2017 IL App (1st) 142492-U
No. 1-14-2492

THIRD DIVISION
April 26, 2017

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court
	)	of Cook County.
Plaintiff-Appellee,	)	
	)	
v.	)	No. 08 CR 12937
	)	
KENYDALE ROBINSON,	)	
	)	The Honorable
Defendant-Appellant.	)	Gregory Robert Ginex,
	)	Judge Presiding.

JUSTICE PUCINSKI delivered the judgment of the court.
Presiding Justice Fitzgerald Smith and Justice Lavin concurred in the judgment.

ORDER

¶ 1 *Held:* defendant's first degree murder and attempted first degree murder convictions affirmed where he was not denied his constitutional right to present a defense; cause remanded for the circuit court to correct the mittimus to reflect a single conviction for attempted first degree murder and a single conviction for first degree murder to comply with the court's oral pronouncement and the one-act, one-crime rule.

¶ 2 Following a bench trial, defendant Kenydale Robinson was convicted of first degree murder and attempted first degree murder, and was sentenced to 71 years' imprisonment. On appeal, defendant challenges his convictions and the sentences imposed thereon, arguing: (1) he

was denied his constitutional right to present a defense; and (2) his mittimus should be corrected to comply with the court's oral ruling and to avoid running afoul of the one-act, one-crime rule. For the reasons delineated herein, we affirm defendant's conviction for first degree murder and attempted first degree murder. We do, however, remand the cause to the circuit court and order the court to correct defendant's mittimus to vacate several inapplicable convictions.

¶ 3 BACKGROUND

¶ 4 On June 2, 2008, 18-year-old Quinntin Washington and his 17-year-old girlfriend, Tawanna Ford, were shot at while they were driving through the streets of Maywood, Illinois. Although Washington was unharmed, Ford, who was shot in the head, died as a result of the injuries she sustained from the shooting. Defendant was subsequently arrested and charged with multiple offenses in connection with the shooting, including first degree murder, attempted first degree murder and aggravated discharge of a firearm.

¶ 5 Pretrial Proceedings

¶ 6 Following his arrest, defendant was advised of his *Miranda* rights. He elected to waive his rights and submit to a videotaped interrogation. The interrogation took place over the course of two days and lasted approximately six hours in total. During the course of the interrogation, defendant admitted to the shooting.

¶ 7 Defendant subsequently filed a motion to suppress his statement. The motion alleged, in pertinent part, that "due to the physical, physiological, mental, education, emotional and/or psychological state, capacity and condition of the defendant, he was incapable and unable to appreciate and understand the full meaning of his *Miranda* rights and any statement was therefore not the free and rational choice of the accused and was not made voluntarily." In support of this argument, defendant alleged that he had "the equivalent of a seventh grade

education, and a neuropsychological assessment revealed mild mental retardation, characterized by impaired intellectual functioning (full scale I.Q. = 63). At the time of the statement he was 20 years old."

¶ 8 The circuit court presided over a hearing on defendant's motion. At the hearing, the parties presented experts who provided testimony about the voluntariness of defendant's confession. Doctor Robert Hanlon, a clinical neuro psychologist, testified as defendant's retained expert. Doctor Hanlon testified that he evaluated defendant on two different dates and administered various tests. Based on the results of those tests, Doctor Hanlon determined that defendant had a full scale IQ of 63 and thus fell in the "mild mental retardation range." He also determined that defendant's reading comprehension ability was at a second-grade level while his reading accuracy ability was at a third-grade level. Doctor Hanlon further testified that "due to [defendant's] intellectual impairment, and due to a neuro-developmental disorder and multiple cognitive deficits, *** he is vulnerable to interrogative suggestion." Given this vulnerability, Doctor Hanlon opined that there was a "possibility" that defendant would alter his responses when faced with interrogative pressure. Doctor Hanlon acknowledged, however, that defendant's IQ did not preclude him from understanding his *Miranda* rights. After reviewing videotape of defendant's interrogation, Doctor Hanlon testified that he had some "concerns" about defendant's vulnerability to interrogative suggestion; however, he acknowledged that defendant appeared to "underst[a]nd what was being asked of him and *** how he was being challenged."

