

NOTICE
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2017 IL App (4th) 140762-U

NO. 4-14-0762

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED
January 9, 2017
Carla Bender
4th District Appellate
Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from
Plaintiff-Appellee,)	Circuit Court of
v.)	Woodford County
JOHN R. GRAFELMAN,)	No. 13CF154
Defendant-Appellant.)	
)	Honorable
)	Charles M. Feeney III,
)	Judge Presiding.

JUSTICE POPE delivered the judgment of the court.
Justices Holder White and Steigmann concurred in the judgment.

ORDER

- ¶ 1 *Held:* (1) Admission of evidence relating to defendant's infidelity and his introduction of decedent to heroin was not plainly erroneous.
- (2) It is not clear from the record the court considered decedent's death as an aggravating factor in violation of the rule against double enhancements.
- (3) The one-act, one-crime rule precludes defendant's convictions for both drug-induced homicide and unlawful delivery of heroin within 1,000 feet of a church, but it does not preclude his convictions for both drug-induced homicide and child endangerment.
- ¶ 2 Defendant, John R. Grafelman, appeals his March 2014 conviction and May 2014 sentence for unlawful delivery of heroin within 1,000 feet of a church (720 ILCS 570/407(b)(2) (West 2012)), child endangerment (720 ILCS 5/12C-5 (West 2012)), and drug-induced homicide

(720 ILCS 5/9-3.3(a) (West 2012)). On appeal, defendant makes the following arguments: (1) defendant should receive a new trial because the State elicited inflammatory and irrelevant evidence regarding defendant's infidelity, employment, and his role in introducing decedent to heroin; (2) the trial court improperly weighed aggravating and mitigating factors during sentencing; and (3) the one-act, one-crime rule precludes his convictions for unlawful delivery of heroin, child endangerment, and drug-induced homicide because each crime was precipitated by the same act. We affirm in part, vacate in part, and remand with directions.

¶ 3

I. BACKGROUND

¶ 4 In March 2014, a jury found defendant guilty of unlawful delivery of heroin within 1,000 feet of a church (720 ILCS 570/407(b)(2) (West 2012)), child endangerment (720 ILCS 5/12C-5 (West 2012)), and drug-induced homicide (720 ILCS 5/9-3.3(a) (West 2012)). In May 2014, the trial court sentenced defendant to concurrent terms of 10 years in prison for the unlawful delivery conviction, 364 days in jail for the child endangerment conviction, and 23 years in prison for the drug-induced homicide conviction.

¶ 5 In November 2013, defendant and decedent, Mariah Higgins-Nino, were involved in a romantic relationship. Defendant was 18 years old at that time, and decedent was 17 years old. On November 25, 2013, defendant picked decedent up from a friend's house, and the two returned to defendant's grandparents' home, where defendant lived at the time.

¶ 6 Upon arriving, defendant and decedent listened to music in defendant's room and smoked cannabis. Decedent then told defendant she wanted to use heroin. Defendant told decedent he did not want her to use heroin, and he would leave the room if she was going to do so. Defendant left the room, spoke with his grandmother, Joyce Grafelman, and returned to his

bedroom. When defendant returned to his room, decedent appeared very sleepy. Defendant became concerned for her well-being. However, decedent stated she was just tired and wanted to sleep, so defendant allowed her to do so. Defendant stayed awake for a while and then went to sleep.

¶ 7 The next morning, defendant's grandmother woke defendant, but the two were unable to wake decedent. They called 9-1-1, and defendant performed cardiopulmonary resuscitation (CPR) on decedent. Defendant began CPR while decedent was positioned on the bed, but the 9-1-1 dispatcher recommended they move decedent to the floor. While defendant was performing CPR, decedent vomited. Defendant's grandmother cleaned the vomit off the floor and bed with some towels. Defendant testified he threw the towels behind him into the closet during the chaos.

¶ 8 Deputy James Shreffler was the first on the scene. Upon arriving, Deputy Shreffler relieved defendant and began performing CPR on decedent. Approximately 10 minutes later, emergency personnel arrived and attempted to defibrillate decedent. Decedent had not responded to CPR, other than vomiting, and the defibrillation was unsuccessful. Decedent was pronounced dead at the scene. The autopsy performed on decedent confirmed she died of a heroin overdose.

