No. 129967

IN THE

SUPREME COURT OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS, Respondent-Appellant, -vs- TRAVARIS T. GUY, Petitioner-Appellee.	))))))))))))	Appeal from the Appellate Court of Illinois, Third District, Nos. 3-21-0423 & 3-21-0426. There on appeal from the Circuit Court of the Twelfth Judicial Circuit, Will County, Illinois, No. 02 CF 1974. Honorable David Carlson, Judge Presiding.

BRIEF AND ARGUMENT FOR PETITIONER-APPELLEE

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ISSUE PRESENTED FOR REVIEW

Whether the Appellate Court correctly concluded that the trial court erroneously instructed the jury at Travaris T. Guy's trial that the mental state for attempted murder was the intent to kill; the jury reached legally inconsistent guilty verdicts for second-degree murder and attempted murder due to the erroneous instruction; Guy's successive post-conviction petition established that he was deprived of the effective assistance of appellate counsel because counsel failed to raise these claims on direct appeal; post-conviction counsel performed unreasonably by abandoning Guy's claim that appellate counsel was ineffective for not raising the instructional error on direct appeal; and outright reversal of Guy's conviction of attempted murder was the appropriate relief.

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STATUTES INVOLVED

720 ILCS 5/7-1 (2002)

> A person is justified in the use of force against another when and to the extent that he reasonably believes that such conduct is necessary to defend himself or another against such other's imminent use of unlawful force. However, he is justified in the use of force which is intended or likely to cause death or great bodily harm only if he reasonably believes that such force is necessary to prevent imminent death or great bodily harm to himself or another, or the commission of a forcible felony.

720 ILCS 5/8-4(a) (2002)

> (a) Elements of the Offense.
> A person commits an attempt when, with intent to commit a specific offense, he does any act which constitutes a substantial step toward the commission of that offense.

720 ILCS 5/9-1(a) (2002)

> (a) A person who kills an individual without lawful justification commits first degree murder if, in performing the acts which cause the death:
>
> > (1) he either intends to kill or do great bodily harm to that individual or another, or knows that such acts will cause death to that individual or another; or
> > (2) he knows that such acts create a strong probability of death or great bodily harm to that individual or another; or
> > (3) he is attempting or committing a forcible felony other than second degree murder.

720 ILCS 5/9-2 (2002)

> (a) A person commits the offense of second degree murder when he commits the offense of first degree murder as defined in paragraphs (1) or (2) of subsection (a) of Section 9-1 of this Code and either of the following mitigating factors are present:
> > (1) At the time of the killing he is acting under a sudden and intense passion resulting from serious provocation by the individual killed or another whom the offender endeavors to kill, but he negligently or accidentally causes the death of the individual killed; or
> > (2) At the time of the killing he believes the circumstances to be such that, if they existed, would justify or exonerate the killing under the principles stated in Article 7 of this Code, but his belief is unreasonable.

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The Appellate Court did not err by reversing outright Travaris T. Guy's conviction of attempted murder where the jury at his trial was erroneously instructed on the mental state for the offense; the jury reached legally inconsistent guilty verdicts for second-degree murder and attempted murder; Guy's successive post-conviction petition established that he was deprived of the effective assistance of appellate counsel because counsel failed to raise these meritorious claims on direct appeal; and post-conviction counsel performed unreasonably by failing to include in the amended petition Guy's meritorious claim that appellate counsel was ineffective for not raising the instructional error on direct appeal.

STANDARD OF REVIEW

The second-stage dismissal of a post-conviction claim is reviewed *de novo*. *People v. Pendleton*, 223 Ill. 2d 458, 473 (2006). Whether post-conviction counsel provided unreasonable assistance is also reviewed *de novo*. *People v. Suarez*, 224 Ill. 2d 37, 42 (2007).