¶ 9 Doctor Eric Neu, a licensed clinical psychologist, testified as the State's retained expert witness. Doctor Neu also examined defendant on two separate occasions. On both occasions, Doctor Neu concluded that defendant "was engaging in malingering" in that he "was purposely

presenting himself as more impaired than [wa]s really the case." In contrast to the image that defendant attempted to project, Doctor Neu found that "there was nothing obvious from his presentation to suggest that he had severe cognitive deficits." Defendant was able to process his inquiries and render relevant responses. Doctor Neu also reviewed the video of defendant's interrogation and made the following observations: "[H]e did not appear to have significant difficulties understanding inquiries. He spoke in a fairly eloquent manner on the videotapes. He was not just giving one or two word answers, but he at times was speaking for several sentences and his speech would remain organized and relevant during those times. He demonstrated a decent vocabulary. He wasn't using just real short or limited words." When asked about defendant's vulnerability to interrogative suggestion, Doctor Neu noted that defendant did not appear to simply "mimic" language used by detectives; rather, he "appeared to be able to stick up for himself and say no and not just readily give in to anything that the detective and sergeant wanted him to say." There were also occasions in which defendant appeared to take control over the interview himself.

¶ 10 On cross-examination, Doctor Neu acknowledged that he did not test defendant's IQ and admitted that defendant possibly "suffers from some degree of cognitive deficits;" however, he emphasized that on the two occasions he met with defendant, he "wasn't displaying severe deficits." Doctor Neu further acknowledged that defendant initially denied his involvement in the shooting before ultimately admitting to his role in the crime. In his opinion, however, it did not appear that defendant's change in story was due to his will being overcome; rather, "it appeared as though the detectives were shooting holes in the defendant's story and he gradually was adjusting his story based on what the detectives were informing him that they already

knew." Doctor Neu nonetheless agreed that it was "possible" that defendant's will was overcome.

¶ 11 After considering the evidence presented by both parties[1] and viewing the recording of defendant's interrogation, the circuit court denied defendant's motion to suppress his statement. In doing so, the court noted that "although [defendant] may have an IQ of 63" and "read at a particular level," he appeared to be "very streetwise." In the court's opinion, "the totality of the circumstances" did not support defendant's argument that there was any coercion or that his will was overcome by suggestion. Moreover, it did not appear that defendant misinterpreted or misunderstood what was going on during the course of the interrogation.

¶ 12 Thereafter, the cause was set for trial. Prior to trial, the State filed a motion *in limine* seeking to bar Doctor Hanlon's testimony regarding defendant's vulnerability to suggestion. After hearing arguments from the parties, the circuit court granted the State's motion. In doing so, the court held that defense counsel was free to challenge the credibility and weight of defendant's confession and that Doctor Hanlon could provide testimony about defendant's IQ and reading comprehension and accuracy levels. The court, however, determined that Doctor Hanlon's testimony regarding the possibility of defendant's vulnerability to suggestion "goes beyond the pale," and therefore barred this portion of his testimony. The cause then proceeded to trial.

¶ 13 Trial

¶ 14 Quinntin Washington testified that on June 2, 2008, he and Ford, whom he had been dating for one year, spent the day together. By early evening, they were on their way back to Ford's house. Washington was driving his 1999 Pontiac Bonneville and Ford was seated in the

[1] We note that additional witnesses were called upon to testify at the suppression hearing. Because their testimony is not relevant to resolve the issues defendant raises on appeal, we need not detail their testimony in this disposition.

