

convicted of the first-degree murders of his wife and her daughter, home invasion, two counts of aggravated battery with a firearm, and aggravated discharge of a firearm. The jury found defendant eligible for the death penalty. The trial court entered judgment on counts I and III and sentenced defendant to death on those convictions. The trial court sentenced defendant to concurrent terms of natural life and 15 years' imprisonment on the home invasion and the aggravated discharge of a firearm convictions, respectively. The trial court did not impose judgment and sentences on the remaining murder counts or the two counts of aggravated battery with a firearm because it found those convictions merged with the intentional murder convictions. Defendant filed a timely notice of appeal.

¶ 3 Initially, this case went directly to our supreme court for review pursuant Supreme Court Rule 603 (eff. July 1, 1971); however, it was transferred from the supreme court to this court after the Governor commuted defendant's sentence to life in prison without the possibility of parole instead of a death sentence on March 9, 2011. Our General Assembly has since abolished the death penalty in Illinois pursuant to Public Act 96-1543 (eff. July 1, 2011) (amending 725 ILCS 5/119-1 (West 2010)). The issues raised by defendant in this appeal are as follows: (1) whether the trial court erred in denying defendant's motions for a change of venue, (2) whether defendant was denied his right to the effective assistance of counsel during his fitness hearing, (3) whether the trial court erred in denying defense counsel's challenges for cause to jurors David Simmons and Barbara Boyd during the fitness hearing, (4) whether the trial court's denial of defense counsel's request to *voir dire* potential jurors about defendant's white-supremacist beliefs deprived defendant of his right to an impartial jury, (5) whether the trial court erred in failing to suppress defendant's confession, (6) whether defendant's conviction for the intentional first-degree murder of Amanda Jeffers was proper, and (7) whether the Illinois death penalty statute is constitutional.

¶ 4 Due to the Governor's commutation of defendant's sentence, we note that the final

issue raised by defendant concerning the death penalty is moot. Likewise, the fourth issue raised is moot to the extent that it relates to sentencing. With regard to all remaining issues, we affirm.

¶ 5

FACTS

¶ 6 On May 16, 2006, defendant was charged by information with the above-outlined offenses for acts which allegedly occurred on May 15, 2006. The State's Attorney filed a notice of intent to seek the death penalty. Defendant filed a motion to suppress his postarrest statements. During the suppression hearing, evidence was presented that when the police took defendant into custody on the night of May 15, 2006, his interrogations were audio and video recorded. DVD recordings of the incriminating interrogations were played at the suppression hearing, during which defendant indicated that he suspected his wife was having an affair in the months prior to his arrest. There was considerable friction in his marriage due to finances and his wife's children from a prior marriage. Ultimately, he and his wife separated, and his wife moved in with her daughter, Amanda. Amanda shared the house with Michael Rister and Rachel Byrum.

¶ 7 According to defendant, Mike Rister and three other men attacked and beat him shortly after his separation from his wife. Defendant admitted he stole a gun from the home of an acquaintance, Larry Reynolds. Defendant said he followed his wife after she got off work to the home in which she was living on May 15, 2006. When he arrived at her house, he tried to talk to her, but she ignored him and began walking into the house. He then shot her. He said he hit her at least once and then followed her inside the house, where he continued shooting. He emptied one ammunition clip and reloaded. Inside the house, he saw Amanda, who he described as being in the "wrong place at the wrong time," and he also shot her.

¶ 8 Defendant's former pastor and officers involved in defendant's interrogation also

testified at the suppression hearing. The parties filed written closing arguments, after which the trial court entered an order finding the videotaped statements made on May 15, 2006, were voluntary and admissible. The trial court also found other statements made by defendant to Deputy Sykes upon his arrest and to the sheriff were admissible.

¶ 9 Defendant filed a motion for a change of venue. Several newspaper articles were attached as exhibits, as was a summary of a telephone survey of potential jurors in White County. The defense also filed a motion to determine whether defendant was fit to stand trial. On November 21, 2006, the trial court appointed Dr. Robert E. Chapman to examine defendant for the purpose of determining fitness.

¶ 10 On November 25, 2007, a hearing on the motion for change of venue was conducted. Richard Hall, who conducted the telephone survey, testified that on the evening of August 22, 2006, his company conducted a telephone survey of White County households concerning defendant's case. A total of 5,140 households were called, and 2,525 people answered the phone. One thousand forty-two people agreed to participate in the survey. Five hundred eighty-five people said that they heard about the case. Five hundred thirty-nine people expressed an opinion, with 436 people stating that defendant was "probably guilty." The State presented a sworn statement from the county clerk which stated there are 11,385 registered voters in White County. The trial court reserved its final ruling, noting that it would conduct at least preliminary *voir dire* in White County. The court granted defense leave to raise the issue again if *voir dire* indicated that defendant would be unable to obtain an impartial jury in White County.

¶ 11 On December 3, 2007, jury selection for a hearing on defendant's fitness to stand trial convened. The trial court denied a defense challenge to juror David Simmons for cause. Simmons stated that his father, who was in the oil business, knew the State's Attorney well and the two had done a lot of work together. Simmons, who was a contractor, expressed

concern about losing work during jury service. Simmons's wife also expressed concern to the circuit clerk about Simmons serving on a jury and said it would cause "considerable unhappiness in their home." The trial court also denied a defense challenge for cause to Barbara Boyd. Boyd's daughter was an EMT who responded to the scene of the instant homicides. Boyd's daughter received a subpoena to be a potential witness in the criminal trial. Boyd also worked with the State's Attorney's wife at the same place of employment. Ultimately, the defense accepted a jury panel which was to determine defendant's fitness that included David Simmons and exercised a peremptory challenge on Boyd.

¶ 12 Dr. Robert Chapman testified for the State that defendant was fit to stand trial. He found that while defendant suffered from a personality disorder, not otherwise specified, and exhibited some antisocial and narcissistic traits, he did not suffer from any mental condition which rendered him incapable of understanding the nature and purpose of the proceedings or from assisting in his defense. Dr. Terry Killian testified for the defense that defendant was not fit to stand trial. While he found defendant may have been able to understand the nature of the charges and the proceedings, he would be incapable of assisting his attorneys due to his paranoia. Dr. Killian found that defendant suffered from a mild psychosis most likely induced by chronic cocaine use.

¶ 13 During closing arguments, the State asserted defendant was fit to stand trial. Defense counsel agreed that there was no issue concerning defendant's ability to understand the nature of the proceedings, but asserted that the issue was whether defendant has the mental capacity to assist in his defense. Defense counsel said there was ample evidence to support their theory that defendant was unfit and ample evidence to support a finding of unfitness. Counsel explained that the matter needed to be decided by somebody who was not close to the case, somebody neutral and detached, and that is why it was before the jury. He asked the jurors to be fair and to use their own life experiences in deciding the issue of fitness.

Ultimately, the jury found defendant fit to stand trial, and the trial court issued an order confirming the jury's verdict that defendant was mentally fit to stand trial.

¶ 14 Defendant filed a supplemental motion for a change of venue, attaching several exhibits. The trial court heard brief arguments and then noted its position had not changed on the issue, but reserved a final ruling until *voir dire* was conducted as that "will give us a good idea as to whether or not it is possible for us to obtain a jury in this county." Several other pretrial matters were ruled upon by the trial court, including the following proposed *voir dire* question: "You may hear evidence that the defendant professes to believe in the supremacy of the white race. Will that prevent you from being able to be fair and unbiased in your consideration of this case?" After discussion, the trial court denied the proposed question.