ARGUMENT

Pursuant to the Criminal Code, the mental state for attempted crimes is the intent to commit a specific offense. Consequently, the mental state for attempted first-degree murder (hereafter "attempted murder") is the intent to commit first-degree murder. A person can only intend to commit first-degree murder by intending to commit all the elements of first-degree murder. First-degree murder requires the killing of an individual without lawful justification. Therefore, the mental state for attempted murder is the intent to kill without lawful justification.

Defendant was charged with first-degree murder for killing David Woods ("David Sr.") and attempted murder for shooting Sheena Woods ("Sheena"). At trial, the State's evidence established that defendant fired four shots, one right after the other. The State did not argue that defendant's mental state changed during the shooting. Defendant argued that he shot David Sr. and Sheena in self-defense. The jury found defendant guilty of second-degree murder with respect to David Sr. and attempted murder with respect to Sheena.

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The jury's guilty verdicts were legally inconsistent. On the one hand, the jury necessarily found that defendant believed his use of force was legally justified, *i.e.*, that he intended to kill with lawful justification, by finding him guilty of second-degree murder. On the other hand, the Criminal Code required the jury to find that defendant intended to kill without lawful justification to be found guilty of attempted murder. These two findings could not coexist.

The inconsistent verdicts were the product of instructional error. The circuit court erroneously instructed the jury that the mental state for attempted murder was merely the intent to kill. This enabled the jury to return guilty verdicts for both offenses.

Defendant's appellate counsel did not raise a claim of instructional error or inconsistent verdicts on direct appeal. In fact, appellate counsel wrote defendant multiple letters, advising that it was not possible to challenge the conviction of attempted murder. Appellate counsel also advised that, should defendant file a post-conviction petition, he should raise other issues not premised on the record. Appellate counsel even conveyed that it would be futile for defendant to argue appellate counsel's ineffectiveness. Defendant relied on appellate counsel's advice when drafting his initial post-conviction petition.

Defendant then filed a successive post-conviction petition, raising*, inter alia*, the claims of instructional error and inconsistent verdicts. Defendant alleged that his trial and appellate attorneys were ineffective for failing to raise the claims. Defendant attached the letters from appellate counsel as supporting evidence. The circuit court advanced the petition to the second stage. Post-conviction counsel amended the petition, adopting the claims premised on inconsistent verdicts but abandoning the claims premised on instructional error. The court dismissed the

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claims premised on inconsistent verdicts but accepted another claim not at issue in this Court, resulting in the reversal of defendant's conviction of attempted murder.

The State appealed the reversal of defendant's conviction, resulting in Case No. 3-21-0423. Defendant appealed the partial dismissal of his petition, resulting in Case No. 3-21-0426. In Case No. 3-21-0426, defendant argued that the circuit court erred by dismissing his claim of ineffective assistance of appellate counsel premised on appellate counsel's failure to raise the claim of inconsistent verdicts on direct appeal. Defendant also argued that post-conviction counsel performed unreasonably by abandoning the claim that appellate counsel was ineffective for failing to raise the claim of instructional error on direct appeal as a matter of plain error and via a claim of ineffective assistance of trial counsel.

The Appellate Court agreed with defendant's claims in Case No. 3-21-0426 and reversed outright defendant's conviction for attempted murder. The Appellate Court opined that a remand for further post-conviction proceedings would be a waste of judicial resources because the claims involved purely legal questions. Further, remanding for a new trial on both charges would be inappropriate because the jury's guilty verdict for second-degree murder, and the findings it made to reach that verdict, were not the result of legal error. Remanding for a new trial on attempted murder could result in inconsistent verdicts again, with a second jury making contrary findings to the first. Thus, the Appellate Court concluded the appropriate remedy was to reverse the conviction of attempted murder outright.

This Court should affirm the Appellate Court's judgment, as it was not erroneous in any respect, and reject the State's arguments to overturn it, as they lack merit and, in many cases, are subject to multiple layers of forfeiture or waiver.

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A. The Appellate Court did not err by concluding that the mental state for attempted murder is the intent to kill without lawful justification.