front passenger seat. When they reached the intersection of 9th Avenue and Washington Boulevard, they stopped for a red light. Washington recalled that while his vehicle was stopped, he looked to the right and observed a white Cadillac parked in a body shop. As he was admiring the car, defendant and another African American male came into view. Defendant was wearing a white shirt, dark pants and a baseball cap. He was the taller of the two men. As they walked across 9th Avenue in front of Washington's car, defendant spoke to him, stating: "What the f*** you looking at?" Washington testified that he "didn't say nothing" in response and simply made a left-hand turn onto Washington Boulevard when the traffic light turned green. After making the turn, however, he stopped his vehicle because he thought defendant was possibly "one of his friends." After he pulled over and the two men walked closer, he realized that he was mistaken and that he did not know either of the two men. As Washington began to pull away from the curb, he saw defendant aiming a gun in his direction. Before he was able to "hit the gas and take off, ***bullets just started flying" as defendant began discharging his weapon. Washington estimated that defendant fired about 3 times in his direction. One of the bullets "shattered" the rear window located on the driver's side of the vehicle. Once Washington was able to drive away, he asked Ford if she was okay. When he did not hear a response, he looked over at her and saw that she was bleeding from her head. Washington immediately drove to Westlake Hospital and carried her into the building so she could obtain treatment.

¶ 15 Several days later, on June 5, 2008, Washington went to the Maywood Police Department to view a photo array. Defendant's picture was included in that array and Washington identified him as the shooter. He returned to the police department on June 11, 2008, to view a physical lineup. Defendant was included in the lineup and Washington again identified him as the shooter.

¶ 16 On cross-examination, Washington acknowledged that he provided a statement following the shooting. In that statement, Washington stated that when defendant asked "what the f*** you looking at," he responded, "What?" Although he signed the statement, he did not remember responding to defendant's inquiry. Washington estimated that when he pulled his car over, he looked at defendant for "a second" or "half a second" before defendant started shooting. He acknowledged that he could not recall which of the three shots caused his rear window to shatter because it happed "so fast." In addition, he could only describe the firearm that defendant discharged in his direction as a "small weapon." Washington denied that shots could have been fired from multiple guns because he only saw one gun. Moreover, defendant was the individual firing that weapon.

¶ 17 Jason Harris categorized defendant as "an acquaintance of an acquaintance" whom he knew "from around the neighborhood" for several years. He testified that sometime after 5 p.m. on the evening of June 2, 2008, he was in Maywood "talking trash with the fellows" near the intersection of 6th and Walnut. He recalled observing defendant in the area at approximately 5:30 p.m. Defendant was wearing a white T-shirt, blue jeans and a white hat. Sometime after 7 p.m., Harris began walking to a family member's house located at 12th and Warren. He was "accompanied by [defendant.]" After stopping by the house briefly, Harris testified that he and defendant decided to return to the area of 6th and Walnut. When the two men reached the intersection of 10th and Washington, they saw a red car stopped at a red light waiting to make a left-hand turn. A "brown skinned guy" with a "low haircut" was driving the vehicle and a female was sitting in the front passenger seat. Defendant asked Harris if he knew the man driving the vehicle, but he did not. Harris then noticed the driver looking at them, and he asked the driver, "What's the problem?" In response, the driver cursed at them and called them "b***

a*** n***." When the light turned green, the driver made a left turn and then stopped his vehicle and removed his seatbelt. Harris then heard a series of "like 3" shots being fired and when he looked over to his left he saw defendant firing a gun at the car. When the vehicle began driving off, Harris saw the rear passenger window shatter. Harris observed defendant continue pointing his gun in the direction of the moving car. At that point, Harris "took off running." When he returned to the area of 6th and Walnut, Harris purchased cigarettes at a nearby gas station. Harris subsequently encountered defendant "just a little bit later." At that point, defendant was wearing a blue and white "Coogi" shirt.

¶ 18 Harris was shown a picture of Washington's vehicle and confirmed that it was the car he observed at the intersection of 9th and Washington. He was also shown a picture of defendant wearing the blue shirt and confirmed that was the shirt defendant was wearing on June 2, 2008.

¶ 19 On cross-examination, Harris testified that he heard Ford speak to the Washington after he had stopped the car and was removing his seatbelt and ask, "why you about to do this?" Harris explained that it sounded "like she didn't want him to get out of the car or something." Harris further testified that he spoke to police investigating the shooting. He explained that police arrived at his residence on June 12, 2008, and stated that they "needed [him] for questioning" and that he drove himself to the Maywood Police Department. When Harris arrived, he went into an interrogation room with a police officer. The door to the room was closed, but he did not know whether the door was locked. Although he was not told that he was free to leave, Harris testified that he did not make an effort to leave because he "was trying to figure out what [he] was under questioning for." Harris estimated that he was at the station for "several hours" and felt like he "couldn't just leave" until the police "figure[d] everything out."