¶ 9 The towels defendant threw while performing CPR were discovered by Detective Brad Rebman, seemingly hidden in the closet under a jacket. The police also found a substantial amount of drug paraphernalia in defendant's room, including needles, foil, a knife with burnt residue on the end, alcohol swabs, syringes, corners of cellophane Baggies, niacin and water, razor blades, and a rubber band, much of which was strewn about the room in plain view. In the

corner of defendant's closet, hidden in a drop-ceiling, the detectives found a small cellophane bag with a white powdery substance in it, which was later determined to be heroin. Throughout the course of the investigation and trial, defendant maintained all these items, including the heroin, belonged to him. During the search, the police also searched decedent's purse, which contained a small amount of cannabis and a "hitter pipe."

¶ 10 After searching defendant's room, Deputy Shreffler transported defendant to the sheriff's department, where he was interviewed by Detectives Rebman and Andrew Yedinak. Defendant explained to Rebman he and decedent had been in a relationship for approximately 2 1/2 years, but they had broken up for a while because defendant had been unfaithful, which caused decedent's mother to dislike him. Defendant also admitted he was a heroin addict and stated all the drugs and paraphernalia found in his room belonged to him, except for the cannabis and hitter pipe found in decedent's purse. Defendant first stated he had never known decedent to use heroin, but he later admitted he knew she used heroin and that he was the person to introduce her to the drug and teach her how to inject the drug into her arm. Defendant explained decedent wanted to use heroin that night, and he left the room because he did not want to watch her use the drug. Defendant also indicated his heroin was "out in his room," immediately accessible, and decedent knew where it was.

¶ 11 At trial, Deputy Shreffler and Detective Rebman testified in accordance with the facts outlined above. Detective Rebman also noted in his testimony that the Grafelman residence was 103 feet away from St. John's Catholic Church in Benson, Illinois. Michelle Dierker, a forensic scientist, testified she determined the white substance discovered in defendant's room contained heroin. Allison Youmans, the pathologist who performed decedent's autopsy,

confirmed decedent died as the result of a heroin overdose.

¶ 12 Defendant took the stand at his trial and testified largely in conformance with statements made during his interview with Detectives Rebman and Yedinak. However, at trial, defendant stated decedent used her own heroin, not his, on the night she died. Defendant testified he told decedent he did not want her to use heroin and he did not offer her any. Defendant testified he left the bedroom after telling decedent he would do so if she was going to use heroin. Defendant testified he lied to Detectives Rebman and Yedinak about to whom the heroin belonged in order to protect decedent's reputation. On redirect, when asked why decedent wanted to use his heroin rather than the heroin she allegedly brought, defendant responded:

"That way—she had such a small amount, that way the next morning—when you do heroin you get what's called dope sick. She wanted to make sure that she would be able to get what's called your sick off. That way she had her own supply for the morning."

¶ 13 Defendant testified he sold life insurance with Primerica for four months. The State called Detective Yedinak in rebuttal, who testified defendant never indicated he sold life insurance. When Detective Yedinak had asked defendant whether he was employed during the interrogation, defendant indicated he had a job and that he had made most of his money when he was younger by mowing lawns.

¶ 14 Based on the testimony and evidence admitted at trial, the jury returned guilty verdicts for unlawful delivery of heroin within 1,000 feet of a church, child endangerment, and drug-induced homicide. At a May 2014 sentencing hearing, the trial court sentenced defendant

to concurrent terms of 10 years in prison for the unlawful delivery conviction, 364 days in jail for the child endangerment conviction, and 23 years in prison for the drug-induced homicide conviction.

¶ 15 During the sentencing hearing, the trial court noted many aggravating factors, including defendant's prior criminal history and drug abuse, his unwillingness to rehabilitate in the past, and the need for deterrence. The court stated no mitigating factors existed, but the court indicated the need to consider defendant's age and the fact this was his first adult crime. During the sentencing hearing, the court mentioned decedent's death, the loss of a beautiful human being, and admonished defendant for "spewing poison" into the community and causing decedent's death.