Attempted offenses are specific intent crimes. *People v. Reagan*, 99 Ill. 2d 238, 241 (1983). Under the Criminal Code, "[a] person commits an attempt when, with *intent to commit a specific offense*, he does any act which constitutes a substantial step toward the commission of that offense." 720 ILCS 5/8-4(a) (2002) (emphasis added). Thus, attempted murder requires the intent to commit first-degree murder. See *id.* Logically, to intend to commit first-degree murder, a person must intend to commit all the elements of first-degree murder. One element is the killing of an individual. 720 ILCS 5/9-1(a) (2002). Another element is that the killing be "without lawful justification." *Id.* Consequently, to intend to commit first-degree murder, a defendant must intend to kill without lawful justification. See *id.*

Therefore, the plain language of the Criminal Code provides that the mental state for attempted murder is the intent to kill without lawful justification. See *id.*; 720 ILCS 5/8-4(a) (2002).

Importantly, it is not enough that the defendant simply intends to kill. The intent to kill does not equate to the intent to commit a specific offense. The intentional killing of a person is not always murder because it can be legally justified. See 720 ILCS 5/9-1(a) (2002) (stating that first-degree murder requires that the killing be without lawful justification); 720 ILCS 5/7-1 (2002) (discussing the justifiable use of force, *i.e.*, self-defense). To be sure, murder has always been defined as the *unlawful* killing of a human being. See, *e.g.*, *Davis v. People*, 151 U.S. 262, 264–66 (1894) (explaining that, at common law, murder is defined as the unlawful killing of a human being); *Spies v. People*, 122 Ill. 1, 174 (1887)

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("Murder is the unlawful killing of a human being . . . ."); *People v. Burnett*, 27 Ill. 2d 510, 515 (1963) (same).

Aside from the plain language of the Criminal Code, years of precedent from this Court demonstrates that the mental state for attempted murder is the intent to kill without lawful justification.

In *People v. Harris*, 72 Ill. 2d 16, 27–28 (1978), this Court held that the mental state for attempted murder was not the same as the mental state for murder. The trial court had properly instructed the jury that the mental state for attempted murder was the "intent to commit the crime of murder," not merely the intent to kill. *Id.* at 20, 22. However, the trial court then erred by defining the mental state of murder to include the mental states that are alternatives to "an intent to kill," which opened the door to a conviction of attempted murder without a finding that the defendant intended to kill an individual. *Id.* at 20, 22, 24. This Court emphasized that "to convict for attempted murder[,] nothing less than a *criminal* intent to kill must be shown." *Id.* at 27 (emphasis added).

The plain language of the Criminal Code compelled the *Harris* Court's conclusion. Because the killing of an individual is an element of first-degree murder, a person cannot be said to intend to commit first-degree murder if he or she merely intends to do great bodily harm, or merely knows his or her acts create a strong probability of death or great bodily harm. Additionally, where an element of first-degree murder is that the killing be without lawful justification, a person who merely intends to kill, which is not necessarily a criminal intent, is not intending to commit all the elements of first-degree murder and, thus, cannot be said to be attempting to commit first-degree murder.

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In *People v. Barker*, 83 Ill. 2d 319, 322–25 (1980), this Court rejected a defendant's contention that an indictment charging him with attempted murder was fatally defective because it alleged that he had intended to commit the offense of murder, instead of alleging that he intended to kill. The *Barker* Court explained that the indictment tracked the literal language of the attempt statute. *Id.* at 326. Significantly, this Court emphasized, *"If the indictment had only charged the defendant with the intent to kill* and did not include the allegation that the defendant acted with the intent to commit murder, *it would have been defective* under section 8-4(a) of the Criminal Code, quoted above, *in that it would not have charged the defendant with an intent to commit a specific offense*." *Id.* at 327 (emphasis added).