He testified that it was "not long" before he relayed that "he saw that shooting" and identified defendant as the individual "who did the shooting."

¶ 20 Harris acknowledged that he did not know whether Washington had a weapon in his car at the time that defendant began shooting. Harris had no knowledge of any problem between defendant and Washington that occurred in the weeks before the shooting. He emphasized that he did not know Washington and had "never even seen him before in [his] life until that day."

¶ 21 Samuel Brooks testified that on June 2, 2008, he was visiting a friend in Maywood. He acknowledged that he knew defendant but stated that he could not remember whether he had seen defendant that day. Brooks acknowledged that he testified before a grand jury on June 6, 2008, but stated that he did not testify "of [his] will" and that he "made up a bunch of stuff" and "said a lot of stuff [that] wasn't true." When asked specifically about his grand jury testimony, Brooks admitted that he had previously testified that he heard three gunshots on the evening of June 2, 2008, as he was walking towards Madison on 6th Street. Shortly after the shots were fired, Brooks saw defendant running toward him. Defendant was wearing blue jean shorts, no shirt and was holding a white hat in his hand. Defendant was "sweating and shaking" and appeared to be "nervous." When he saw Brooks, defendant told him that he "needed a shirt" because he "thought [he] caught a body." Brooks understood that to mean that defendant thought he had killed somebody. After learning that Brooks did not have an extra shirt, defendant "took off running again."

¶ 22 Following the parties' questioning of Brooks, the circuit court inquired whether Brooks was admitting he lied before the grand jury and Brooks ultimately responded, "yeah." The circuit court admonished Brooks about committing perjury and he was then taken into custody.

¶ 23 Officer Donna Lewis, an evidence technician with the Maywood Police Department, testified that she was assigned to the investigation into Ford's shooting. She first responded to Westlake Hospital, where Ford had been transported to following the shooting. When she arrived, she noticed that "a red car was parked in the service area where the ambulances parked with the doors open." Officer Lewis conducted a "cursory inspection of the interior of the vehicle" and observed "a lot of blood spattered throughout the interior." Inside the hospital, Officer Lewis had an opportunity to view Ford, who at that time, was unconscious with a bandage on the left side of her head. Ford died later that day. Following her trip to the hospital, Officer Lewis relocated to the area of the shooting, which had already been secured by other officers. At the intersection of 9th Avenue and Washington Boulevard, she saw pieces of shattered glass. Although she looked for firearms evidence, she was unable to find any during her search of the intersection.

¶ 24 During the course of her investigation, Officer Lewis had an opportunity to take a closer look at the interior of Washington's vehicle, which she had first seen parked outside of Westlake Hospital. During her search of the vehicle, she recovered a "projectile" in "the rear floor area on the passenger's side" and inventoried the silver bullet fragment in accordance with police protocol. A second projectile was later provided to her by the medical examiner, who recovered the item during Ford's autopsy. That item was also inventoried in accordance with police protocol.

¶ 25 Maywood Police Detective Charles Porter, one of the officers assigned to Ford's homicide investigation, testified that on June 11, 2008, he located defendant at a residence located at 4326 West 17th Street in Chicago, arrested him, and transported him to the Maywood Police Department for questioning. When they arrived at the station, defendant was put into an

interview room and received his *Miranda* admonishments. Defendant agreed to speak to him and signed a *Miranda* waiver form. Detective Porter testified that the interview was videotaped. During the course of the interview, defendant initially denied knowing anything about the shooting. Thereafter, defendant changed his story and admitted that he had heard about the shooting from somebody. Finally, defendant ultimately told Detective Porter that he was personally involved in the shooting. He described the shooting as an "accident" and that he had just meant to "scare" Washington, the driver of the vehicle, and did not intend to actually shoot anybody. Defendant also admitted that he had a previous conflict with Washington prior to the date of the shooting.

