2015 IL App (3d) 130152-U

Order filed August 11, 2015

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

A.D., 2015

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court of the 12th Judicial Circuit, Will County, Illinois.
Plaintiff-Appellee,	)	
v.	)	Appeal No. 3-13-0152 Circuit No. 09-CF-861
LEE PONSHE,	)	Honorable Daniel J. Rozak,
Defendant-Appellant.	)	Judge, Presiding.

JUSTICE LYTTON delivered the judgment of the court.
Presiding Justice McDade and Justice O'Brien concurred in the judgment.

ORDER

¶ 1 *Held*: (1) Erroneous admission of father's statement to defendant about counsel's impression of the case was not prejudicial in light of evidence presented at trial. (2) Trial court did not abuse its discretion in refusing to issue an involuntary manslaughter instruction.

(3) Defendant is entitled to a resentencing hearing because mandatory life sentencing statute has been invalidated and has not been reenacted.

¶ 2 Defendant, Lee Ponshe, appeals his conviction of first degree murder (720 ILCS 5/9-1(a)(2) (West 2008)) and his mandatory natural life sentence imposed pursuant to section 5/5-8-

1(a)(1)(c)(ii) of the Unified Code of Corrections (Code) (730 ILCS 5/5-8-1(a)(1)(c)(ii) (West 2012)). Defendant contends that (1) counsel was ineffective in allowing the jury to hear a recorded telephone conversation he had with his father, (2) the trial court abused its discretion in refusing to issue an involuntary manslaughter jury instruction, and (3) he is entitled to resentencing because the mandatory life sentencing provision employed by the trial court was struck down as unconstitutional and has not been reenacted. We affirm defendant's conviction and remand the cause to the trial court to impose a sentence within the appropriate sentencing range.

¶ 3 Defendant was charged by indictment with one count of first degree murder in that, on April 30, 2009, he allegedly caused the death of eighteen-month-old Halli Burton by striking her on the head, knowing that his act created a strong probability of death or great bodily harm.

¶ 4 At a pretrial hearing, the State moved to edit portions of a telephone call placed by defendant to his father from the Will County jail for the purpose of publishing the call to the jury. The State presented a transcript with the proposed redactions marked in red. Defense counsel objected, arguing that the call should not be edited and claiming that the entire conversation should be admitted under the completeness doctrine. The trial court admitted the redacted transcript as offered by the State, and the recorded call was edited for trial.

¶ 5 At trial, Jessie Evans testified that she was Halli's mother. Halli was born in October of 2007 and had no significant medical history or developmental delays. She was just starting to sleep through the night in April of 2009, but she was teething.

¶ 6 Evans testified that she divorced Halli's father in September of 2008 and met defendant online in January of 2009. At the time, she was working as a nurse at a hospital in Jacksonville,

Illinois, and lived in White Hall. By April, she and defendant were engaged. She quit her job in Jacksonville and moved to Elwood to live with defendant on April 13, 2009.

¶ 7 The day before she moved to Elwood, she left Halli at her home in White Hall with defendant who was visiting. When she returned home, she noticed Halli had a bruise on her cheek. Defendant told her that Halli had fallen off a toy.

¶ 8 The next morning, Evans and defendant packed up Evans' belongings and drove to Elwood. After unpacking, they placed several of boxes in the crawl space of defendant's house. The door to access the crawlspace was in the floor of defendant's bedroom closet. Defendant crawled down into the space, and Evans handed him the boxes.

¶ 9 Evans left to run a few errands. When she called home around 7, she heard Halli crying. Defendant said that it sounded like her cries were coming from the crawlspace, which he had left open, and agreed to call her back. After a few minutes, defendant called back and reported that he found Halli in the crawlspace. She was sitting on the floor and reached up for him. Evans could hear Halli on the phone. Evan testified that she was not crying "hysterically." When she returned home, she did not notice any new injuries to Halli.