Three years later, this Court decided *People v. Reagan*, 99 Ill. 2d 238 (1983). In *Reagan*, the Appellate Court reversed the defendant's convictions of attempted voluntary manslaughter, holding that such an offense did not exist in Illinois. *People v. Reagan*, 111 Ill. App. 3d 945, 950–52 (3d Dist. 1982). Notably, the court discussed the *Barker* decision and opined, "The specific intent necessary to commit the crime of attempted murder is more than an intent to kill: The intent must be a specific intent to kill without lawful justification." *Id.* at 950. This Court affirmed the Appellate Court's judgment. *Reagan*, 99 Ill. 2d at 239–40. In doing so, the Court explained that conviction for attempted offenses requires proof of the specific intent to commit an offense. *Id.* Significantly, this Court addressed the interplay of the attempt statute and imperfect self-defense when using deadly force. The Court stated, "The requirement of the attempt statute is not that there be an intent to kill, but that there be *an intent to kill without lawful justification*. If . . . defendant at the time of the shooting believed the circumstances to be such

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that if they existed would justify the killing, *then there was no intent to commit an offense*." *Id.* (emphasis added). In contrast, "[i]f a defendant intended to kill with the knowledge that such action was unwarranted, he has intended to kill without lawful justification and could be prosecuted for attempted murder." *Id.* This Court added that, in the case before it, "the defendant intended to defend himself, although his belief in the need to defend himself or in the need to use deadly force was unreasonable, his intent was not to commit a crime. His intent was to engage in self-defense, which is not a criminal offense." *Id.* at 240–41.

In *People v. Lopez*, 166 Ill. 2d 441, 446–49 (1995), this Court reaffirmed its prior decision in *Reagan* and held that the offense of attempted second-degree murder did not exist.[1] *Lopez* concerned two consolidated cases where defendants convicted of attempted murder had requested that their juries be instructed on the offense of attempted second-degree murder. *Id.* at 442–44. The trial courts refused, and the Appellate Court affirmed the trial courts' decisions. *Id.* In affirming the Appellate Court's judgment, this Court explained that the offense of attempted second-degree murder, if it existed, "would require the intent to commit the specific offense of second degree murder." *Id.* at 448. Consequently, the intent required for attempted second-degree murder would be "the intent to kill without lawful justification, plus the intent to have a mitigating circumstance present." *Id.* This Court opined that "one cannot intend either a sudden and intense passion due to serious provocation or an unreasonable belief in the need to use deadly force." *Id.* Thus, this Court concluded that the offense of attempted second-degree murder

[1] In 1987, the offense of voluntary manslaughter was abolished and replaced with the offense of second-degree murder. *People v. Jeffries*, 164 Ill. 2d 104, 111 (1995).

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did not exist in Illinois. *Id.* at 449. The Court emphasized that its decision was "based on the wording of our attempt statute rather than some notion of how the crime of attempt should be defined." *Id.* It stressed that "the specific language of Illinois' attempt statute . . . plainly requires the intent to commit a specific offense, not simply the intent required to commit the predicate offense." *Id.* Importantly, this Court explained that, "concerning the mitigating factor of an imperfect self-defense, one cannot intend to unlawfully kill while at the same time intending to justifiably use deadly force." *Id.* at 448–49. "[A] defendant intending to defend himself, although unreasonably, would not have the intent to unlawfully kill. Such a defendant would have the intent to lawfully kill using self-defense. The two different intents, intent to kill unlawfully and intent to kill in self-defense, cannot coexist in the same crime." *Id.* at 448.

In sum, the plain language of the Criminal Code and this Court's precedent compel the conclusion that the mental state for attempted murder is the intent to kill without lawful justification. Contrary to the State's argument, this conclusion is consistent with *Harris* (State's Br. at 29–34). The State misconstrues *Harris* as holding that the mental state for attempted murder is merely the intent to kill (State's Br. at 25–28).

Accordingly, the Appellate Court did not err by concluding that the mental state for attempted murder is the intent to kill without lawful justification.