¶ 26 Following Detective Porter's testimony, the State proceeded by way of stipulation. The parties first stipulated to the testimony of Doctor John Santaniello. Pursuant to the stipulation, Doctor Santaniello would provide testimony about his treatment of Ford when she was transferred from Westlake Hospital to Loyola Medical Center at 8:49 p.m. on June 2, 2008. Specifically, Doctor Santaniello would testify that Ford's CT scan showed a "transcranial gunshot wound with associated devastation of her brain." Based on the results of the CT scan, a decision to remove life support was made and Ford ultimately died at 10:29 p.m.

¶ 27 It was further stipulated that Doctor Michelle Jorden, an assistant medical examiner with the Cook County Medical Examiner's Office, was assigned to conduct Ford's autopsy. Pursuant to the stipulation, Doctor Jorden would testify that Ford suffered a gunshot wound to the left side of her head. The gunshot wound was ".3 inches in diameter" and "coursed left to right." A medium-caliber lead bullet was recovered from the right temporal lobe of Ford's brain. Doctor Jorden would opine that Ford's death was caused by a single gunshot wound to the head and would classify the manner of death as a homicide.

¶ 28 The parties also stipulated to the testimony of Assistant State's Attorney Michael Hogan who questioned Samuel Brooks before a grand jury on June 6, 2008. ASA Hogan would testify that in response to his inquiries, Brooks admitted that he heard three gunshots on the evening of June 2, 2008, and encountered defendant shortly thereafter. Defendant ran toward him wearing blue jean shorts and carrying a white hat. Defendant was not wearing a shirt. He was shaking and sweating and appeared to be nervous. When defendant encountered Brooks, defendant indicated that he needed a shirt because he thought "caught a body." Brooks understood that to mean that defendant thought he killed somebody. When Brooks did not give defendant a shirt, defendant "took off running again."

¶ 29 After presenting the aforementioned evidence, the State rested. Defense counsel, in turn, moved for a directed finding, which the circuit court denied. Thereafter, defendant presented the stipulated testimony of Doctor Hanlon. Pursuant to the stipulation, Doctor Hanlon would testify that he examined defendant on two occasions and formed an opinion that defendant possessed an IQ of 63 and therefore suffered from "mild mental retardation." Doctor Hanlon would also testify that he examined defendant's reading comprehension and accuracy abilities. Based on the results of the examination, Doctor Hanlon would opine that defendant "functions at the second grade level" for reading comprehension and that he "functions at a third grade level" for reading accuracy. Given the circuit court's ruling on the State's motion *in limine*, the stipulation did not reference Doctor Hanlon's opinion that there was a "possibility" that defendant was vulnerable to interrogative suggestion.

¶ 30 Thereafter, defendant elected not to testify and defense counsel rested its case.

¶ 31 In rebuttal, the State entered into evidence the transcript of Doctor Neu's testimony from the hearing on defendant's motion to suppress his statement.

¶ 32 The parties then delivered closing arguments. After reviewing the evidence presented, the court found defendant guilty "on all counts in the indictment." The court explained its rationale as follows:

> "We have to look at the attempt murder here. It is a specific intent crime. The attempt murder requires the State to prove that the Defendant with the intent to kill did an act, to wit, fired a handgun, knowingly with the intent to kill Quinntin Washington which constituted a substantial step toward the commission of first-degree murder. The confrontation here was not with Ms. Ford. The confrontation, if anything, was with the driver, Mr. Washington. The shots in the car were meant for Mr. Washington. It is clear from the evidence.
>
> What happened was by transferred intent, the Defendant killed Ms. Ford. It was clear from the evidence that the Defendant fired those shots with intent to kill or attempt to kill Mr. Washington. What happened was he missed and killed the young lady.
>
> From the totality of the evidence in this case, it is abundantly clear to the Court, based on direct and circumstantial evidence, as well as looking at the physical layout of the scene, that the State has proven all counts in the indictment, and that the Defendant was the person who possessed the firearm, did fire the weapon, did cause the death; and therefore, the Defendant is found guilty on all counts in the indictment."