¶ 15 Defense counsel orally renewed the motion for a change of venue during *voir dire* after 140 potential jurors had been questioned, and 41 survived challenges for cause. Defense counsel asked in the alternative that if the trial court was unwilling to grant the motion, the defense be granted additional peremptory challenges. The trial court denied both the request for a change of venue at that point in the proceedings as well as the request for additional peremptory challenges. The trial court made a final ruling on the motion for change of venue at the close of evidence on the first day of trial, specifically stating, "Based on the fact that we are able to select and swear in 12 jurors and three alternates, the [c]ourt is going to deny that motion for change of trial at this time."

¶ 16 The trial started on March 3, 2008. The State presented evidence that Kathleen, defendant's wife, sought an order of protection against defendant, and defendant was served with that order on May 4, 2006, at his residence. A short time later, a property exchange between defendant and Kathleen occurred, which was supervised by the police. Mike Rister, who was dating Amanda Jeffers, testified that he was present in court when Kathleen

obtained the order of protection.

¶ 17 After Kathleen received the order of protection, Rister, Kathleen, and Amanda took a walk in downtown Carmi near the courthouse. As they walked by Danny's Pool Hall, defendant came out and said to Kathleen, "You're dead, bitch." Kathleen called the police on her cell phone and defendant went back inside the pool house. Rister heard defendant make other threats against Kathleen in the days following the issuance of the order of protection. Rister also heard defendant make threats via phone to both him and Kathleen in the days following the issuance of the order of protection.

¶ 18 Monica Burgess, a coworker of Kathleen's at a nursing home, drove to and from work with Kathleen in April and May 2006. Burgess testified that one day she and Kathleen were parked at a Huck's store in Carmi when defendant pulled in beside her. Burgess went into the store while Kathleen remained in the car. When Burgess exited the store, she heard defendant tell Kathleen, "You're dead, bitch."

¶ 19 On May 15, 2006, Burgess and Kathleen worked the 6 a.m.-to-2 p.m. shift at the nursing home. After work, Burgess took Kathleen home. She stopped just short of Kathleen's driveway and the two talked in the car. An old yellow car pulled up beside them on the passenger side closest to Kathleen.

¶ 20 Kathleen got out of the car and started talking to defendant, who was in the yellow car. Burgess heard defendant tell Kathleen he was leaving the area and that Kathleen could pick up her remaining belongings at his trailer. She also heard defendant tell Kathleen he loved her. As Kathleen started to walk away, defendant exited the yellow car. Kathleen saw defendant with a gun and heard three gunshots. She saw Kathleen flinch, fall to the ground, and start screaming. Fearing for her own life, Burgess drove away from the scene and headed toward Doug's convenience store because Kathleen's daughter, Amanda, worked there. On her way to Doug's, Burgess called 9-1-1 to report what she witnessed.

¶ 21 Rachel Byrum testified that she started working with Amanda at Doug's convenience store in April 2005. Six or seven months later, she and Amanda rented a house together, along with Mike Rister. Approximately two months later, Kathleen and her two younger children moved in with them.

¶ 22 Byrum and Amanda were inside the house at the time Kathleen was shot outside. Byrum walked from her room to a bathroom across the hall. Amanda was coming out of the bathroom as Byrum was entering. Byrum partially shut the bathroom door, but left it ajar six to eight inches. Byrum heard a commotion and saw a shadow enter the house. She heard a smacking sound and heard Amanda say, "Oh my God, Gary, don't do this." She smelled gunpowder and heard someone fall to the ground. She saw a shadow go the other way to leave the house and then she heard a car "peeling out." She made her way through a closet into her bedroom where she retrieved her cell phone. She called her friend who was a police officer and then called 9-1-1.

¶ 23 Jill Roberts lived near Byrum and could look out her kitchen window and see the back door of Byrum's house. Roberts was doing dishes on the afternoon of May 15, 2006. She saw Burgess's car pull up near Byrum's house, and as Burgess's car was pulling away, a yellow Monte Carlo partially entered Byrum's driveway at a slant. Roberts saw a man exit the yellow car and run into Byrum's house. Roberts heard five gunshots and then saw the man run out of the house. He got into the yellow Monte Carlo and drove away. She did not see anyone else enter or exit the house and saw no other occupants in the Monte Carlo.

¶ 24 Christopher Burgess, Monica's son, testified that he was working on his computer in his home located across the street and diagonally from Byrum's house on the date in question. He heard a hammering noise and went outside to investigate. He saw a man whom he identified as defendant with a gun in his hand running out of Byrum's house. He saw defendant get into a "yellowish" Monte Carlo and drive away. He testified that he did not

think anyone else was in the car, but conceded that he told the police a few hours after the incident that he saw a white man wearing a hat in the passenger seat of the Monte Carlo.

¶ 25 Sheriff Doug Maier testified that he and some of his deputies were attending graduation ceremonies when he received a dispatch about a shooting at the Byrum house. He and his deputies immediately responded to the scene. He entered the house from the back door and observed two holes in the outer wall, which appeared to be bullet holes. He entered an enclosed porch where he saw an ammunition clip on the floor. When he entered the house he looked down a narrow hallway into the living room and saw Kathleen's body on the floor. Upon entering the living room, he also saw Amanda's body. He obtained statements from Rachel Byrum and Monica Burgess. He assigned a deputy to look for defendant, who was apprehended later that evening. Around 6 a.m. the following morning, he and defendant drove to a rural area to look for a gun and clothes, which defendant said he had thrown out his car. Neither the gun nor the clothing were found.

¶ 26 The Reverend Royce Roy testified for the State over defendant's objection. He said he had known defendant for 10 or 11 years and was his minister when defendant lived near Roy's church in the St. Louis metropolitan area. He had not seen or heard from defendant for three or four years prior to May 15, 2006. Defendant called Roy on the date of the murders and said he shot and killed his wife and stepdaughter. According to Roy, defendant was remorseful, and Roy feared defendant was suicidal. Defendant told Roy he was hiding with a vehicle in a wooded area. Roy drove toward Carmi and contacted the state police. After defendant surrendered, Roy met with him at the police station. Defendant was sorry for his actions and visibly upset.

¶ 27 Dustin Buttry, a Carmi police officer, saw defendant drive his car into a vacant lot. Buttry arrested defendant at that time. During the arrest, Buttry observed what appeared to be blood on defendant's hands and clothing. Robert Sykes, a deputy who was also at the

scene of the arrest, transported defendant to jail. Defendant told Sykes: "I've done something horrible. I've hurt a couple of people."

¶ 28 Sergeant Henby testified that he conducted the interrogation of defendant on the evening of May 15, 2006. He said he noticed defendant had a cut on his hand with blood on it. Henby testified that the interrogation occurred in three segments and there were videotapes of each segment. During the interrogation, defendant made incriminating statements. The tapes were played for the jury. Henby admitted defendant refused to sign the waiver form and said he was not waiving his rights, but agreed to make a statement. Henby agreed that defendant told him he had been threatened in the days prior to the shooting, but Henby did not investigate that claim.

¶ 29 The clothes defendant was wearing at the time of his arrest were admitted into evidence and shown to the jury. There was a red stain on the left knee of the jeans and long underwear defendant was wearing. DNA samples taken from the bathroom floor of Byrum's house matched defendant's DNA.

¶ 30 Larry Reynolds testified that defendant visited his home on several occasions and helped with projects around the house. Defendant had a key to Reynolds's house in order to feed the dogs if Reynolds was gone. Reynolds kept about six guns at his house. After the murders, the police came to Reynolds's house and Reynolds discovered that a 9.18-millimeter pistol was missing. The police took some of the ammunition for the 9.18-millimeter pistol and the holster.

¶ 31 Crime scene investigators removed two bullets from the exterior wall of Byrum's house, recovered an empty pistol magazine from the floor of the enclosed porch, removed a bullet from a living room wall, and recovered shell casings from the scene. A forensic expert testified that each spent shell casing came from the same weapon of which the precise caliber was 9.18 millimeters, and each spent bullet was fired from the same unknown

weapon. The expert testified that without the actual weapon from the scene, he could not conclusively say whether the bullets and the shell casings came from the same weapon.