¶ 10 Evans and defendant put Halli to bed and then stayed up drinking vodka and lemonade and watching a movie. Evans went to bed around midnight. When she woke up the next morning, she mentioned to defendant that she was surprised Halli slept through the night. Defendant told her Halli had been fussy since about 4 a.m. When she checked on Halli, she noticed that her lip was swollen. She gave Halli a bath and did not find any other injuries. She made Halli breakfast, and Halli ate well. Later that day, Evans and defendant took Halli with them to town. They stopped at a car dealership and a hardware store. When they returned home, Halli took a nap and defendant went to school to pick up his son. Evans testified that in the

afternoon, she played with Halli. Evans laid Halli down for a nap on the couch in the office around 5 p.m. Just after 7 p.m., she heard defendant scream that Halli was not breathing. She ran to the office, and Halli's lips were blue. Evans started CPR. Halli had no pulse or respiration and was pronounced dead when she arrived at the emergency room.

¶ 11 The day after Halli's death, Detective Wayne Ratajack interviewed defendant, along with Detective Powers. The interview was recorded and played in open court. During the interview, defendant initially states that he did not touch Halli "abnormally" or in the wrong way. Then he states that he did not remember hurting Halli. He then becomes emotional and states that he thinks he is going to prison for the rest of his life. He tells the detectives that Halli was lying down and that she would not go to sleep. She just kept crying. Defendant says that every 15 minutes for hours he continued to go into the office where Halli was sleeping to soothe her. Around 3:35 a.m., he went into the office, leaned over the couch and rubbed her head. She still would not go to sleep so he "smacked her."

¶ 12 After admitting that he hit Halli, defendant exclaims, "Oh God, Oh God, Oh my God," and begins to cry. He tells Detective Ratajack that he doesn't remember how many times he hit her. He then states that he must have hit her twice. He shows detective Ratajack how he hit her by rapping his knuckles on the table in a knocking motion. When asked why he did it, he tells the detectives that he does not know, that "it happened very fast" and that he just "lost it." Still crying, he starts to rock back and forth. He explains to the detectives that after he hit Halli, he said to himself, "What the fuck did you just do, you just hit a little girl, what did you just do Lee Ponshe?" At the end of the interview, defendant confirms that Halli fell into the crawlspace the day before. He then admits that he hit Halli on the head the night before she died.

¶ 13 The edited version of the telephone conversation defendant had with his father was played for the jury. During the call, defendant states that he had seven or eight vodka drinks the night before Halli's death. The following conversation then develops:

"FATHER: So you guys were drinking heavily? Probably passed out.

DEFENDANT: Exactly and I was on a bunch of fucking Xanax and Vicadin [sic]

FATHER: *** Okay, well that's not be a good excuse for no jusy [sic]. Lee, I dunno if we can getcha out of this. It's gonna be fucking rough he, I have the best fucking lawyer in Will County. He's the #1 guy for criminal, but he said, let me tell you, it's gonna be fucking rough. It's really gonna be fucking tough."

Later, the conversation continues:

"DEFENDANT: What does this guy think, I mean what's our road here man?

FATHER: He, what he want's [sic] to do is, he wants to hire a private investigator to already hit the places you shopped at. He feels that's our best avenue, to start going that direction.

DEFENDANT: And the other guy said that he wanted to hire somebody to do another autopsy.

FATHER: Well so does he.

DEFENDANT: So what, what, where's the body?

FATHER: I don't know, I don't know, we weren't even gonna hire him, we were gonna hire this other guy. Ma had started talking to the other one, this is all screwed up now, I probably owe him money for getting involved.

DEFENDANT: And what's that guy's name?

FATHER: Dunlap. The other guy? This guy's Goldstein, the one I hired.

DEFENDANT: Goldstein?

FATHER: Yeah, they're the three best in Illinois, seriously. Their win/loss record is like, okay I'm just saying, ya know."

¶ 14 Following publication to the jury, defense counsel objected stating that he thought the trial court wanted to exclude the portion of the conversation in which defendant and his father talked about "the best attorneys and all that." The trial court noted that it had previously considered which portions would be redacted in the pretrial motion and had ruled in favor of the State edited version. It denied defendant's motion.

¶ 15 Rachael Eggleston testified that she previously lived with defendant and related an incident in which her 18-month-old son, Travis, had been injured while in defendant's care. She and Travis were living with defendant in June of 2008. One evening, defendant woke Eggleston and told her that Travis accidentally deployed a parachute on the defendant's race car and that it struck him in the face. Travis was calm, but his face was bruised and swelling. Defendant told Eggleston that if she took Travis to the hospital, she might lose custody of him and defendant might lose custody of his three-year-old son, Lee Jr. Defendant suggested that if she did seek medical attention she should say that Travis fell off a "Bigwheel." The next day, she received a phone call from Travis's father, Jason. He had taken Travis to the hospital. She met him there and told the hospital staff that Travis had fallen off a Bigwheel toy and struck his head.