¶ 33 The cause then proceeded to a sentencing hearing. After the parties presented arguments in aggravation and mitigation, the court sentenced defendant to 50 years' imprisonment for first degree murder and 21 years' imprisonment for attempted first degree murder, the sentences to be served consecutively.

¶ 34 Defendant's posttrial motions were denied. This appeal followed.

¶ 35 ANALYSIS

¶ 36 Right to Present a Defense

¶ 37 On appeal, defendant raises no challenge to the sufficiency of the evidence. Instead, he argues that the circuit court erred in granting the State's motion *in limine* to preclude Doctor Hanlon from testifying that defendant's cognitive limitations created a possibility that he was vulnerable to interrogative suggestion during the course of his police interrogation. Defendant argues that the circuit court's ruling prohibiting him from introducing expert testimony and argument regarding his vulnerability to suggestion interfered with his constitutional right to present a defense.

¶ 38 The State initially responds that defendant failed to preserve this issue for appellate review. On the merits, the State argues that the circuit court did not err in excluding expert testimony concerning defendant's "alleged vulnerability of interrogative suggestibility" and that the exclusion of such evidence did not deprive defendant of his right to present a defense.

¶ 39 As a threshold matter, defendant concedes that he failed to properly preserve this issue for appellate review because trial counsel did not include this purported error in defendant's posttrial motion. See *People v. Enoch*, 122 Ill. 2d 176, 186 (1988) (recognizing that to properly preserve an issue for appeal, a defendant must object to the purported error at trial and specify the error in a posttrial motion and that his failure to satisfy both requirements results in forfeiture of appellate review of his claim); see also *People v. Denson*, 2014 IL 116231, ¶ 13 (recognizing that an issue is properly preserved when the matter was raised and litigated in a motion *in limine* and included in a posttrial motion). In an effort to avoid forfeiture, however, defendant invokes the plain error doctrine, which provides a limited exception to the forfeiture rule and allows for review of forfeited issues on appeal if the evidence is closely balanced or if the claimed error is

of such a serious magnitude that it affected the integrity of the judicial process and deprived the defendant of his right to a fair trial. Ill. S. Ct. R. 615(a) (eff. Jan. 1, 1967); *People v. Belknap*, 2014 IL 117094, ¶ 48; *People v. Sargent*, 239 Ill. 2d 166, 189 (2010); *People v. Piatkowski*, 225 Ill. 2d 551, 564-65 (2007). Here, defendant relies on the first prong of plain error review and argues that the court's purported error prejudiced him because the evidence was closely balanced. The first step in any plain error analysis is to determine whether any error actually occurred. *Piatkowski*, 225 Ill. 2d at 565; *People v. Rinehart*, 2012 IL 111719, ¶ 15. If an error is discovered, the defendant then bears the burden of persuasion to show that the error prejudiced him. *Sargent*, 239 Ill. 2d at 189-90. Keeping this standard in mind, we turn now to evaluate the merit of defendant's claim.

¶ 40 Every criminal defendant is afforded the constitutional right to confront the witnesses against him and present a meaningful defense. Ill. Const. 1970, art. I, §8; U.S. Const., amends. VI, XIV; see also *Crane v. Kentucky*, 476 U.S. 683, 690 (1986) (quoting *California v. Trombetta*, 476 U.S. 479, 485 (1984)) ("the Constitution guarantees criminal defendants 'a meaningful opportunity to present a complete defense' "). At the same time, "[t]he trial court has the power and discretion to exclude evidence offered by the defense in a criminal case on the basis of irrelevancy without infringing on an accused's constitutional right to present a defense." *People v. Brewer*, 2013 IL App (1st) 072821, ¶ 51. Motions *in limine* fall within the circuit court's broad inherent authority to admit or exclude evidence, and as with other evidentiary rulings, the circuit court's judgment will not be disturbed absent an abuse of discretion. *People v. Nelson*, 235 Ill. 2d 386, 420 (2009); *People v. Stevenson*, 2014 IL App (4th) 13013, ¶ 26; *People v. Bennett*, 376 Ill. App. 3d 554, 571 (2007). An abuse of discretion pertaining to an evidentiary ruling " ' will be found only where the trial court's ruling is arbitrary, fanciful,

unreasonable, or where no reasonable person would take the view adopted by the trial court.' " *People v. Thompson*, 2013 IL App (1st) 113105, ¶ 100 (quoting *People v. Caffey*, 205 Ill. 2d 52, 89 (2001)).