¶ 32 Suzanne Glove testified that she sold defendant a yellow 1981 Monte Carlo in 2006. She was not sure of the exact date but thought it may have been the Friday or Monday prior to the shootings in question.

¶ 33 An autopsy showed that Kathleen died of multiple gunshot wounds, including a wound to her neck, which indicated the barrel of the gun was touching her neck when the shot was fired. An autopsy on Amanda also indicated that she died as the result of multiple gunshot wounds.

¶ 34 After hearing all the evidence, the jury returned a verdict finding defendant guilty of the first-degree murder of Kathleen, first-degree murder of Amanda, home invasion, aggravated battery with a firearm against Amanda, and aggravated discharge of a firearm. Thereafter, the jury found defendant eligible for the death penalty. The State then presented its case in aggravation.

¶ 35 Several witnesses testified that in the weeks before the accident, defendant made numerous threats against Kathleen. Rachel Byrum testified that when Kathleen came to her house and asked if she could move in, Kathleen told her about an incident in which defendant was driving her car and she was a passenger and defendant deliberately drove into a ditch and into a stop sign. Defendant told Kathleen he was going to kill her. Approximately two weeks before defendant shot Kathleen, he called Kathleen on her cell phone. Kathleen asked Byrum and others to listen to the conversation because she thought she needed witnesses. Byrum heard defendant tell Kathleen to have her clothes picked out for her funeral because he had a bullet with her name on it. They reported this call to a local police officer. According to Byrum, defendant told Kathleen that she would be dead by Mother's Day. Kathleen was killed the Monday after Mother's Day.

¶ 36 Defendant's actions were so threatening that Byrum actually tried to stay away from the house and usually spent five nights a week sleeping somewhere else. Kathleen's and Mike Rister's tires were slashed on their respective cars. Mike Rister would park his car two blocks away so that defendant did not think Rister was home. After defendant wrecked her car, Rister's father fixed the windshield, causing defendant to accuse Kathleen of having an affair with Rister's father.

¶ 37 Monica Burgess discussed the incident when defendant threatened Kathleen outside of Huck's and said defendant told Kathleen she would be dead before Mother's Day. A police officer testified that he took a report from Kathleen about the Huck's incident and the incident outside Danny's Pool Room. Both incidents were a violation of an order of protection. Monica also testified again about what she witnessed the day of the shootings.

¶ 38 Candace Dale testified that she and her husband owned the convenience store where Amanda worked. They loved Amanda like their own daughter. After the shootings, Candace was responsible for telling Kathleen's two youngest children their mother was dead. Kathleen also had a daughter who lived in Alabama. As soon as that daughter learned of her mother's death, she drove to Illinois and stayed with Candace. They planned the funeral together. Kathleen's two younger children also stayed with her for a couple of nights after the murder. Candace testified that while they were staying with her she was very afraid because defendant threatened to have "skinheads" come finish the job he failed to finish. Candace and her husband were afraid they could not protect Kathleen's children, so they made arrangements and paid for them to stay in a hotel for five days. After that, Kathleen's two younger children went to Alabama to live with their oldest sister.

¶ 39 Colleen Holloman, who worked with Kathleen at the nursing home and shared rides with her, testified that defendant followed her and Kathleen and made threats to Kathleen. Holloman also testified that defendant threatened to have someone burn her home down.

This was corroborated by the father of Holloman's children, Robert Melendez, who shared a jail cell with defendant. Melendez testified that while sharing a cell, defendant told him that if anyone testified against him he was going to send down "neo Nazis" from St. Louis with whom he was acquainted and have them burn down their houses.

¶ 40 The State also presented evidence that defendant interfered with Kathleen's employment. The administrator of the nursing home testified that defendant came to the nursing home and told her that Kathleen was a drug addict who was stealing drugs and other items from the nursing home. The administrator told him to bring proof of the thefts, and defendant brought back a thermometer that Kathleen had most likely inadvertently left in her coat pocket when she left work. It was an inexpensive item. Kathleen submitted to a drug test after defendant made the allegations against her, and the results were negative.

¶ 41 The State presented evidence that defendant was a controlling liar who did not get along well with Kathleen's children. Various inmates reported that defendant had homemade weapons in his cell. Jail officials recovered shanks and weapons from defendant's cell. The State also presented evidence that defendant spit on the State's Attorney during one of the court proceedings. Finally, the State presented evidence of defendant's prior convictions, which included a violation of an order of protection, burglary, and attempted child abduction.

¶ 42 Defendant testified during the mitigation phase against counsels' advice. Defendant testified that he and Kathleen had a mutual parting of the ways over issues with the children and finances. Approximately two or three weeks before the shootings, he was beaten up by four men, including Mike Rister, and was told he better leave town. Defendant suspected Kathleen was cheating on him, and he hired a private investigator to follow her. The investigator caught Kathleen on tape "sleeping with a— with a nigger." Defendant said that pretty much ended their relationship. Defendant testified he destroyed the tape and would not reveal the name of the private investigator.

¶ 43 Defendant admitted that he killed Kathleen and Amanda basically in the manner in which the witnesses testified, specifically saying: "They don't have it quite real accurate, but it's close enough. I mean, so—and then Amanda come out there and just bad situation."

Defendant went on to state about the murders:

"Well, about the only thing, that anybody that tells you that, you know, they committed premeditated first-degree murder and they tell you they're sorry, they're lying. I don't sit here sorry for that at all. I don't have any reason to be sorry for that. I just—I do feel sorry for the kids involved in the matter."

Defendant rambled about when he "drowned a dude for screwing another dude's wife" and when he "took the axe and chopped that dude's head and hands off over there for owing a little bit of drug debt." He asked if those things mattered and admitted, "I mean, probably I am menace to society by all rights, and that's the only reason I'm probably sitting here today."

¶ 44 Defendant said he was affiliated with white supremacists, having gotten involved with them while attending a school that was 70% black. He said, "I got tired of getting jumped, and [the white supremacists] just kind of took me under their wing." He moved to Illinois to try to get away from that life, but he said he could not ever really get away because "they know where you live, and they'll come by your house. *** You're never out until you're dead."

¶ 45 Defendant testified that he did not have any "mental issues" that would exonerate him of the crimes. He said he had issues, but pointed out that everybody has issues. He specifically recalled that two of his sons died, and said that while this makes him sad, he thinks they are in a better place. He said a day does not go by when he does not think of his two dead children but sees the situation as "just the way the cards fall." Both children died as infants. One death was ruled pneumonia and one was ruled Sudden Infant Death

Syndrome (SIDS).

¶ 46 Barbara Camerer, defendant's sister, testified that their father was convicted of murder in Florida in 1975, and he died in prison. She said after their father went to prison they were taken out of parochial school and put in public school and it was very difficult dealing with the publicity. Ultimately, the family moved to Illinois from Florida to get away and live with their grandparents. Barbara testified it was very difficult financially to be raised by a single mother and that her father's incarceration was difficult on defendant. She testified about defendant's two prior marriages and the loss of his sons. She said the first child was actually his stepson. The second was named Brandon, and defendant suspected that the mother of the child might have had something to do with his death, even though the official cause of death was SIDS. She said after Brandon died, defendant "just didn't seem the same." Barbara said she loved Kathleen like a sister and she was shocked and devastated when she learned of her death. As to defendant's claims to be affiliated with neo-Nazis or skinheads, she said she thinks "it's crazy."

¶ 47 Debbie Clark, another sister of defendant, corroborated Barbara's testimony about the family's difficulties after their father was convicted of murder. She also corroborated the difficulties defendant had in dealing with the death of his son, Brandon. She said the death "took a toll" on defendant and after that he got into drugs heavily. Debbie finds it difficult to believe defendant's claims about his connection to white supremacists.