¶ 16 Kelly Christopher, a deputy coroner, testified that Halli's autopsy was performed by Dr. Brian Mitchell, who died in March of 2010. Coroner Patrick O'Neil identified Mitchell's autopsy report. He noted that in the report Mitchell concluded that Halli died of closed head injuries due to or as a consequence of blunt force trauma. In concluding that Halli died from

trauma to the brain, Dr. Mitchell's report stated that there was "profound cerebral edema [swelling of the brain] with cerebellar tonsillar notching."

¶ 17 Dr. Lucy Rork-Adams testified that she is a pediatric neuropathologist and is employed as a senior neuropathologist at Children's Hospital of Philadelphia. She read Dr. Mitchell's report and reviewed the autopsy photographs, as well as other evidence. She observed bruising to Halli's face and forehead, a cut to her lip and a bruise in her left ear.

¶ 18 Dr. Rork-Adams testified that a child's skull is softer than an adult's because it has not calcified and that outside forces pass more easily into the brain causing swelling. Brain swelling in the medulla causes the brain to exert pressure through a hole at the base of the skull called the foramen magnum. Parts of the brain controlling heartbeat and respiration are in this area. She noted that Halli's medulla was swollen.

¶ 19 Dr. Rork-Adams opined that a person could have a grave internal injury without serious external injuries. She noted that Halli suffered considerable non-accidental injury consistent with blunt force trauma. The injuries on the top and back of Halli's scalp were consistent with a blow from a fist. She testified that her injuries were not consistent with a fall into the crawl space because Halli would have had to fall head first into the area, which she believed was unlikely. Even if that had happened, the location of the injuries to Halli's head suggested multiple impacts. She noted that in the interval of time between 4 a.m. and when Halli took a nap at 5 p.m., Halli could have had a lucid interval and that the lucid intervals could have lasted 12 to 24 hours. Dr. Rork-Adams concluded that Halli "sustained considerable nonaccidental injury" and died as a consequence. She confirmed that her injuries were consistent with blunt force trauma.

¶ 20 Dr. Rork-Adams also explained the injuries to the jury using published photographs of Halli's brain. She noted that there were "multiple bruises on the deep layers of the scalp, and you can see that they are scattered in multiple areas, they're separate from each other, they vary in size." She noted that the spacing of the bruises was consistent with knuckles on a hand. Dr. Rork-Adams counted 10 bruises in the photo. She indicated that strong force would have been needed to cause the bruises to Halli's scalp. In another autopsy photo, she counted 15 contusions resulting from individual blows from a blunt object. Dr. Rork-Adams testified that these separate bruises were not consistent with a four-foot fall into a crawl space. She briefly discussed a published study of short falls five or fewer feet and noted that such falls are rarely fatal in children. Based on that study, she opined that a crawl space fall would not have caused Halli's death.

¶ 21 Dr. Rork-Adams stated that Halli's brain was heavier than normal, which she noted is also an indicator of injury. She testified that some of the damage to Halli's brain was discernible by a well-trained pediatric pathologist but would be difficult for someone to diagnosis who was not a neuropathologist.

¶ 22 She stated that, in addition to the damage to her brain, Halli suffered contusions to the left and right side of her pleural cavity consistent with a strong force blow from a fist or blunt trauma. Finally, Halli had hemorrhaging to the outer covering of the spinal column near her neck and lower back consistent with blunt force trauma. The contusions to the pleural cavity and the scalp were caused within 24 to 48 hours of her death. Dr. Rork-Adams concluded that Halli had been abused.

¶ 23 On cross-examination, Dr. Rork-Adams acknowledged that, in cases like this, she would have expected the presence of beta-amyloid. She performed a test for beta-amyloid but found

none. However, she testified that the samples she tested had been taken by Dr. Mitchell during the autopsy, and she opined that they were taken from the wrong areas of Halli's brain.