¶ 41 Where, as here, the circuit court denies a defendant's motion to suppress his statement and finds that the statement was voluntarily given, a defendant nonetheless still has the right to present relevant evidence and challenge the credibility of, or weight to afford, his confession. *People v. Polk*, 407 Ill. App. 3d 80, 102 (2010); *Bennett*, 376 Ill. App. 3d at 571; *People v. Wood*, 341 Ill. App. 3d 599, 608 (2003). Evidence is considered relevant if it has any tendency to make the existence of a fact that is of consequence to the matter more or less probable than it would be without the evidence. *People v. Gonzalez*, 142 Ill. 2d 481, 487-88 (1991); *People v. Roman*, 2013 IL App (1st) 110882, ¶ 23. More specifically, expert testimony is considered to be relevant and admissible where such testimony pertains to matters that are generally beyond the common knowledge of ordinary citizens and where the testimony will aid the fact finder in reaching its conclusion. *People v. Bergund*, 2016 IL App (5th) 130119, ¶ 142; *Polk*, 407 Ill. App. 3d at 102; *People v. Itani*, 383 Ill. App. 3d 954, 977 (2008); *Bennett*, 376 Ill. App. 3d at 571; *Wood*, 341 Ill. App. 3d at 599. Illinois courts have routinely concluded that a defendant's susceptibility to interrogative suggestion is not a difficult concept that is beyond the understanding of laypersons and that a circuit court does not abuse its discretion in barring such testimony. See, *e.g.*, *Polk*, 407 Ill. App. 3d at 102 (holding that the circuit court did not err in excluding an expert from testifying that the defendant's low IQ and the interrogation techniques used created a risk of false confession because such matters were not beyond the common knowledge of lay persons and because the jury had heard evidence about the defendant's educational background and intellectual level and could make its own determination as to how

those factors pertained to the defendant's confession); *Itani*, 383 Ill. App. 3d at 977-78 (concluding that the circuit court did not abuse its discretion in precluding an expert from testifying that the defendant's brain injury made him susceptible to police suggestibility where the matter "was not beyond the understanding of ordinary citizens" and where the jury had been presented with evidence about the defendant's brain injury and brain functioning and was able to draw its own conclusions on the impact those matters had on the defendant's confession); *Bennett*, 372 Ill. App. 3d at 571-73 (finding that the circuit court did not abuse its discretion in precluding an expert from testifying that defendant, who had an IQ of 73 and attended a school for individuals with learning and behavioral difficulties, was susceptible to police interrogations and suggestions because such testimony was not beyond the understanding of laypersons and because the jury heard evidence regarding the defendant's school and intellectual performance and could assess the effect that the defendant's intellectual abilities had on his confession).

¶ 42 In light of the aforementioned authority, we are unable to agree with defendant that the circuit court erred and abused its discretion in granting the State's motion *in limine* to preclude Doctor Hanlon from testifying that defendant's IQ and cognitive abilities made him vulnerable to suggestion. Initially, we note that defendant elected to proceed by way of a bench trial rather than a jury trial and that matters pertaining to a defendant's vulnerability to suggestion are not beyond the common knowledge of the judiciary. Moreover, we note that the circuit court's decision to limit Doctor Hanlon's testimony did not preclude defendant from mounting a meaningful defense. When the circuit court granted the State's motion *in limine* and limited the scope of Doctor Hanlon's testimony, it emphasized that its ruling did not preclude defendant from challenging the credibility of his statement or the weight to afford to his confession. Moreover, based on the court's statements when finding defendant guilty, the court

acknowledged defendant's "low IQ" and his "less than normal function," but nonetheless found that the totality of the evidence, including defendant's statement as well as the eyewitness testimony, was sufficient to establish his guilt beyond a reasonable doubt. Ultimately, "[h]aving found no error, there can be no plain error." *Bannister*, 232 Ill. 2d at 79.