¶ 48 The Reverend Roy testified that he had counseled defendant and his previous wife, Michelle. He said their relationship was dysfunctional and defendant was "unstable" and lost his temper quite a bit. However, Roy ultimately sided with defendant in those divorce and child custody proceedings because he believed Michelle was lying more than defendant. He knew of the deaths of the other children, and he was concerned about their remaining child, Gary Jr.

¶ 49 On May 15, 2006, the Reverend Roy received a call from defendant's mother, who was hysterical about the shootings. She asked him to call defendant, and he did. He said defendant admitted to the shootings and talked about killing himself. Ultimately, defendant agreed that if Roy would come down, he would turn himself in to police with Roy's assistance. Defendant told Roy about all the marital difficulties he and Kathleen were having and said he loved Kathleen and could not live without her and that is what led him to kill her. According to Roy, one minute defendant would be remorseful and the next minute he would be trying to justify his actions. Roy said defendant always believed he was "handed a bad deck of cards in his life" due to the situation with his father. He recalled defendant having "some pretty rough friends," but did not ever see evidence of him being involved with "skinheads."

¶ 50 Defendant worked at a tool-and-dye shop from 1999 until 2003. His employer during that time testified that defendant never caused any problems with coworkers and his job performance was good. He recalled defendant as being "a person that really loved his kids, and he tried his hardest to get his family back together." He said defendant was always battling somebody over custody issues. He said defendant was not fired from the job, but was just ready to move on and do something different.

¶ 51 Jailers testified that defendant was suicidal immediately following the murders. Defendant denied being suicidal.

¶ 52 Defendant's first wife, Rebecca, and his son from that marriage, Daniel, testified. Rebecca was 19 when she married defendant. They divorced because defendant was having an affair. Rebecca testified that defendant was never cruel or violent when they were married. Daniel testified that he did not like to be around defendant's second wife, Michelle, and Rebecca corroborated this. Rebecca had no concerns about Kathleen and even allowed Daniel to live with Kathleen and defendant. After defendant shot Kathleen and Amanda, he

called Rebecca and Daniel and told them that he was not going to be able to see Daniel for awhile. Defendant finally told Rebecca that he shot Kathleen. He said he felt someone was out to get him and that is why he was carrying a gun. Defendant told Rebecca he had some pills and he was contemplating suicide. Defendant also told her the Reverend Roy was on his way and he was going to turn himself in to the police. Daniel and Rebecca made a trip to the jail to see defendant about a month before the trial, but defendant did not want to see them.

¶ 53 Susan Frasier, defendant's sister who lives in Florida, testified about her and defendant's difficult childhood. She testified defendant took several pills when he was 16 and she thought he was going to overdose, so she told her mother, and defendant went to rehabilitation. She did not think defendant went to school much past eighth grade. She testified to the difficulties defendant had with his second wife, Michelle, and how "hurt" defendant was by the loss of his stepson and biological son.

¶ 54 Prior to the murders, defendant called Susan and told her about his marital problems with Kathleen and the fact that he believed Kathleen was cheating on him. Susan encouraged him to come to Florida and stay with her. Defendant refused, saying he did not have the financial means to get to Florida and that he still loved Kathleen. Defendant called her the afternoon of the murders and was crying. He said something happened with "Mandy and Kathy" and he said he wanted to die and to tell everyone he loved them.

¶ 55 Dr. Terry Killian, a board-certified psychiatrist, testified that he interviewed defendant for approximately 10 hours on May 29 and May 30, 2007. He found defendant to be paranoid. Defendant believed the police were conspiring against him and that Kathleen was having an affair, even though Dr. Killian found no evidence to suggest that was true. In talking to people who knew defendant, Dr. Killian found evidence to suggest that defendant's behavior changed substantially in the two years preceding the murders. He believed

defendant developed a substance-induced psychosis in recent years, which could have come from chronic cocaine use; however, Dr. Killian was unsure of the psychosis's precise origin. Dr. Killian acknowledged there was little independent evidence, outside of defendant's admissions, that defendant was an extensive cocaine user. He testified that defendant was uncooperative with him and the defense team. Defendant refused to sign releases for his school or medical records. Defendant told Dr. Killian he was opposed to mitigation evidence and would sabotage any efforts at mitigation.

¶ 56 Dr. Killian recently received a report from 1986 from Christian Brothers Hospital in St. Louis when defendant was 15 and admitted into rehabilitation. At that time, defendant was using alcohol and marijuana and had tried cocaine and LSD. Defendant did not take rehabilitation seriously and left after five days. Dr. Killian found this new report to add credibility to his diagnosis of drug-induced psychosis because it showed that as early as age 15 defendant was having substantial problems with drugs.

¶ 57 Dr. Killian thought there were several mitigating circumstances, including defendant's difficult childhood, lack of parental guidance, death of two sons, and belief that his second wife Michelle may have had something to do with his son's deaths, as well as his psychosis. He believed that defendant was under the influence of extreme mental or emotional disturbance at the time of the murders. Dr. Killian opined that at the time of the shootings defendant "had these delusional, paranoid ideas that certainly interfered in his capacity to think through what he was doing and make reasonable choices"; however, he did not believe defendant was so substantially impaired that he could not appreciate the criminality of his behavior.

¶ 58 In rebuttal, the State presented Dr. Robert Chapman, who is board certified in psychiatry and forensic psychiatry. He examined defendant three times, August 16, 2006, December 6, 2006, and October 5, 2007, for fitness purposes. Dr. Chapman disagreed with

Dr. Killian's diagnosis and did not believe defendant suffered from psychosis. Dr. Chapman did not believe there was any basis for finding chronic drug-induced psychosis. He said if there was even a mild psychosis, he did not see it, and he pointed out that only a moderate to severe psychosis would impair a person's ability to function; a mild psychosis would "hardly" affect a person's ability to function. Moreover, a drug-induced psychosis would only affect a person currently using drugs or a person who had used drugs within the previous month. He opined that defendant was not suffering any reduced mental capacity at the time of the murders, nor was he suffering from anything more than anger.

¶ 59 After hearing all the evidence, the jury found death to be an appropriate sentence. The trial court entered its judgment on count I and count III. The trial court indicated that it entered judgment on the most culpable first-degree murder convictions and merged the other murder counts into the most severe. The trial court entered death sentences on counts I and III. The court also entered judgment on count VI, home invasion, and count IX, aggravated discharge of a firearm. The trial court sentenced defendant to natural life on count VI and 15 years on count IX. The trial court declined to enter judgment on the jury's additional guilty verdicts, finding that these counts were lesser-included offenses.

¶ 60 Defendant filed motions for a new trial and a new sentencing hearing, which were denied. Defendant filed a timely notice of appeal. The case went directly to our supreme court for review, but was transferred to this court after the Governor commuted defendant's sentence to natural life in prison without the possibility of parole on counts I and III.

¶ 61

ANALYSIS

¶ 62

I. Change of Venue

¶ 63 The first issue we address is whether the trial court erred in denying defendant's motion for a change of venue. Defendant argues the trial court deprived defendant of his right to a fair and impartial jury by denying his motion for a change of venue because the trial

was convened in the county where the offenses occurred, the county has a small population, extensive news coverage and public discussion of the case throughout the community influenced a majority of the jury venire, and most of the venire members knew or had contact with the witnesses of the shooting. The State replies that the trial court did not abuse its discretion in denying defendant's motion for a change of venue because defendant failed to demonstrate that a presumption of prejudice is warranted or that any actual prejudice infected his jury.

