our first step in plain error review is to determine whether any error occurred at all. *Thompson*, 238 Ill. 2d at 613.

¶ 34 Defendant argues that whether the prosecutor's comments during closing arguments constitute reversible error is an issue of law that we should review *de novo.* See *People v. Wheeler*, 226 Ill. 2d 92, 121 (2007). The State urges us to review this issue for an abuse of discretion. See *People v. Love*, 377 Ill. App. 3d 306, 313 (2007). However, our holding in this case would be the same under either standard.

¶ 35 First, defendant contends that the following statement made by the State in closing argument violated his right to a fair trial:

> "This is not a murder mystery. This is not a who-done-it. There is only one conclusion to draw since the day Steven Eaton was shot to death on that basketball court. * * * There is no reason based upon the evidence that you heard that you should ever think for one second that anyone other than the defendant is the one that murdered Steven Eaton on April 3, 2009."

¶ 36 Defendant argues that the State improperly told the jury that there was "only one conclusion to draw" because the State impermissibly told the jury what to think. However, prosecutors are afforded a great deal of latitude in closing argument. *People v. Thompson*, 2013 IL App (1st) 113105, ¶ 80. Prosecutors may comment on the evidence and draw reasonable inferences therefrom. *Id.* When reviewing claims of prosecutorial misconduct in closing

arguments, courts will consider the entire closing argument of both the prosecutor and the defense attorney, in order to place the comments in context. *Id.*

¶ 37 In the instant case, the comment that there "was only one conclusion to draw" was followed by the prosecutor's discussion of the evidence presented in the case. The prosecutor discussed the entirety of the evidence, including the testimony of the eyewitnesses who identified defendant as the shooter in their statements. The prosecutor mentioned the gunshot residue evidence, the bullets found at the scene, the pictures and the video evidence. Viewed in this context, the prosecutor's remarks were made as part of a larger argument that, in the light of the circumstantial evidence along with the eyewitness testimony, defendant was proven guilty of first degree murder beyond a reasonable doubt. Therefore, we find no error when the prosecutor asked the jury to conclude and to find the defendant guilty based on the entire evidence presented because the prosecutor was merely drawing reasonable inferences from the evidence at trial. See *People v. Gonzalez*, 388 Ill. App. 3d 566, 588 (2008).

¶ 38 Next, defendant contends that the State improperly made the following comments during rebuttal:

> "The law, the facts, and evidence in this case can lead you to no other conclusion, and certainly, when you receive the instruction, there won't be any instruction on reasonable doubts, but I'll tell you what it doesn't mean. It doesn't mean proof beyond any doubt or proof beyond unreasonable doubt. It has to be reasonable doubt based upon your experience, your listening to the evidence, your common sense of why those young men testified the way they did given all the facts in the case, the identifications, and the other evidence. Certainly proof

beyond a reasonable doubt is a standard that's met in this building and all the buildings throughout the course of this country each and every day."

¶ 39 Defendant argues that the prosecutor's statement was an impermissible attempt to define reasonable doubt. Defendant claims that the statement was prejudicial because by telling the jury to base its decision-making on its common sense, the State eliminated and lowered the standard of reasonable doubt and, instead, urged the jury to convict defendant on a reasonable common-sense belief. Similarly, defendant claims that the prosecutor's comment that the standard beyond a reasonable doubt was met "in this building and all the buildings through the course of this country each and every day," the State diminished its burden creating a risk that the jury convicted defendant on a standard of proof less than the constitutionally required standard of proof beyond a reasonable doubt.

¶ 40 Although, both the prosecutor and defense counsel are entitled to discuss reasonable doubt and to present their view of the evidence, including suggesting whether the evidence supports reasonable doubt (*People v. Carroll*, 278 Ill. App. 3d 464, 467 (1996)),"[t]he law in Illinois is clear that neither the court nor counsel should attempt to define the reasonable doubt standard for the jury"(*People v. Speight*, 153 Ill. 2d 365, 374 (1992)). "The danger is that, no matter how well-intentioned, the attempt may distort the standard to the prejudice of the defendant. If sufficient prejudice results, reversal is warranted." *People v. Keene,* 169 Ill. 2d 1, 24-25 (1995).

¶ 41 In *People v. Averett*, 381 Ill. App. 3d 1001, 1007 (2011), the defendant claimed that the following statement made by the State in rebuttal eliminated or lowered its burden of proof:

> "It's a burden that is met in this courthouse every day. It's a burden that is met across this state in courtrooms every day. It's a burden that is met across the country every day. It's a burden beyond a reasonable doubt. And when you consider the word 'reasonable,' all that implies, as Counsel suggested, was your common sense. Based on your reasonable beliefs and common sense, did the State prove the defendant on June 24th, possessed those seven bags with the intent to deliver them." *People v. Averett*, 381 Ill. App. 3d at 1007.