¶ 24 Dr. Larry Blum testified as one of defendant's expert witnesses. He stated that after reviewing the autopsy reports, he did not reach a conclusion as to the cause of Halli's death. He was unable to say within a reasonable degree of medical certainty that the child died of blunt force trauma. He found it problematic that there was a positive finding of swelling without more significant trauma. But he stated that "this case would be better reviewed by a forensic neuropathologist or someone particularly trained in children's injuries or conditions of the brain." He opined that the bruising above and below Halli's left eye were consistent with a fall from a toy or from striking a tailgate. Dr. Blum stated that Dr. Rork-Adams could be correct but there was nothing in her report that changed his mind. He was not confident that an intentional act was the cause of death. He testified that had there been trauma the result of the beta-amyloid test should have been positive. On cross-examination, Dr. Blum confirmed that Halli died from cerebral edema or swelling of the brain, but he could not say what caused it. He agreed that Dr. Rork-Adams had a good reputation; he deferred to her when it came to interpreting the tissue samples in Halli's brain.

¶ 25 Dr. Jamie Jacobson, a neuropathologist, also testified as an expert witness for the defense. He stated that his practice focused on tumors and cancer related issues of the brain. Dr. Jacobson reviewed Mitchell's autopsy report. He testified that in Mitchell's report it stated that Halli's brain weighed 1,070 grams and that a normal weight, according to a treatise co-authored by Dr. Rork-Adams, would be 1,042 grams. If Halli had cerebral edema, Dr. Jacobson would have expected to find central herniation of the brain and compression of the ventricles. According to the autopsy report, Dr. Mitchell found that the ventricles were normal, and Dr.

Jacobson saw no evidence of edema. Dr. Jacobson opined that the death was not caused by trauma because there was no evidence of gross or microscopic injury to the brain. He admitted that the absence of beta-amyloid does not disprove trauma but stated that it is often seen in trauma cases.

¶ 26 On cross-examination, Dr. Jacobson acknowledged that the contusions on Halli's scalp matched reports of her known injuries. He also admitted that there were abnormalities to the membrane surrounding Halli's spinal cord. He testified that he is familiar with Dr. Rork-Adams and that she is well regarded in the field of pediatric neuropathology.

¶ 27 Michelle Thomas, a DNA analyst, testified that she obtained Halli's DNA profile and compared it to samples taken from the plastic on the crawl space floor and areas around the opening to the crawl space. The profiles of the samples were not complete. She could not positively identify the DNA profiles of the samples taken to Halli's DNA profile. She testified that based on the partial profiles of the samples, she could only say that Halli could not be excluded as a source of the DNA found on the plastic.

¶ 28 Nancy Keel, a fingerprint examiner, took impressions from the plastic on the crawl space floor for analysis. She found eleven impressions: one of a shoe and ten others of a finger or a palm. Most of the palm and finger prints were from defendant. Another palm print was an adult print, but it did not match defendant's hand.

¶ 29 At the jury instruction conference, defense counsel requested an instruction on involuntary manslaughter. The trial court concluded that there was no evidence of recklessness that would justify giving the lesser included instruction.

¶ 30 The jury found defendant guilty of first degree murder. It also found that defendant had attained the age of 17 and that the victim was less than 12 years old. At sentencing, the trial

court noted that section 5-8-1(a)(1)(c)(ii) of the Code (730 ILCS 5/5-8-1(a)(1)(c)(ii) (West 2008)) required a natural life sentence for an adult convicted of murdering a child under the age of 12. The court then sentenced defendant to a term of life in prison.

¶ 31 ANALYSIS

¶ 32 I

¶ 33 Defendant argues that trial counsel was ineffective in allowing the jury to hear the recorded conversation between defendant and his father in which defendant's father stated that defense counsel believed the case was going to be "fucking rough."

¶ 34 To establish a claim of ineffective assistance of counsel, a defendant must show that counsel's performance fell below an objective standard of reasonableness and that, but for counsel's errors, a reasonable probability exists that the result of the proceeding would have been different. *Strickland v. Washington*, 466 U.S. 668, 687-88 (1984). If the defendant fails to establish either prong, his ineffective assistance claim must fail. *Id.* at 687. To establish prejudice, the defendant must show a reasonable probability that, absent counsel's deficient performance, the trial's outcome would have been different. *People v. Evans*, 209 Ill. 2d 194, 220 (2004). "A reasonable probability of a different result is not merely a possibility of a different result." *Id.*