¶ 64 A defendant is entitled to a change of venue as a result of pretrial publicity if a reasonable apprehension exists that he or she cannot receive a fair and impartial trial. *People v. Fort*, 248 Ill. App. 3d 301, 309, 618 N.E.2d 445, 452 (1993). "Exposure to publicity about a case is not enough to demonstrate prejudice because jurors need not be totally ignorant of the facts and issues involved in a case." *People v. Kirchner*, 194 Ill. 2d 502, 529, 743 N.E.2d 94, 108 (2000). What is essential is that the jurors who are ultimately chosen are able to lay aside impressions or opinions and render a verdict based upon the evidence presented at trial. *People v. Sutherland*, 155 Ill. 2d 1, 16, 610 N.E.2d 1, 7 (1992). The issue on appeal is not how much pretrial publicity occurred, but whether defendant received a fair and an impartial trial. *People v. Lucas*, 132 Ill. 2d 399, 422, 548 N.E.2d 1003, 1011 (1989).

¶ 65 While defendant asserts that pretrial publicity was so pervasive that prejudice against him must be presumed, we find that not to be the case. White County has 11,385 registered voters. In the instant case, over 140 people were questioned for defendant's 12-person jury, and 80 people were questioned for the four alternate positions. Out of these 220 people, approximately 150 people had been exposed to media coverage about the case, and approximately 100 people formed an opinion about the case based upon the pretrial publicity. However, these 100 people represent less than 50% of the prospective jurors.

¶ 66 Of the 12 people actually chosen to serve on the jury and the 4 alternates, many of

them were unfamiliar with the case or had only heard about it in general, and all of them expressed a willingness to put aside what he or she knew about the case and decide it based only upon the evidence presented at trial. Even juror Harms, over whom defendant strenuously objected, stated during *voir dire* that she initially had an incorrect presumption about the case and knew that it was not fair to convict a person for information heard outside of the courtroom. She assured the court that she could set aside whatever information she knew and make a decision based solely upon the evidence presented at trial. Most importantly, the trial court correctly reconsidered defendant's motion for a change of venue following jury selection. It is only after the jury selection process has occurred that there will be real evidence as to whether a fair and impartial jury can be selected as evidenced by the prospective jurors' responses. See *People v. Little*, 335 Ill. App. 3d 1046, 1053-54, 782 N.E.2d 957, 964-65 (2003).

¶ 67 Defendant relies on *People v. Taylor*, 101 Ill. 2d 377, 462 N.E.2d 478 (1984), in support of his contention that the trial court erred in not granting his motion for a change of venue. However, *Taylor* is distinguishable from the instant case because in *Taylor* there was an "unprecedented volume of publicity" combined with the jurors' exposure to polygraph information, which was particularly persuasive and highly prejudicial. *Taylor*, 101 Ill. 2d at 395, 462 N.E.2d at 486-87. In the instant case, there was certainly pretrial publicity, but not an unprecedented volume, and the jurors were not exposed to inadmissible polygraph information. Under the circumstances presented here, where the trial court continuously reconsidered its ruling regarding a change of venue, including after the first day of testimony, and the jurors all said they could be fair and impartial, we cannot say the trial court abused its discretion in denying defendant's motion for a change of venue.

¶ 68

II. Fitness

¶ 69 The second issue we are asked to consider is whether defendant was denied his right

to the effective assistance of counsel during his fitness hearing. Defendant argues he was denied his right to the effective assistance of counsel during the fitness hearing because defense counsel took no position on the issue of fitness and even argued that there was ample evidence for the jury to find defendant fit. Defendant insists that stating there was "ample" evidence to find defendant fit was tantamount to conceding that the State had met its burden of proof, thus rendering defense counsel's performance deficient. After careful consideration, we disagree.

¶ 70 To establish a claim of ineffective assistance of counsel, the defendant must show that (1) counsel made errors so serious and counsel's performance was so deficient that counsel was not functioning as "counsel" as guaranteed by the sixth amendment to the United States Constitution (U.S. Const., amend. VI) and (2) defendant was prejudiced by counsel's deficient performance. *Strickland v. Washington*, 466 U.S. 668 (1984). In order to demonstrate deficient performance, the defendant must overcome a strong presumption that counsel's action or inaction was the result of sound trial strategy and show that counsel's performance fell below an objective standard of reasonableness under the prevailing professional norms. *People v. Ramsey*, 239 Ill. 2d 342, 433, 942 N.E.2d 1168, 1218 (2010). In order to show prejudice, a defendant must prove that a reasonable probability exists that but for counsel's unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome. The prejudice prong of the *Strickland* test requires more than an "outcome-determinative" test; the defendant must also show that counsel's deficient performance makes the result of the trial unreliable or the proceeding fundamentally unfair. *People v. Evans*, 186 Ill. 2d 83, 93, 708 N.E.2d 1158, 1163-64 (1999).

¶ 71 In Illinois, a defendant may elect to have the issue of fitness determined by either a jury or the court. 725 ILCS 5/104-12 (West 2006). In the instant case, defendant filed a

pretrial motion in which he argued he was unfit to stand trial and requested that the issue be determined by a jury. At the hearing, the State's expert, Dr. Robert Chapman, testified that he interviewed defendant three times and reviewed police reports, witness statements, defendant's confession, and defendant's history, including social, marital, and drug and alcohol history. Dr. Chapman found that defendant suffered from an unspecified personality disorder and exhibited both narcissistic and antisocial traits; however, he did not believe defendant suffered from any mental condition which rendered him incapable of understanding the nature of the proceedings against him or assisting in his defense. Dr. Chapman concluded defendant was fit to stand trial.

¶ 72 On the other hand, while defendant's expert, Dr. Terry Killian, agreed that defendant did understand the nature of the criminal proceedings against him, he concluded defendant was incapable of assisting his attorneys with his defense because he suffered from a recently developed mild-to-moderate case of paranoia. Dr. Killian also testified that defendant suffered from mild psychosis, most likely caused by chronic cocaine use, and a personality disorder that interfered with his ability to assist his attorneys. Dr. Killian found defendant unfit to stand trial. Dr. Killian believed that antipsychotic medication could decrease defendant's paranoid thinking and restore him to fitness. Dr. Killian admitted that the only evidence of defendant's cocaine use was defendant's admission of such to Dr. Lipman and conceded that defendant later admitted to fabricating that information. Dr. Killian further admitted he did not question defendant about his drug history during the interview. Dr. Killian acknowledged defendant elected to have a jury trial and actively participated in jury selection.

¶ 73 Defendant specifically objects to defense counsel's use of the word "ample" with regard to the evidence during his closing argument, but after reviewing the prosecutor's closing in its entirety, we are unconvinced by defendant's contention that defense counsel

conceded defendant was fit. A review of defense counsel's closing in its entirety shows that this was a matter of trial strategy. Defense counsel made no secret of the fact that defendant was a difficult client. Defense counsel acknowledged that there needed to be an impartial trier of fact to determine whether or not defendant was fit to stand trial. Defense counsel acknowledged that the State's expert, Dr. Chapman, presented testimony that defendant was fit, but argued that Dr. Killian's opinion was more credible and logical. We agree with the State that defense counsel was merely acknowledging the State's credible evidence of fitness, namely Dr. Chapman's testimony, when discussing "ample" evidence. Defense counsel then countered this by pointing out defendant's own credible evidence of unfitness as offered through the testimony of Dr. Killian. Defense counsel then told the jury it was to decide the issue of fitness. Considering the entire closing, we find this to be a reasonable trial strategy under *Strickland*. We disagree with defendant's assertion that he is entitled to reversal of his convictions and a new trial on this basis.