¶ 16 Defendant timely filed his notice of appeal, and this appeal followed.

¶ 17 II. ANALYSIS

¶ 18 On appeal, defendant argues (1) the State improperly introduced irrelevant and unfairly prejudicial evidence; (2) the trial court erred by improperly weighing aggravating and mitigating factors during his sentencing; and (3) the one-act, one-crime rule precludes his convictions for unlawful delivery of heroin, child endangerment, and drug-induced homicide because each crime was precipitated by the same act.

¶ 19 A. Evidentiary Arguments

¶ 20 Defendant argues he should receive a new trial because the State elicited irrelevant evidence during the trial and impeached him on a collateral matter. Defendant contends testimony relating to his infidelity and the fact he introduced decedent to heroin was irrelevant, or alternatively, unfairly prejudicial. Defendant also maintains he was impeached on

the collateral matter of his employment. Defendant concedes he forfeited these arguments by both failing to object at trial and raise these issues in his posttrial motions. Nonetheless, he requests plain-error review.

¶ 21 Our supreme court has explained:

"[T]he plain-error doctrine bypasses normal forfeiture principles and allows a reviewing court to consider unpreserved error when either (1) the evidence is close, regardless of the seriousness of the error, or (2) the error is serious, regardless of the closeness of the evidence. In the first instance, the defendant must prove 'prejudicial error.' That is, the defendant must show both that there was plain error and that the evidence was so closely balanced that the error alone severely threatened to tip the scales of justice against him. The State, of course, can respond by arguing that the evidence was not closely balanced, but rather strongly weighted against the defendant. In the second instance, the defendant must prove there was plain error and that the error was so serious that it affected the fairness of the defendant's trial and challenged the integrity of the judicial process. [Citation.] Prejudice to the defendant is presumed because of the importance of the right involved, '*regardless* of the strength of the evidence.' (Emphasis in original.) [Citation.] In both instances, the burden of persuasion remains with the defendant. [Citations.]" *People v. Herron*, 215

Ill. 2d 167, 186-87, 830 N.E.2d 467, 479-80 (2005).

¶ 22 We first examine defendant's argument the State elicited irrelevant testimony relating to (1) the fact he introduced decedent to heroin and (2) his infidelity. Evidence is relevant if it has any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence. Ill. R. Evid. 401 (eff. Jan. 1, 2011). Defendant argues we should consider this forfeited issue because the evidence was closely balanced.

¶ 23 The primary question for the jury was whether defendant knowingly delivered to decedent the heroin that caused her death. The trial testimony established defendant introduced decedent to heroin. Further, evidence showed it was not unusual for decedent to go to defendant's house for the purpose of using heroin. This was clearly relevant evidence because it showed defendant knew decedent would use his heroin when he left the room.

¶ 24 Defendant also argues, in the alternative, the prejudicial impact of this evidence far outweighed its probative value. See Illinois Rule of Evidence 403 (eff. Jan. 1, 2011) ("Although relevant, evidence may be excluded if its probative value is *substantially* outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence." (Emphasis added.)). "In this context, prejudice means 'an undue tendency to suggest decision on an improper basis, commonly an emotional one, such as sympathy, hatred, contempt, or horror.'" *People v. Eyler*, 133 Ill. 2d 173, 218, 549 N.E.2d 268, 288 (1989) (quoting M. Graham, Cleary & Graham's Handbook of Illinois Evidence § 403.1 (4th ed. 1984)). The prejudicial impact of this evidence did not exceed its probative value on the issue whether defendant knowingly delivered

the heroin that killed decedent. Thus, we conclude the admission of testimony establishing defendant introduced decedent to heroin was not plainly erroneous.

¶ 25 Defendant next argues evidence of his infidelity was inadmissible as either irrelevant or overly prejudicial. The State maintains this evidence is relevant and probative because it helps establish the history of defendant and decedent's relationship, which the State argues demonstrates decedent's reliance on defendant to supply heroin to her. We are unpersuaded by the State's argument. Defendant's infidelity has no bearing on whether he delivered heroin to decedent or whether he endangered her, nor does it help establish a history of decedent relying on defendant to supply heroin. We conclude the evidence of defendant's infidelity was irrelevant and should not have been introduced by the State.