¶ 35 In all legal matters, a lawyer is an officer of the court and is bound to work for the advancement of justice and the rightful interests of his client. *United States v. Nobles*, 422 U.S. 225, 237 (1975). Defense counsel's task in a criminal trial is to persuade the jury that there is a reasonable doubt of the defendant's guilt. *Herring v. New York*, 422 U.S. 853, 861-62 (1975). In performing these legal duties, it is essential that the attorney work with a certain degree of privacy. *Hickman v. Taylor*, 329 U.S. 495, 510 (1947) (recognizing the importance of the work-

product doctrine). A lawyer's work includes his or her mental impressions and personal beliefs. *Nobles*, 422 U.S. at 238. If an attorney's thoughts are not his or her own, "[i]nefficiency, unfairness and sharp practices would inevitably develop in the giving of legal advice and in the preparation of cases for trial." *Hickman*, 329 U.S. at 511. Consequently, courts have historically recognized that publication of an attorney's mental processes would be demoralizing and "the interests of the clients and the cause of justice would be poorly served." *Id*.

¶ 36 In this case, the specific references to defense counsel's mental impressions of the case, statements about defense counsel possible legal strategies, and defense counsel's assessment of defendant's chances of success were irrelevant, demoralizing and denigrating to the "cause of justice." They should not have been published to the jury. Defense counsel's failure to object to these statements was error.

¶ 37 The question we must then answer is whether counsel's failure to object rose to the level of prejudicial error. Specifically, defendant must show that but for counsel’s performance, the outcome would have been different. See *Evans*, 209 Ill. 2d at 220. At trial, the evidence included expert testimony describing multiple bruises on Halli's scalp, referencing the injuries on photos published to the jury and explaining the nature of the blunt force trauma Halli suffered. Dr. Rork-Adams testified that Halli died as a result of swelling around the medulla that caused Halli's circulatory and respiratory systems to fail. Dr. Rork-Adams testified that Halli's injuries were not consistent with a fall into the crawl space, and the forensic experts could not confirm that Halli fell into the crawlspace. Moreover, while defendant's medical experts disagreed with Dr. Rork-Adams opinion that Halli’s death was the result of physical abuse, one expert admitted that Halli died from cerebral edema. The other expert was dismissive of Dr. Rork-Adams evaluation of the case but acknowledged that she was a well-respected pediatric neurologist.

Further, defendant made several inculpatory statements to the detectives on the day of Halli's death that were published to the jury. He admitted that he had been drinking, that he was frustrated with Halli because she would not go back to sleep, that he used his knuckles to strike Halli's head at least twice and that he "lost it." In light of this evidence, defendant cannot establish a reasonable probability that, absent counsel's error, the result of the trial would have been different. See *People v. Garland*, 254 Ill. App. 3d 827, 835 (1993); *People v. Fields*, 226 Ill. App. 3d 345, 355 (1992).

¶ 38 II

¶ 39 Defendant also claims that the trial court abused its discretion by refusing to issue an involuntary manslaughter instruction to the jury.

¶ 40 The giving of a jury instruction is a matter within the sound discretion of the trial court. *People v. Jones*, 219 Ill. 2d 1, 31 (2006). An instruction on a lesser included offense is justified if there is some evidence to support it. *People v. Jones*, 175 Ill. 2d 126, 132 (1997). If there is some credible evidence in the record that would reduce the crime of first degree murder to involuntary manslaughter, an instruction should be given. *People v. Foster*, 119 Ill. 2d 69, 87 (1987).

¶ 41 The difference between involuntary manslaughter and first degree murder is the mental state that accompanies the act that causes the victim's death. *Foster*, 119 Ill. 2d at 87. Involuntary manslaughter requires a less culpable mental state than first degree murder. A defendant commits first degree murder when he kills an individual without lawful justification and he knows that his acts create a strong probability of death or great bodily harm. 720 ILCS 5/9-1(a)(2) (West 2008). A defendant commits involuntary manslaughter when he performs acts that are likely to cause death or great bodily harm to another and he performs these acts

recklessly. 720 ILCS 5/9-3(a) (West 2008). "A person is reckless or acts recklessly, when he consciously disregards a substantial and unjustifiable risk that circumstances exist or that a result will follow, described by the statute defining the offense; and such disregard constitutes a gross deviation from the standard of care which a reasonable person would exercise in the situation." 720 ILCS 5/4-6 (West 2008). Reckless conduct generally involves a lesser degree of risk than conduct that creates a strong probability of death or great bodily harm. See *People v. Davis,* 35 Ill. 2d 55, 60 (1966); *People v. Rosenberger,* 125 Ill. App. 3d 749, 763 (1984).