¶ 74 Even assuming *arguendo* that defense counsel's performance was deficient, defendant has failed to show prejudice. "A defendant is unfit if, because of his mental or physical condition, he is unable to understand the nature and purpose of the proceedings against him or to assist in his defense." 725 ILCS 5/104-10 (West 2006). Even Dr. Killian, defendant's expert, agreed that defendant was able to understand the proceedings against him. The only issue was whether defendant was able to assist in his defense. Dr. Chapman testified convincingly that defendant was capable of assisting in his own defense, but chose not to do so. Dr. Killian's contrary conclusion was based upon the belief that defendant suffered from cocaine-induced psychosis. However, Dr. Killian admitted that defendant falsely reported using cocaine to Dr. Lipman, and despite knowing that defendant lied to Dr. Lipman, Dr. Killian did not survey defendant about his drug use. Moreover, Dr. Killian admitted that defendant chose a jury trial and actively participated with his lawyers in choosing a jury, thus

admitting that defendant assisted his attorneys. Under these circumstances, defendant has failed to convince us that he was prejudiced by his counsel's performance. Accordingly, we disagree with defendant that he was denied the effective assistance of counsel during his fitness hearing.

¶ 75

III. Challenges for Cause

¶ 76 The third issue raised by defendant is whether the trial court erred in denying defense counsel's challenges for cause to jurors David Simmons and Barbara Boyd during the fitness hearing. Defendant contends that the trial court abused its discretion and deprived defendant of an impartial jury during the fitness hearing by denying challenges to juror David Simmons for cause because Simmons expressed significant concerns about lost work time while serving on the jury and his wife even complained to the circuit clerk about the hardship Simmons's service would cause. Defendant contends that Simmons's concerns created incentives for him to disregard the defense expert's conclusion that defendant was unfit because finding defendant unfit would have required additional jury service to determine whether defendant's condition would improve with treatment. Defendant further contends the trial court abused its discretion in denying his challenge for cause to Barbara Boyd, asserting that Boyd was too well-acquainted with people intimately involved in the case to be objective. Defendant contends that when the trial court denied his objections for cause to Boyd and Simmons, it forced him to exercise his last peremptory challenge on Boyd and grudgingly accept Simmons, thereby depriving him of his right to an impartial jury. We disagree.

¶ 77 In reviewing a trial court's decision whether to excuse a venire person for cause, we are to review the venire person's statements "not in isolation but as a whole." *People v. Gaines*, 88 Ill. 2d 342, 357, 430 N.E.2d 1046, 1053 (1981). It is also important to recognize that the trial court is in a superior position to ascertain the meaning of what the venire person

was trying to convey. *People v. Holman*, 132 Ill. 2d 128, 148, 547 N.E.2d 124, 131 (1989). The decision whether to allow a challenge for cause lies within the sound discretion of the trial court and will not be disturbed on appeal absent an abuse of discretion. *People v. Taylor*, 166 Ill. 2d 414, 421-22, 655 N.E.2d 901, 905 (1995).

¶ 78 During *voir dire* the venire persons were specifically asked if the trial was to run through Friday, would it "cause a terrible inconvenience for any of you?" Simmons specifically answered, "May on work." The following colloquy then ensued between Simmons and defense counsel:

[Defense counsel:] May on work. I think—we really thing [*sic*] we'll be done surely Thursday, but would that still cause you a problem?

[Simmons:] No.

[Defense counsel:] Well, let me ask you this question. Can you deal with that or is that something that's going to take your mind off what you're doing and you'd be thinking about, oh, my God, I wish I was at work?

[Simmons:] It's hard to pay your bills without money. Got two baby kids.

[Defense counsel:] Is that something that would be on your mind that would distract you?

[Simmons:] When you got no lights, can't pay your bills, it's kind of on my mind, yeah.

[Defense counsel:] Okay. Okay. I may have Judge Sutton ask you a little bit more about that in just a minute.

[Simmons:] Okay."

The trial court then examined Simmons and the following colloquy ensued:

"Q. Mr. Simmons, a minute ago I asked you about that, and you indicated that you thought there, like if we were done Wednesday, would that work or not work?

A. Yeah.

Q. I'm not trying to pressure you. I understand the situation. It's just that what [defense counsel] brings up is an important issue. We've got to have you here and concentrating on what we're doing here and not concerned with something else.

A. I'm a contractor and I don't want to lose all of my work, you know, but I really, yeah, it would be an issue, but, then, again, if I can't do nothing about it, I can't do nothing about it.

Q. Well, that's what we're trying to do is to determine whether or not it's something that would prevent you from being able to be here and concentrating on what's going on here, and you're really the only one who can tell us that.

A. No, it will be all right.

Q. You're sure now?

A. (Nodding)."

Outside the presence of the jury, defense counsel moved to excuse Simmons for cause. The trial court noted that Simmons stated he would be able to manage his employment situation and, therefore, denied the motion.

¶ 79 The trial court then began the process of selecting the jury and called the venire members in panels of 4, with each side allowed 5 peremptory challenges in selecting the 12-person jury. In selecting the first eight jurors, the defense used four peremptory challenges. When Simmons's name came up for selection, defense counsel renewed his challenge for cause. Defense counsel told the trial court that he learned that Simmons's wife told the clerk that if Simmons was required to serve on the jury, it "would bring considerable unhappiness [to] their home." Defense counsel also sought to remove Boyd for cause, citing Boyd's relationship with the State's Attorney's wife and her daughter's role in the case. The trial court denied defendant's challenge for cause to Simmons on the basis that the fitness hearing

should be completed by Wednesday and that Simmons indicated he was available to serve until Friday. The trial court also denied the objection for cause to Boyd, noting that Boyd said she could be objective and because the hearing was limited to defendant's fitness, making Boyd's daughter's connection to the case irrelevant.

¶ 80 Ultimately, Simmons was included in the 12-person jury, even though defendant had one peremptory challenge remaining. The trial court then moved on to the issue of alternates and told defendant that he had two peremptory challenges, one left over from choosing the jury of 12, as well as an additional one granted by the trial court to the parties in choosing the alternates. The trial court tendered Boyd and another prospective juror. Defendant used a peremptory challenge to excuse Boyd and then accepted the next panel tendered. Therefore, defense counsel had one peremptory challenge remaining upon completion of selection of the alternates. Under these circumstances, defendant has failed to convince us that the trial court abused its discretion in denying defendant's challenges for cause to either Simmons or Boyd.

¶ 81 While Simmons initially expressed concern about serving on the jury due to his work, he ultimately reassured the trial court that he would be able to concentrate on the fitness hearing and that he would be willing to serve. As for Boyd, she worked at the same place the State's Attorney's wife was employed, but there is nothing in the record to suggest they had a close relationship. As for her daughter's relationship to the case, her daughter was a volunteer emergency medical technician who responded to the scene of the murders. Boyd was advised that she was being asked to serve on a jury which would determine defendant's fitness to stand trial, not determine whether or not defendant was actually guilty of the crimes with which he was charged. Boyd assured the trial court she would only consider the evidence presented during the hearing and could be objective.

¶ 82 Finally, defendant's claim that he was forced to use his last peremptory challenge to

excuse Boyd and accept Simmons is not supported by the record. Defense counsel had one peremptory challenge remaining, but did not use it on Simmons. When the panel of 12 was complete, defendant had one peremptory challenge remaining, which carried over for the selection of alternates. Defendant was also given another peremptory challenge for selection of alternates, giving him a total of two. He used one of his peremptory challenges on Boyd, but had one remaining when the two alternates were chosen.

¶ 83 Failure to challenge a jury for cause or by peremptory challenge waives any objection to that jury. *People v. Coleman*, 168 Ill. 2d 509, 546-47, 660 N.E.2d 919, 938 (1995). We agree with the State that under these circumstances, where defendant failed to exercise an available peremptory challenge to excuse Simmons and actually had a peremptory remaining at the conclusion of jury selection, defendant waived his claim that Simmons should not have been allowed to sit on the jury. Even if the issue was not waived, defendant has failed to convince us that he did not receive an impartial jury at his fitness hearing.