¶ 26 However, regardless of the inadmissibility of this evidence, we will not review this issue pursuant to the plain-error doctrine. The evidence in this case was not closely balanced. Further, evidence of defendant's infidelity did not affect the fairness of defendant's trial or challenge the integrity of the judicial process. The result in this case would have been the same, even in the absence of the testimony about defendant's infidelity. There was substantial direct and circumstantial evidence as well as a confession by defendant.

¶ 27 Defendant also argues the State should not have impeached him regarding his employment, which he alleges was a collateral matter. While testifying at trial, defendant stated he sold life insurance for Primerica. Detective Yedinak later testified defendant said nothing about selling life insurance when he was asked during the interrogation whether he was employed. The State, citing *People v. Buckner*, 121 Ill. App. 3d 391, 459 N.E.2d 1102 (1984), argues criminal defendants who take the stand place their credibility at issue, which may be

attacked even on collateral matters.

¶ 28 We find *Buckner* unpersuasive. In *Buckner*, the time frame on the night in question was important. In addition, the State proved defendant lied about his employment. Here, defendant's employment had no bearing on any fact of consequence. As a result, it was irrelevant and inadmissible. See Ill. R. Evid. 401 (eff. Jan. 1, 2011) and Ill. R. Evid. 402 (eff. Jan. 1, 2011). Moreover, the failure to mention certain employment to Detective Yedinak does not show defendant lied during his direct testimony. However, as we indicated earlier, the evidence in this case was not closely balanced. Further, this evidence did not threaten to tip the scales of justice against defendant. We will not review this issue pursuant to the plain-error doctrine.

¶ 29 B. Sentencing Argument

¶ 30 Defendant next argues the trial court abused its discretion by imposing a 23-year prison sentence for drug-induced homicide based upon the fact defendant would serve approximately 17 years in prison, which was the age of decedent at her death. Defendant also argues the trial court abused its discretion by failing to consider mitigating factors and by considering improper aggravating factors. "[T]he question of whether a court relied on an improper factor in imposing a sentence ultimately presents a question of law to be reviewed *de novo*." *People v. Abdelhadi*, 2012 IL App (2d) 111053, ¶ 8, 973 N.E.2d 459. Defendant concedes these arguments were forfeited but requests plain-error review.

¶ 31 1. Irrational Sentence Argument

¶ 32 The Illinois Constitution provides "[a]ll penalties shall be determined both according to the seriousness of the offense and with the objective of restoring the offender to

useful citizenship." Ill. Const. 1970, art. I, § 11. Trial courts have wide latitude to determine an appropriate sentence, and such decisions are reviewed for an abuse of discretion. *People v. Jones*, 168 Ill. 2d 367, 373-74, 659 N.E.2d 1306, 1308 (1995). A trial court abuses its discretion by fashioning a sentence based upon irrational or arbitrary factors. *People v. Miller*, 2014 IL App (2d) 120873, ¶ 36, 9 N.E.3d 1210. "This court presumes that a trial judge knows and follows the law unless the record *affirmatively* indicates otherwise." (Emphasis added.) *In re Jonathon C.B.*, 2011 IL 107750, ¶ 72, 958 N.E.2d 227.

¶ 33 According to the Illinois truth-in-sentencing law, a person convicted of drug-induced homicide must serve 75% of his or her sentence. 730 ILCS 5/3-6-3 (West 2012). During the sentencing hearing, the State asked the trial court to impose a 23-year prison sentence for the drug-induced homicide conviction because "if you take 75 percent, that comes out to right around—a little over 17 years, and that was the age Mariah was when she was taken from this earth[.]" The trial court made no comment on the State's recommendation during the sentencing hearing, but it sentenced defendant to 23 years in prison for the drug-induced homicide charge.