B. The Appellate Court did not err by concluding that the Illinois Pattern Jury Instructions incorrectly defined the mental state for attempted murder.

During defendant's trial, the Illinois Pattern Jury Instructions provided that the mental state for attempted murder was simply "the intent to kill an individual." Illinois Pattern Jury Instructions, Criminal, No. 6.05X (4th ed. 2000);

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Illinois Pattern Jury Instructions, Criminal, No. 6.07X (4th ed. 2000). The current Illinois Pattern Jury Instructions state the same. Illinois Pattern Jury Instructions, Criminal, No. 6.05X (approved Oct. 17, 2014); Illinois Pattern Jury Instructions, Criminal, No. 6.07X (approved Oct. 17, 2014). Because the mental state for attempted murder is the intent to kill without lawful justification, the Illinois Pattern Jury Instructions are erroneous.

Therefore, the Appellate Court did not err by concluding that the Illinois Pattern Jury Instructions incorrectly define the mental state for attempted murder.

C. The Appellate Court did not err by concluding that the trial court incorrectly instructed the jury on the mental state for attempted murder.

At defendant's trial, the court instructed the jury as follows with regard to attempted murder:

> A person commits the offense of attempt first degree murder when he, without lawful justification and with the intent to kill an individual, does any act which constitutes a substantial step toward the killing of an individual.
>
> The killing attempted need not have been accomplished.
>
> To sustain the charge of attempt first degree murder, the State must prove the following propositions:
>
> First proposition, that the defendant performed an act which constituted a substantial step toward the killing of an individual, and, second proposition, that the defendant did so with the intent to kill an individual, and, third proposition, that the defendant was not justified in using the force he used.

(C481–82; R912–13).

Because the court's instructions admonished the jury that the mental state for attempted murder was "the intent to kill an individual," rather than the intent to kill an individual without lawful justification, the court's instructions were erroneous.

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Therefore, the Appellate Court did not err when it concluded that the trial court incorrectly instructed the jury on the mental state for attempted murder.

D. The Appellate Court did not err by concluding that the jury's guilty verdicts for second-degree murder and attempted murder were legally inconsistent.

Legally inconsistent verdicts occur where, although the offenses arise from the same set of facts, the verdicts find that an essential element of each crime has been found to exist and not to exist. *People v. Price*, 221 Ill. 2d 182, 188 (2006). "When offenses involve mutually inconsistent mental states, a determination that one mental state exists is legally inconsistent with a determination of the existence of the other mental state." *Id.* Verdicts are likewise legally inconsistent when a jury makes inconsistent findings on the presence of a mitigating factor for purposes of second-degree murder, such as by finding that a killing of a person was both provoked and unprovoked. *People v. Porter*, 168 Ill. 2d 201, 213–14 (1995).

In this case, the jury found defendant guilty of both second-degree murder and attempted murder for the shooting of David Sr. and Sheena, respectively (C431–32; R928). With regard to second-degree murder, the only mitigating factor that the trial court instructed the jury about was imperfect self-defense (C472, 478; R914–17). Thus, when the jury found defendant guilty of second-degree murder, it necessarily found that when he shot and killed David Sr., he believed, albeit unreasonably, that his actions were legally justified. See generally 720 ILCS 5/9-2(a)(2) (2002).

However, because the mental state for attempted murder is the intent to kill without lawful justification, the jury would need to find that defendant had this mental state when he shot Sheena to properly find him guilty of attempted murder. Again, the intent to kill with lawful justification and the intent to kill

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without lawful justification are contradictory and cannot coexist. *Lopez*, 166 Ill. 2d at 448–49.

Nevertheless, for defendant to be found guilty of both second-degree murder and attempted murder, he would have needed to act with both states of mind when he fired at the van. That is not possible in this case. Defendant could not have had two contradictory mental states simultaneously. Therefore, his convictions involve mutually inconsistent states of mind, making the guilty verdicts of second-degree murder and attempted murder inconsistent as a matter of law.