¶ 84 A review of Simmons's responses to both defense counsel's and the trial court's questioning shows that he was willing to serve on the jury and that he could set aside concerns about his job in order to be a fair and impartial juror. It is also clear that defendant did not suffer any prejudice from Boyd because ultimately she did not even sit on defendant's jury. Accordingly, we find no error in the trial court's denial of defendant's challenges for cause to either Simmons or Boyd.

¶ 85

IV. *Voir Dire*

¶ 86 The fourth issue we are asked to address is whether the trial court's denial of defense counsel's request to *voir dire* potential jurors about defendant's white-supremacist beliefs deprived defendant of his right to an impartial jury. Defendant contends that the trial court refused to allow reasonable *voir dire* concerning sensitive and controversial evidence relating to his white-supremacist views thereby undermining confidence that the jurors were able to

maintain their ability to impartially consider the issues of guilt, aggravation, and mitigation. Defendant asks us to reverse and remand for a new trial, or in the alternative, remand for a new sentencing hearing. Given the Governor's commutation of defendant's sentence, we agree with the State that this issue is moot to the extent that it relates to sentencing. In any event, we find the issue without merit.

¶ 87 Supreme Court Rule 431 concerns *voir dire* examination and provides in pertinent part as follows:

"(a) The court shall conduct *voir dire* examination of prospective jurors by putting to them questions it thinks appropriate, touching upon their qualifications to serve as jurors in the case at trial. The court may permit the parties to submit additional questions to it for further inquiry if it thinks they are appropriate and shall permit the parties to supplement the examination by such direct inquiry as the court deems proper for a reasonable period of time depending upon the length of examination by the court, the complexity of the case, and the nature of the charges. Questions shall not directly or indirectly concern matters of law or instructions. The court shall acquaint prospective jurors with the general duties and responsibilities of jurors." Ill. S. Ct. R. 431(a) (eff. May 1, 2007).

It is well-settled that the trial court is given the primary responsibility of conducting *voir dire*, and the extent and scope of such examination lies within the trial court's discretion. *People v. Strain*, 194 Ill. 2d 467, 479, 742 N.E.2d 315, 320 (2000).

¶ 88 In the instant case, defense counsel sought to pose the following question to the venire: "You may hear evidence that the defendant professes to believe in the supremacy of the white race. Will that prevent you from being able to be fair and unbiased in your consideration of this case?" The State, however, argued that defendant's white-supremacist views were irrelevant because defendant did not kill his wife or her daughter because of

them. The State suggested the following question be posed to the venire: "You may hear evidence that the defendant professes to have beliefs outside of the mainstream norms; regardless of how irrational or absurd those beliefs are, can you listen to the evidence and make a decision based only on that and not hold that against him?" The trial court denied defendant's request because the State was not alleging that defendant killed the victims due to his white-supremacist beliefs and because it felt that other questions posed during *voir dire* would be sufficient to detect juror bias.

¶ 89 In *Strain*, our supreme court held that where testimony concerning gang membership and gang-related activity is an integral part of the defendant's trial, the defendant must be given the opportunity to question the venire concerning any gang bias. *Strain*, 194 Ill. 2d at 481, 742 N.E.2d at 321. The supreme court reasoned that the trial court abused its discretion in disallowing questions about gangs on the basis that there is a strong prejudice against gangs in our society. *Strain*, 194 Ill. 2d at 477-80, 742 N.E.2d 320-22. Defendant claims that the same sort of prejudice exists against those espousing white-supremacist views and that it was an abuse of the trial court's discretion to disallow such questioning. However, we note that *Strain* also found that "evidence indicating a defendant is a member of a gang or is involved in gang-related activity is admissible only where there is sufficient proof that membership or activity in the gang is related to the crime charged." *Strain*, 194 Ill. 2d at 477, 742 N.E.2d at 321.

¶ 90 In the instant case, there was no allegation that defendant's white-supremacist views were in any way related to the crimes. This was a crime of passion in which defendant killed his estranged wife and her daughter who just happened to be in the wrong place at the wrong time. Defendant has failed to convince us that defendant's white-supremacist views would close the minds of the jurors to the evidence such " 'that they cannot apply the law as instructed in accordance with their oath.' " *Strain*, 194 Ill. 2d at 476, 742 N.E.2d at 476

(quoting *People v. Cloutier*, 156 Ill. 2d 483, 495-96, 622 N.E.2d 774, 781 (1993)). Under the circumstances presented here, defendant has failed to convince us that the trial court's denial of defense counsel's request to *voir dire* potential jurors about defendant's white-supremacist views violated his constitutional right to a fair trial before an impartial jury.

¶ 91

V. Motion to Suppress

¶ 92 The fifth issue raised on appeal is whether the trial court erred in failing to suppress defendant's statement. Defendant contends his statement should have been suppressed because the police failed to cease their custodial interrogation and provide him with counsel after he refused to waive his constitutional rights under *Miranda v. Arizona*, 384 U.S. 436 (1966). Defendant insists that his statements were coerced and involuntary and that the use of those statements rendered his trial fundamentally unfair and require his convictions be reversed. We disagree.

¶ 93 The sixth amendment provides that "[i]n all criminal prosecutions, the accused shall enjoy the right *** to have the Assistance of Counsel for his defence." U.S. Const., amend. VI. The fifth amendment provides that "[n]o person *** shall be compelled in any criminal case to be a witness against himself." U.S. Const., amend. V. Our state constitutional privilege against self-incrimination is found in article I, section 10, of the Illinois Constitution of 1970, which provides, "[n]o person shall be compelled in a criminal case to give evidence against himself nor be twice put in jeopardy for the same offense." Ill. Const. of 1970, art. I, § 10. In *Miranda*, the Supreme Court established a number of guarantees designed to counteract the "inherently compelling pressures" of custodial interrogation. *Miranda* held that a person under such interrogation has the right to have counsel present. However, *Miranda* also established that statements elicited during a custodial interrogation are admissible if the prosecution can establish that a suspect "knowingly and intelligently waived his privilege against self-incrimination and his right to retained or appointed

counsel." *Miranda*, 384 U.S. at 475.

¶ 94 Once a suspect asserts the right to counsel, not only must the current interrogation cease, but also the suspect may not be approached for further interrogation unless and "until counsel has been made available to him." *Edwards v. Arizona*, 451 U.S. 477, 484-85 (1981). If police subsequently initiate questioning without counsel present, the accused's statements are presumed involuntary and inadmissible. *Edwards*, 451 U.S. at 485-87. Whether a suspect actually invoked his right to counsel is an "objective inquiry." *Davis v. United States*, 512 U.S. 452, 458-59 (1994). In order to properly invoke his right to counsel, the suspect "must articulate his desire to have counsel present sufficiently clearly that a reasonable police officer in the circumstances would understand the statement to be a request for an attorney." *Davis*, 512 U.S. at 459. When a suspect makes an ambiguous or equivocal reference to an attorney, it is good police practice to clarify whether the suspect actually wants counsel; however, such clarification is not required. *In re Christopher K.*, 217 Ill. 2d 348, 379, 841 N.E.2d 945, 963 (2005) (citing *Davis*, 512 U.S. at 461-62).

¶ 95 Waiver of defendant's constitutional rights under *Miranda* need not be express, but may be inferred from defendant's actions and words. *People v. Byrd*, 139 Ill. App. 3d 859, 863, 487 N.E.2d 1275, 1278 (1986); see also *North Carolina v. Butler*, 441 U.S. 369, 373 (1979). There is no *per se* rule that when an accused refuses to sign a waiver form, but agrees to give a statement, that the statement cannot be used at trial. *Byrd*, 139 Ill. App. 3d at 863, 487 N.E.2d at 1278. The question of waiver is determined from the particular facts and circumstances of each case. *Butler*, 441 U.S. at 374-75.