¶ 34 Defendant argues the conclusion the trial court imposed the sentence based upon decedent's age is inescapable. We disagree with defendant's assessment. It is not clear or obvious the trial court imposed the 23-year prison sentence for the reason furnished by the State. When addressing the reasoning behind the sentence, the court mentioned many aggravating factors, but it never commented on decedent's age or the State's reason for requesting a 23-year prison sentence. As the State notes, trial courts are presumed to have acted in accordance with the law absent an affirmative indication otherwise, and there is no such affirmative indication here. Such an affirmative indication is of greater import where, as here, we are reviewing the

sentencing for plain error, which calls for a clear or obvious error. Accordingly, we reject defendant's argument the trial court arbitrarily based his sentence on decedent's age.

¶ 35 *2. Aggravating and Mitigating Factors Arguments*

¶ 36 Defendant next argues the trial court relied on three improper aggravating factors when determining his sentences for drug-induced homicide and unlawful delivery: (1) decedent's death, (2) the harm heroin causes society, and (3) the court's conclusion defendant was dealing heroin. Defendant also argues the court failed to consider any mitigating factors, such as his age, potential for rehabilitation, and tumultuous upbringing. The testimony both at trial and at the sentencing hearing suggested defendant was not dealing heroin, and there is nothing in the record indicating the court concluded defendant was dealing heroin. We find defendant's argument relating to such a conclusion entirely without merit.

¶ 37 Sections 5-5-3.1 and 5-5-3.2 of the Unified Code of Corrections (Unified Code) set forth the factors to be considered in mitigation and aggravation, respectively. 730 ILCS 5/5-5-3.1, 5-5-3.2 (West 2012). "Although the plain language of sections 5-5-3.1 and 5-5-3.2(a) of the Unified Code mandates that, if present, the trial court must *consider* the enumerated 13 mitigating and 22 aggravating factors, respectively, in determining a sentence of imprisonment, those factors are not an exclusive listing that prohibits a court from considering any other relevant sentencing factor." (Emphasis in original.) *People v. Brunner*, 2012 IL App (4th) 100708, ¶ 49, 976 N.E.2d 27. "In determining whether the trial court based the sentence on proper aggravating and mitigating factors, a court of review should consider the record as a whole, rather than focusing on a few words or statements by the trial court." *People v. Dowding*, 388 Ill. App. 3d 936, 943, 904 N.E.2d 1022, 1028 (2009). Additionally, "a factor necessarily

implicit in a crime should not be used as an aggravating factor when sentencing for that crime." *People v. Edwards*, 224 Ill. App. 3d 1017, 1032, 586 N.E.2d 1326, 1337 (1992). Such consideration constitutes double enhancement. *People v. Raney*, 2014 IL App (4th) 130551, ¶ 34, 8 N.E.3d 633.

¶ 38 The sentencing range for defendant's drug-induced homicide was 6 to 30 years in prison with 3 years of mandatory supervised release. 730 ILCS 5/5-4.5-25 (West 2012); 730 ILCS 5/9-3.3 (West 2012). Drug-induced homicide occurs when one unlawfully delivers a controlled substance to another person and that substance causes the death of that person. 720 ILCS 5/9-3.3 (West 2012).

¶ 39 a. Improper Aggravating Factors

¶ 40 Defendant asserts the trial court improperly considered decedent's death and the harm heroin causes to society as aggravating factors. In sum, defendant argues his sentence was doubly enhanced by the court's consideration of factors inherent in the offense of drug-induced homicide.

¶ 41 We do not find it clear or obvious that the trial court improperly considered harm to society as an aggravating factor. *People v. McCain*, 248 Ill. App. 3d 844, 852, 617 N.E.2d 1294, 1300 (1993), is instructive. In *McCain*, the Second District recognized the serious harm drug-related crimes inflict upon our society and noted several courts have determined the harm to society is implicit in drug-related offenses. *Id.* However, the Second District also noted other courts have determined the crime's harm to society may be properly considered an aggravating factor. *Id.* The *McCain* court went on to state:

"It is not improper *per se* for a sentencing court to refer to

the significant harm inflicted upon society by drug trafficking. It is important that defendants understand why they are subject to the penalties provided by law and why they have received their particular sentences. The harm that the crime causes society is an inherent consideration which underlies the basic range of penalties specified by the legislature. Commenting on the problems caused by drug-related crime encourages rehabilitation by providing a context in which a defendant may develop feelings of remorse. We do not wish to discourage courts from addressing such relevant considerations, but we suggest that sentencing courts attempt to segregate such general commentary from the balancing of sentencing factors." *Id.*