¶ 42 While not dispositive, certain factors may help determine whether a defendant acted recklessly and whether an involuntary manslaughter instruction is appropriate. Those factors include (1) the disparity in size and strength between the defendant and the victim (2) the brutality and duration of the beating, and the severity of the victim's injuries, and (3) whether a defendant used his bare fists or a weapon, such as a gun or a knife. *People v. DiVincenzo,* 183 Ill. 2d 239, 251 (1998) (listing cases in support of each factor). In addition, an involuntary manslaughter instruction is generally not warranted where the nature of the killing, shown by either multiple wounds or the victim's defenselessness, shows that the defendant did not act recklessly. *Id*. at 250. Whether an involuntary manslaughter instruction is warranted depends on the facts and circumstances of each case. *Id*.

¶ 43 Here, the trial court considered the *DiVincenzo* factors and concluded that there was no evidence of recklessness that would justify an involuntary manslaughter instruction. The record supports the trial court's decision. Halli was an eighteen-month-old child who was barely able to speak, while defendant was a 25-year-old adult male. Although defendant did not use a weapon, Halli's injuries were forceful and severe. Defendant used his knuckles to strike Halli in the head multiple times. He admitted that he had been drinking, that he was tired and that he lost control.

As an infant, Halli was defenseless. Defendant then failed to report his conduct to Halli's mother or to transport the child for medical services when he noticed bruising and swelling on her face the next morning.

¶ 44 This evidence indicates that defendant acted knowingly, rather than recklessly. Defendant's self-serving statement that he did not intent to cause Halli's death is not enough to reduce the degree of the offense charged. See *People v. Johnson*, 197 Ill. App. 3d 74, 85-86 (1990); *People v. Ward*, 101 Ill. 2d 443, 451-52 (1984). In light of the evidence, we cannot say that the trial court abused its discretion in denying defendant's request for an involuntary manslaughter instruction.

¶ 45 III

¶ 46 Defendant maintains that we should vacate his sentence and remand the cause for a new sentencing hearing because the mandatory life sentence provision relied on by the trial court was struck down as unconstitutional in *People v. Wooters*, 188 Ill. 2d 500 (1999), and has not been reenacted.

¶ 47 Section 5/5-8-1(a)(1)(c)(ii) of the Code states:

> "(a) Except as otherwise provided in the statute defining the offense, a sentence of imprisonment for a felony shall be a determinate sentence set by the court under this Section, according to the following limitations:
>
> (1) for first degree murder,
>
> ***
>
> (c) the court shall sentence the defendant to a term of natural life imprisonment when the death penalty is not imposed if the

> defendant,
>
> ***
>
> (ii) is a person who, at the time of the commission of the murder, had attained the age of 17 or more and is found guilty of murdering an individual under 12 years of age; or, irrespective of the defendant's age at the time of the commission of the offense, is found guilty of murdering more than one victim." 730 ILCS 5/5-8-1(a)(1)(c)(ii) (West 2008).

¶ 48 Subsection (a)(1)(c)(ii) was enacted by Public Act 89-203 in 1995. See Pub. Act 89-203 (eff. July 21, 1995). Public Act 89-203 contained revisions to 10 different statutes using typographical mechanisms such as "<<+ +>>" and "<<- ->>" to indicate additions and deletions. Among other things, it added the following language to section 5-8-1(a)(1)(c)(ii): "<<+(ii) is a person who, at the time of the commission of the murder, had attained the age of 17 or more and is found guilty of murdering an individual under 12 years of age; or, irrespective of the defendant's age at the time of the commission of the offense+>>." Pub. Act 89-203 (eff. July 21, 1995) (typographical marks included).

¶ 49 In *Wooters*, the defendant was convicted of murder based on a 1996 charge that she struck her 19-day-old son in the head and caused his death. The trial court refused to sentence the defendant to life in prison, ruling that the mandatory sentencing scheme of section 5-8-1(a)(1)(c)(ii) was unconstitutional. In reviewing the case, the Illinois Supreme Court concluded that section 5-8-1(a)(1)(c)(ii) was unconstitutional because Public Act 89-203, which enacted the mandatory life provision, violated the single subject rule of the Illinois Constitution. *Wooters*, 188 Ill. 2d at 520; Ill. Const, 1970, art. IV, § 8.