¶ 96 In the instant case, the trial court conducted a hearing on defendant's motion to suppress, after which it denied the motion on the basis that the State proved by a preponderance of the evidence that defendant knowingly and voluntarily waived his *Miranda* rights. The trial court also found that defendant was "adequately and effectively" apprised

of his *Miranda* rights. Our review of the record supports the trial court's determination.

¶ 97 Defendant fled the scene after the victims were killed. Defendant was taken into custody later in the evening. Once in custody, he was interrogated by police. The interrogations were recorded on audio cassette and DVD. When the interview began, Sergeant Kelly Henby of the Illinois State Police read defendant his rights per *Miranda*. Defendant was crying and distraught and said he did not want to discuss anything at that time. Defendant requested he be allowed to speak to his pastor. Questioning was stopped, and the police waited for the pastor to arrive.

¶ 98 The Reverend Royce Roy encouraged defendant to talk to the police and tell the truth. After defendant and the pastor completed their conversation, the police again interviewed defendant. The second interview began at approximately 8:41 p.m. Henby again read defendant his *Miranda* rights from a prepared Illinois State Police form and asked defendant to initial and sign the form. The form states in pertinent part:

"Before we ask you any questions, it is my duty to advise you of your rights:

1. You have the right to remain silent.
2. Anything you say can be used against you in court or other proceedings.
3. You have the right to talk to a lawyer for advice before we ask you any questions, and to have him with you during questioning.
4. If you cannot afford a lawyer, one will be appointed for you, free of any cost to you, before any questioning if you wish."

After reading defendant the form, the following colloquy then ensued:

"[Defendant]: What's this waiver bit here?"

[Henby]: That's so you can sit here and talk to us without an attorney present.

And we can ask you questions rather than you just asking us questions.

[Defendant]: I just can't give you a statement without signing?"

[Henby]: Well, if you want to waive your rights verbally to an attorney, you just go to say I don't want an attorney present, you understood what I read you. But I don't know why you wouldn't want to sign this.

[Defendant]: Yeah, I'd rather not.

[Henby]: Do you understand those rights?

[Defendant]: Well yeah, I understand the rights, but ...

[Henby]: You just don't want to sign the form?

[Defendant]: Yes.

[Henby]: Well, the reason we're here is about what happened in Norris City today. And if you just want to give a statement, I'm willing to listen to it. But, I've got some questions here I'd like to ask you.

[Defendant]: Okay."

Henby then asks defendant a series of background questions, which defendant answers. After that the following discussion took place about the waiver form:

"[Henby]: Have you ever signed a rights waiver like that? You act like you're hung up about signing that.

[Defendant]: No. I'm not gonna waive my rights.

[Henby]: You just want to give us a statement?

[Defendant]: Yeah, I'll give you a statement.

[Henby]: Tell us what happened."

Defendant never signed the waiver form, but gave a detailed statement in which he admitted to shooting both victims.

¶ 99 While defendant refused to sign the waiver form, he nevertheless gave a detailed statement to the police admitting to the crimes. Defendant was told that he had the right to remain silent and any statement he gave could be used against him in court or other

proceedings. Defendant was also told that he had the right to counsel. Sergeant Henby read defendant his *Miranda* rights twice. He read them before defendant asked to talk to his pastor, and he read them a second time, at approximately 8:32 p.m. On both occasions, defendant said he understood his rights. Defendant told the Reverend Royce Roy he wanted to give a statement. At one point defendant did say he was not going to waive his rights, but he never asked for an attorney, and he went on to give an incriminating statement. Defendant's words and actions were ambiguous, and Officer Henby tried to clear up the ambiguity. Under these circumstances presented here, a reasonable police officer could believe that defendant was waiving his right to remain silent and his right to counsel, and the trial court did not err in denying defendant's motion to suppress.

¶ 100 Even assuming *arguendo* that defendant did not waive his rights and the statement should have been suppressed, any error caused by the introduction of defendant's admission would be harmless because of the overwhelming evidence against him. Several witnesses testified that defendant stalked Kathleen and made death threats against her. Kathleen's coworker was at the scene of the crime and saw defendant shoot Kathleen. Amanda's roommate was in the house at the time of the shooting and heard Amanda specifically say, "Oh my God, Gary, don't do this." Roy testified that defendant admitted killing both Kathleen and Amanda. Defendant's blood was found at the scene and Kathleen's blood was found on defendant's clothing. Once in custody, defendant told Deputy Sykes: "I've done something horrible. I've hurt a couple of people." Ballistic reports showed that shell casings removed from the scene were from a 9.18-caliber gun, the same type of gun defendant stole from his friend, Larry Reynolds. Under these circumstances, any error caused by the trial court's refusal to suppress was harmless.

¶ 101

VI. First-Degree Murder

¶ 102 The sixth issue raised is whether defendant's conviction for the intentional first-degree

murder of Amanda Jeffers was proper. Defendant contends that his conviction for the first-degree murder of Amanda must be vacated because the jury was instructed it could find him guilty under an allegedly invalid theory of felony murder. Defendant asserts that the first-degree murder of one person cannot serve as the predicate felony underlying the felony murder of a second person, and there is significant danger in the instant case the jury found defendant guilty of murdering Amanda without a culpable mental state, which requires reversal of his convictions and remand for a new trial on that charge and a new capital sentencing hearing.

We disagree.

¶ 103 We point out that defendant has failed to cite any authority to support his claim that the intentional murder of Kathleen cannot serve as the predicate felony for the felony murder of Amanda. Defendant's challenge to his conviction for first-degree murder of Amanda is premised on the faulty assumption that he was not found guilty of intentional first-degree murder, but rather only felony murder. In the instant case, defendant was charged with three separate theories of first-degree murder with regard to Amanda. Count III charged defendant with intentional first-degree murder, count IV charged defendant with knowing or strong probability of murder, and count VI charged defendant with felony murder. The jury received two general verdict forms for Amanda: (1) not guilty of first-degree murder or (2) guilty of first-degree murder. Defendant did not object to the submission of these forms, nor did he request the trial court tender special verdict forms for each count. The jury returned the guilty form.

¶ 104 Where the defendant is charged in several counts with a single offense and multiple convictions have been entered, the "one-act, one-crime" doctrine establishes that judgment and sentence may be entered only on the most serious offense. *People v. Smith*, 233 Ill. 2d 1, 20, 906 N.E.2d 529, 540 (2009). With regard to a general verdict murder conviction:

"[W]here a defendant is charged with murder in multiple counts alleging intentional, knowing, and felony murder, and a general verdict of guilty is returned, the defendant is presumed to be convicted of the most serious offense—intentional murder—so that judgment and sentence should be entered on the conviction for intentional murder and the convictions on the less serious murder charges should be vacated." *Smith*, 233 Ill. 2d at 20-21, 906 N.E.2d at 540.

Following this logic, the trial court entered judgment and sentenced defendant on the intentional murder count of Amanda, count III. Neither judgment nor sentence was entered on counts IV or V. Therefore, defendant's argument fails because even if the jury was misinstructed on felony murder, neither judgment nor sentence was entered on that count.

¶ 105 We also point out that defendant's killing of Amanda can only be viewed as "intentional" given the fact that she was shot eight times by defendant. Finally, defendant's argument that "it cannot be known to what extent the death penalty findings were based on consideration of that invalid conviction" is moot in light of the Governor's commutation of defendant's sentence. Accordingly, defendant has failed to convince us that his conviction for the first-degree murder of Amanda must be reversed.

¶ 106 VII. Death Penalty

¶ 107 As previously discussed, this issue is moot in light of the Governor's commutation of defendant's death sentence on March 9, 2011, and our General Assembly's abolishment of the death penalty.

¶ 108 CONCLUSION

¶ 109 For the foregoing reasons, the judgment of the circuit court of White County is affirmed.

¶ 110 Affirmed.