The trial court here did not appear to concentrate on the harm to society as an aggravating factor so much as the need for deterrence. The court's comment on the harm to society appears to be more along the lines of the instances discussed by the *McCain* court. See also *Dowding*, 388 Ill. App. 3d at 943, 904 N.E.2d at 1028 ("In determining whether the trial court based the sentence on proper aggravating and mitigating factors, a court of review should consider the record as a whole, rather than focusing on a few words or statements by the trial court."). Accordingly, we conclude the trial court did not commit clear or obvious error by mentioning the harm inflicted on society, but we do encourage the segregation of the sentencing judge's commentary as advocated by the *McCain* court.

¶ 42 Turning to defendant's second double-enhancement argument, the trial court

remarked on decedent's death several times during the sentencing hearing. While considering defendant's statement in which he indicated these events were an accident, the trial court stated, "*** but this was no accident. Providing heroin to another and that other person dying is no accident." The court went on to remark about defendant's "absolute refusal" to conform to the laws, and it stated "[w]e're here because you killed another human being, a beautiful, lovely human being, that absolutely deserved the opportunity to live a wonderful life, but for encountering you." The court further stated, while expressing sympathy for defendant's addiction, "[b]ut I'm not sympathetic with the fact that you killed another human being by providing her with drugs." The court stated, "I have to look at the harm, at the tremendous damage that you have done to society. That needs to be taken into account, because a beautiful human being is not here today." Finally, when addressing harm, the court stated, "[defendant] had a tremendously negative impact as a result of [defendant] spewing the poison to others and another person dying. That is a significant factor in this case, and the court needs to send a message[.]" However, the court understood it could not consider decedent's death in aggravation. The court clearly stated the death is "implicit in the offense and is not considered as [an aggravating] factor."

¶ 43 Defendant asserts this error falls within the second prong of the plain-error doctrine: "the error was so serious that it affected the fairness of the defendant's trial and challenged the integrity of the judicial process." *Herron*, 215 Ill. 2d at 187, 830 N.E.2d at 479-80. To warrant relief under the second prong of the plain-error doctrine, the error at sentencing must be "sufficiently grave that it deprived the defendant of a fair sentencing hearing." *People v. Ahlers*, 402 Ill. App. 3d 726, 734, 931 N.E.2d 1249, 1256 (2010). After considering all of the

trial court's comments at the sentencing hearing, we cannot say the trial court considered decedent's death as an aggravating factor.

¶ 44 b. Mitigating Factors

¶ 45 A trial court "need not expressly indicate its consideration of mitigating factors and, absent evidence to the contrary, is presumed to have considered mitigating factors brought before it." *People v. Wright*, 272 Ill. App. 3d 1033, 1046, 651 N.E.2d 758, 766 (1995). "The existence of mitigating factors does not require the trial court to reduce a sentence from the maximum allowed[.]" and "[a] defendant's rehabilitative potential and other mitigating factors are not entitled to greater weight than the seriousness of the offense." *People v. Pippen*, 324 Ill. App. 3d 649, 652, 756 N.E.2d 474, 477 (2001).

¶ 46 During the sentencing hearing, the trial court stated it considered the presentence investigation report, victim-impact statements, and defendant's statement. The court then went on to state no mitigating factors applied in this case. Defendant argues his age, potential for rehabilitation, and tumultuous upbringing are mitigating factors. The court indicated it needed to temper defendant's age with the seriousness of the crime. The court did not look favorably on defendant's potential for rehabilitation because of defendant's prior drug convictions, continuous drug abuse, and failed attempts at rehabilitation. The court also remarked it was regrettable defendant did not have adults in his life to hold him accountable for his actions but determined it was no excuse for defendant's crimes.

¶ 47 The factors cited by defendant were each contained in the presentence investigation report and remarked upon by the trial court. While defendant's youth is a mitigating factor in this case, the trial court could reasonably have concluded this factor was

outweighed by the proper aggravating factors, such as defendant's criminal history and the need for deterrence. It is not clear or obvious from the record the court failed to consider these mitigating factors, even if the factors were not given as great a weight as defendant would have liked.