We held that the comments were not improper based on the Illinois Supreme Court's decision in *People v. Bryant*, 84 Ill. 2d 514, 523-24 (1983), that approved the comment that proof beyond a reasonable doubt was "not unreasonable" and "met each and every day in court" and it held that this comment did not reduce or shift the State's burden of proof. *People v. Averett*, 381 Ill. App. 3d at 1008. Similarly, in *People v. Laugharn*, 297 Ill. App. 3d 807 (1998), we held that it was not improper when the prosecutor argued the following:

> "Now, we must prove to you the elements of this offense of first degree murder and all of these elements beyond a reasonable doubt. *Now, that's not beyond all doubt or any doubt, but beyond a reasonable doubt. A doubt with some reason to it. Now, that's not some mythical, unattainable standard that can't be met.* It's met in courtrooms throughout the country every day, and we've met [it] in here in this courtroom this week.' " (Emphasis in original.) *People v. Laugharn*, 297 Ill. App. 3d at 810.

¶ 42 In *Laugharn*, we held that the prosecutor's statements did not rise to the level of plain error because the statements did not deprive defendant of a fair trial when the average jury

understands the concept of reasonable doubt and is not undermined when it hears the prosecutor say that reasonable doubt has reason behind it. *Id.* at 812.

¶ 43 Most of the statements made by the prosecutor here mirror those in *Averett* and *Laugharn* and, therefore, do not rise to the level of error but represent arguable inferences from the evidence that did not go beyond the bounds of a legitimate argument. See *People v. Averett*, 381 Ill. App. 3d at 1008. But we find troubling the State's comments to the jury that reasonable doubt "has to be reasonable doubt based upon your experience, your listening to the evidence, your common sense of why those young men testified the way they did given all the facts in the case, the identifications, and the other evidence." The State improperly defined "reasonable doubt" by telling the jury how to apply the term ("based upon your experience…") to the facts in deciding if the State met its burden of proof."Reasonable doubt" is a legal term of art. It is improper for the prosecutor to instruct the jurors that they can define the term through "experience" and "common sense" when our supreme court has insisted "the term 'reasonable doubt' should not be defined for the jury, that the term, in fact, needs no definition because the words themselves sufficiently convey its meaning." *People v. Downs*, 2015 IL 117934, ¶ 24.

¶ 44 A prosecutor's improper comments on reasonable doubt can be remedied by subsequent instructions from the trial judge and, therefore, do not rise to the level of plain error. *People v. Moreno*, 238 Ill. App. 3d 626, 636 (1992); *People v. Howell*, 358 Ill. App. 3d 512, 524 (2005). Here, following the prosecutor's statements, the trial court informed the jury that the court would instruct the jury as to the law, that the defendant was presumed innocent, and that presumption could not be overcome unless the jury was convinced beyond a reasonable doubt that he was guilty. The trial court also informed the jury that the State had the burden of proving defendant

guilty beyond a reasonable doubt and that defendant was not required to prove his innocence. The subsequent instructions from the trial court reinforced to the jury the importance of the reasonable doubt standard and the State's burden of proof, and minimized any prejudice to defendant from the prosecutor's comments. See *People v. Speight*, 153 Ill. 2d 365, at 374 (1992). Therefore, despite the improper argument by the State defining reasonable doubt, defendant failed to meet his burden "of showing that the error affected the fairness of his trial and challenged the integrity of the judicial process" and, therefore, has not met his burden under the plain error doctrine.

¶ 45 Defendant claims next that defense counsel was ineffective for failing to properly object and otherwise preserve the error. In assessing claims of ineffective assistance of counsel, we follow the two-pronged test of *Strickland v. Washington*, 466 U.S. 668, 687 (1984). Under this standard, a defendant must show that counsel's representation fell below an objective standard of reasonableness, and that, because of this deficiency, there is a reasonable probability that counsel's performance was prejudicial to the defense. *People v. Hickey*, 204 Ill. 2d 585, 613 (2001). However, as we discussed above, the prosecutor's arguments were proper. Therefore, defendant's counsel could not have been objectively unreasonable in failing to object. Moreover, even if improper, as previously discussed, they would have been harmless and, thus, *Strickland's* second prong would not have been met. See *People v. Ward*, 371 Ill. App. 3d 382, 436 (2007).

¶ 46 II. Excessive Sentence

¶ 47 Defendant contends next that his aggregate sentence of 60 years is excessive. Defendant contends that the trial court failed to adequately consider the evidence in mitigation and his rehabilitative potential. Specifically, defendant argues that, in crafting defendant's sentence, the

trial court failed to take into account defendant's lack of significant criminal history, his employment and educational background as well as his strong family ties.