¶ 43 Nonetheless, assuming *arguendo* that the circuit court's ruling did amount to error, defendant's claim necessarily fails because he cannot show he was prejudiced by the error. Indeed, notwithstanding defendant's argument to the contrary, the evidence against him was not closely balanced given that two eyewitnesses conclusively identified defendant as the shooter.

¶ 44 Mittimus

¶ 45 Defendant next argues, and the State agrees, that his mittimus should be corrected to reflect a single conviction for first degree murder and a single conviction for attempted first degree murder in order to properly reflect the circuit court's oral pronouncement and comply with the one-act, one-crime rule.

¶ 46 Following the shooting, defendant was charged with six counts of first degree murder, one count of attempted first degree murder and one count of aggravated discharge of a firearm. Defendant was found guilty of all counts. At the sentencing hearing, the court sentenced defendant as follows:

> "[I]t is the decision of this Court that as to Count I on the charge of murder you be sentenced to a term of 25 years plus 25 years for a total of 50 years in the Illinois Department of Corrections.
>
> With respect to Counts 2 through 6, those are all first degree murder charges. They will merge. With respect to Count 7 [attempted first degree murder], the defendant will

be sentenced to 6 years plus 15 years for the use of the gun for a total of 21 years. That would mean 71 years in the Illinois Department of Corrections.

I will indicate to [defendant] again that—again, with respect to the aggravated discharge [of a weapon charge], since it's one act, one crime, and it is, in fact, the same act that caused the murder, et cetera, there will be no sentence on that. It will merge."

¶ 47 Contrary to the circuit court's pronouncement, defendant's mittimus reflects convictions for all counts charged in the indictment. That is, the mittimus reflects six convictions for first degree murder (Counts 1 through 6), one conviction for attempted first degree murder (Count 7) and one conviction for aggravated discharge of a firearm (Count 8).

¶ 48 In addition to failing to correspond to the circuit court's judgment, the mittmus, in its current form, also fails to abide by the one-act, one-crime rule. That rule, in effect provides that a defendant may not be convicted of more than one offense "carved from the same physical act." *People v. King*, 66 Ill. 2d 551, 566 (1977); see also *People v. Hampton*, 406 Ill. App. 3d 925, 943 (2010). More specifically, "[w]here but one person has been murdered, there can be but one conviction of murder." *People v. Cardona*, 158 Ill. 2d 403, 411 (1994). In this case, defendant was charged with the murder of one person: Tawana Ford. Accordingly, under such circumstances, only a conviction on the most serious charge of murder, *i.e*. intentional murder, may be upheld. *Id*. at 411-12. Therefore, we direct the circuit court to correct defendant's mittimus to reflect a single conviction for first degree murder under Count 1 of the indictment. The five remaining first degree murder convictions must be vacated.

¶ 49 Similarly, defendant's aggravated discharge of a firearm conviction must also be vacated because it stems from the act of discharging a firearm in the direction of the vehicle he knew to be occupied by Washington and Ford. The same act alleged in the indictment formed the basis

for defendant's convictions for the murder of Ford and the attempted murder of Washington. Because aggravated discharge of a firearm is a less serious offense than first degree murder or attempted first degree murder, we direct the circuit court to correct the mittimus and vacate defendant's aggravated discharge of a firearm conviction. See, *e.g.*, *People v. Beltran*, 327 Ill. App. 3d 685, 693 (2002) (vacating the defendant's aggravated discharge of a firearm conviction where the same physical act formed the basis for the defendant's attempted first degree murder conviction, the more serious offense).

¶ 50 CONCLUSION

¶ 51 For the aforementioned reasons, we reject defendant's argument that he was denied his constitutional right to present a defense and affirm his convictions for first degree murder and attempted first degree murder. We remand the cause to the circuit court for the limited purpose of correcting the mittimus to reflect a single conviction for first degree murder and single conviction for attempted first degree murder.

¶ 52 Affirmed in part; remanded in part.