¶ 48 C. One Act, One Crime and Double Jeopardy

¶ 49 Defendant argues the one-act, one-crime rule and double jeopardy principles preclude his convictions for unlawful delivery of heroin, child endangerment, and drug-induced homicide because each of these convictions were precipitated by the single act of delivering heroin to decedent. According to defendant, the unlawful delivery and child endangerment convictions should be vacated.

¶ 50 Double jeopardy principles bar "three specific actions: (1) prosecution for the identical offense after an acquittal; (2) prosecution for the identical offense after a conviction; and (3) the imposition of more than one punishment for the same offense." *People v. Gray*, 214 Ill. 2d 1, 6, 823 N.E.2d 555, 558 (2005). The one-act, one-crime rule precludes multiple convictions precipitated by a single physical act. *People v. Almond*, 2015 IL 113817, ¶ 47, 32 N.E.3d 535. It "is used to enforce the third double-jeopardy prohibition." *People v. Price*, 369 Ill. App. 3d 395, 404, 867 N.E.2d 972, 980 (2006). "For purposes of the rule, an 'act' is defined as any overt or outward manifestation that will support a separate conviction." *Almond*, 2015 IL 113817, ¶ 47, 32 N.E.3d 535. However, "[m]ultiple convictions and concurrent sentences should be permitted in all other cases where a defendant has committed several acts, despite the interrelationship of those acts" because "[p]rejudice results to the defendant only in those instances where more than one offense is carved from the [same] physical act." *People v. King*,

66 Ill. 2d 551, 566, 363 N.E.2d 838, 844 (1977).

¶ 51 Defendant acknowledges he forfeited this argument by failing to object to the entry of these multiple convictions and sentences at trial. Nonetheless, a one-act, one-crime violation may constitute plain error because such an error prejudices the defendant and "is so serious that it affect[s] the fairness of the defendant's trial and challenge[s] the integrity of the judicial process." *People v. Artis*, 232 Ill. 2d 156, 165, 902 N.E.2d 677, 683 (2009).

¶ 52 The State concedes the less serious conviction for unlawful delivery should be vacated because the single act of delivering the heroin to decedent precipitated the convictions for both unlawful delivery and drug-induced homicide. We accept the State's concession and vacate defendant's conviction and sentence for unlawful delivery of heroin within 1,000 feet of a church.

¶ 53 Defendant requests the monetary credit originally applied to the fines connected to his conviction for unlawful delivery now be applied to the fines connected to his drug-induced homicide conviction. The State does not challenge this request. Accordingly, we remand this issue to the trial court to apply defendant's monetary credit to the fines imposed in relation to the drug-induced homicide conviction.

¶ 54 With respect to defendant's argument the one-act, one-crime rule precludes his conviction for endangerment of a child, the State argues the conviction is not precluded because it was precipitated by defendant's act of furnishing drug paraphernalia to decedent, not the delivery of heroin. The charging instrument alleges defendant endangered the life of decedent by "provid[ing] heroin and drug paraphernalia" to her, and the record is replete with references to the volume of drug paraphernalia discovered in defendant's room. As such, it is not clear or

obvious the conviction for endangering the life of decedent was precipitated by the sole act of delivering heroin instead of the act of furnishing drug paraphernalia to her. Without a clear or obvious error indicating defendant's multiple convictions violate one-act, one-crime principles, his claim must fail on plain-error review and his child endangerment conviction stands.

¶ 55

III. CONCLUSION

¶ 56 For the reasons stated, we affirm defendant's convictions for drug-induced homicide and child endangerment, affirm his sentence on the drug-induced homicide conviction, vacate defendant's conviction and sentence for unlawful delivery of heroin within 1,000 feet of a church, and remand to the trial court to adjust defendant's award for monetary credit in accordance with this order. As part of our judgment, we award the State its \$50 statutory assessment against defendant as costs of this appeal. 55 ILCS 5/4-2002 (West 2014).

¶ 57

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