¶ 48 A trial court's sentencing decision is afforded great deference, and a reviewing court will not disturb a sentence within the statutory limits unless the trial court abused its discretion. *People v. Stacey*, 193 Ill. 2d 203, 209-210 (2000). A sentence that falls within the statutory range is presumptively proper and does not constitute an abuse of discretion unless it is manifestly disproportionate to the nature of the offense. *People v. Hauschild*, 226 Ill. 2d 63, 90 (2007).

¶ 49 The sentencing range for first degree murder is 20 to 60 years of imprisonment. In addition, here, the trial court had to impose the mandatory firearm enhancement for personally discharging a firearm of 25 years to life, meaning that the defendant was subject to a minimum of 45 years and a maximum of life in prison. 730 ILCS 5/5-4.5-20(a) (West 2013); 730 ILCS 5/5-8-1 (a)(1)(d)(iii) (West 2013). The record reflects that the court considered all of the mitigating factors as well as the violent nature of the offense and the danger defendant would pose to the community upon his release and ultimately imposed a sentence of 60 years of imprisonment. The trial court noted the seriousness of the offense, especially the fact that the shooting took place during the day in a park where numerous young men played basketball. Considering the totality of the circumstances, we cannot say that the trial court abused its discretion when fashioning defendant's sentence. We will only vacate a sentence that is within the sentencing range if the trial court abused its discretion. *People v. Jones*, 168 Ill. 2d 367, 373-74 (1995). Here, it did not.

¶ 50 III. Mittimus Correction

¶ 51 Defendant argues next, and the State agrees, that one of defendant's two convictions for first degree murder must be vacated under the principles of one act, one crime. Where only one person has been murdered, there can only be one conviction for murder, and the sentence is to be imposed on the most serious offense. *People v. Baugh*, 358 Ill. App. 3d 718, 730 (2005). Accordingly, defendant's conviction under Count 5 for the intentional murder of Steven Eaton stands because it is the most serious charge while defendant's strong probability murder under count 6 is vacated. See *People v. Cardona*, 158 Ill. 2d 403, 411 (1994).

¶ 52 Defendant also requests that the case be remanded for a new sentencing hearing because he claims that his 60-year sentence for the remaining murder conviction and the firearm enhancement is so excessive that "ought to shock the conscience" and a sentence of 45 years "hardly denigrate[s]" the "seriousness of the offense."

¶ 53 A misunderstanding of the minimum sentence by the trial judge necessitates a new sentencing hearing only when it appears that the mistaken belief of the judge arguably influenced the sentencing decision. *People v. Eddington*, 77 Ill. 2d 41, 48 (1979). In considering whether a mistaken belief influenced the trial court's sentencing decision, courts look to whether the trial court's comments show that the court relied on the mistaken belief or used the mistaken belief as a reference point in fashioning the sentence. See *Eddington*, 77 Ill. 2d at 48.

¶ 54 The record indicates that, before sentencing defendant, the trial court noted several times that the mandatory firearm enhancement applied in defendant's case and that the minimum possible sentence in defendant's case was 45 years of imprisonment. Therefore, remanding the case for a new sentencing is not necessary. Initially, the trial court stated that defendant's sentence would be two terms of 30 years for Count 5 and 6. However, the record of proceedings

reflects that, at the completion of the sentencing hearing, the following exchange between the prosecutor and the trial court took place:

> "MS. DILLON: And, Judge, just so that the record is clear, it's a 30-year sentence on the murder plus a 30-year sentence for the enhancement of personally discharging a firearm proximately causing death or great bodily harm?
>
> COURT: Correct. I thought I made that very clear. I'm sorry. I said 30 on the first and then 30 on the second for a total of 60."

Based on the prosecutor's question and the trial court's response, the report of proceedings indicates that the trial court intended to impose an aggregate 60-year term, a 30-year sentence for first degree murder plus a 30-year term for the mandatory firearm enhancement. Accordingly, pursuant to Rule 615(b)(1) (Ill. S. Ct. R.615(b)(1) (eff. Aug. 27, 1999)), we vacate defendant's murder conviction under Count 6 and direct the clerk of the circuit court to correct the mittimus to reflect a single conviction for Count 5 of first degree murder with an aggregate sentence of 60 years of imprisonment, 30 years for first degree murder plus a consecutive term of 30 years for the mandatory firearm enhancement.

¶ 55 CONCLUSION

¶ 56 Accordingly, we affirm the judgment of the circuit court.

¶ 57 Affirmed. Mittimus corrected.