¶ 50 A statute that violates the single subject clause is void in its entirety. *People v. Brown*, 225 Ill. 2d 188, 198-99 (2007). It is as though the act had never been passed. *Id*. "The effect of enacting an unconstitutional amendment to a statute is to leave the law in force as it was before the adoption of the amendment." *People v. Gersch*, 135 Ill. 2d 384, 390 (1990). The legislature has the power to enact subsequent legislation to revive a provision held to be unconstitutional. *Johnson v. Edgar*, 176 Ill. 2d 499, 522-23 (1997). However, the legislation "must exhibit on its face" evidence that it was intended to cure or validate the defective act. *People v. Reedy*, 186 Ill. 2d 1, 15 (1999).

¶ 51 Based on *Wooters*, all of the amendatory provisions adopted in Public Act 89-203, including the provision under which defendant was sentenced, are void *ab initio*. Thus, the statutory language mandating a term of natural life imprisonment under section 5-8-1(a)(1)(c)(ii) is void. Moreover, our legislative research revealed that subsection (a)(1)(c)(ii) has not been reenacted since *Wooters*. Accordingly, defendant was improperly sentenced to a mandatory life sentence under section 5-8-1(a)(1)(c)(ii). See *People v. Quevedo*, 403 Ill. App. 3d 282 (2010) (State conceded that the defendant's sentence was void because the mandatory natural life term under section 5-8-1(a)(1)(c)(ii) has been declared unconstitutional in *Wooters* and has not be reenacted); see also *People v. Crutchfield*, 2015 IL App (5th) 120371.

¶ 52 The State argues that section 5-8-1(a)(1)(c)(ii) was subsequently reenacted in Public Act 89-462 (effective May 29, 1996) and is still good law. We disagree. Since the *Wooters* decision, no other legislative act has redrafted the language of subsection (a)(1)(c)(ii). Following the enactment of Public Act 89-203, section 5-8-1 of the Code has been amended by 22 public acts. The legislature has never formally reenacted the language found unconstitutional in *Wooters*. We recognize that the language of subsection (a)(1)(c)(ii) has been restated in other public acts,

including Public Act 89-462. However, the specific provision under which defendant was sentenced has not been reenacted by the appropriate typographical devices indicating that the language struck down in *Wooters* was cured or validated by a subsequent public act. See *Reedy*, 186 Ill. 2d at 15.

¶ 53 The State cites several cases in its motion to add additional authority in support of its position that section 5-8-1(a)(c)(1)(ii) has been reenacted following our supreme court's 1997 decision. See *People v. Davis*, 2014 IL 115595, ¶ 30; *People v. Miller*, 202 Ill. 2d 328 (2002); *People v. Brown*, 2014 IL App (4th) 120887, ¶ 21; *People v. Brown*, 2012 IL App (1st) 091940, ¶ 53; and *People v. Morgan*, 375 Ill. App. 3d 525, 528 (2007). None of those cases raised a constitutional challenge to the mandatory natural life provision in subsection (a)(1)(c)(ii) based on the single subject rule violation found in Public Act 89-203. The courts in those cases were not asked to address the *Wooters* decision or to apply its facially constitutional analysis to the sentencing provision before us. Thus, the State's cases are inapplicable.

¶ 54 Defendant's sentence is vacated, and the cause remanded for a new sentencing hearing to allow the trial court to impose a term according to the statutory language in effect prior to the enactment of Public Act 89-203.[1]

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[1] Prior to the enactment of Public Act 89-203, section 5-8-1(b) provided that if any of the aggravating factors listed in section 9-1(b) of the Criminal Code of 1963 were present, the court could impose a natural life sentence. See 730 ICLS 5/5-8-1(b) (West 1994). Section 9-1(b) established that it was an aggravating factor if the offender murdered an individual under 12 years of age and the offense was accompanied by exceptionally brutal or heinous behavior indicative of wanton cruelty. See 720 ILCS 5/9-1(b)(7) (1994).

¶ 55 CONCLUSION

¶ 56 The order of the circuit court of Will County convicting defendant of first degree murder is affirmed. Defendant's sentence is vacated, and the cause is remanded for a new sentencing hearing as directed.

¶ 57 Affirmed in part and vacated in part; cause remanded with directions.