The State contends that the guilty verdicts are not legally inconsistent because "[a] rational jury could have found that petitioner acted with a belief, albeit unreasonable, in the need for self-defense when he fired the shot that killed David but had no such belief when he subsequently fired the shot that injured Sheena" (State's Br. at 34). To support this contention, the State argues the Appellate Court incorrectly opined that defendant fired the gunshots "in quick succession." The State insists its evidence at trial proved defendant did not shoot Sheena until after David Sr. was shot, walked to the back of the van, lay down, and asked to go to the hospital (State's Br. at 36). The State contends that "[t]he jury heard evidence that [defendant] believed that he needed to protect himself from David, not Sheena" (State's Br. at 36). Quoting Sheena's testimony that defendant "'kept his eyes on us' while shooting," the State argues the Appellate Court incorrectly opined that defendant was not looking where he fired (State's Br. at 37).

The record contradicts the State's arguments. Sheena testified that the gunshots "just kept coming" and were fired "right after each other" (R288). Likewise, David Woods ("David Jr.") testified as follows when questioned by the prosecutor:

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> Q Were [the gunshots] one right after another or was there time in between each one?
>
> A Maybe more like one after the other.

(R366). Furthermore, the remaining occupant in the van, Constance Daniels, testified as follows:

> Q Okay. About how long did it last, the shooting?
>
> A I don't know. I wasn't timing it either.
>
> Q And was it - - was the shooting stopped before David, Sr. stood up and walked to the back of the van?
>
> A I think so.
>
> Q It was all over?
>
> A Yeah, I think so.

(R329). Thus, the Appellate Court correctly surmised from the record that the gunshots were fired in quick succession. As such, it would be senseless to find that as defendant fired four shots, one right after the other, he intended to defend himself but then quickly changed his intent so that he intended to commit murder. In addition, the State falsely claims that defendant believed he only needed to protect himself from David Sr. The evidence of violence at trial was not limited to David Sr. It encompassed *the entire Woods family*, including female members of the family (R576–78, 585, 588, 591, 605, 630–35, 643–44, 664–66, 687–89, 700, 703, 730, 740–41, 753–54). As for whether defendant was looking at the van when he fired, the record establishes that Sheena's testimony about defendant keeping his eyes on them was a reference to what occurred *before the shooting*:

> Q Okay. When you say you looked out the window *before you got shot* and you saw Corzell Cole and [defendant] in that Malibu, is that correct?

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A Uh-huh.

Q Where was Corzell Cole seated?

A He was in the driver's seat.

Q And where was [defendant]?

A He was in the passenger seat.

Q Okay. And did you see anything that [defendant] was doing?

A He kept his eyes on us, but he was reaching down, but he was still looking at us.

(R274) (emphasis added). Thus, the State falsely asserts that Sheena testified that defendant kept his eyes on them as he was shooting. It is also noteworthy that both the State's and defendant's trial evidence established that defendant's view of the occupants in the back of the van was obstructed, so he did not know their identity during the shooting (R324–25, 583).

The State's argument is also disingenuous. During oral argument in the Appellate Court, the State repeatedly conceded that defendant's mental state did not change during the shooting:

The Court: Does the State concede that the intent of the defendant was the same as he fired all four shots?

Prosecutor: Yes.

The Court: Okay.

Prosecutor: Yes. Yeah. I do, Your Honor.

* * *

The Court: But there isn't - - we're not doing some nuanced change in intent? It's the same intent?

Prosecutor: Yes.

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(App. Ct. Oral Arg. at 15:24–15:53). The Appellate Court correctly noted this concession in its opinion. *People v. Guy*, 2023 IL App (3d) 210423, ¶ 64. Oral argument plays an important role during an appeal because attorneys, at times, concede points in oral argument that they do not concede in their briefs. *People v. Colyar*, 2013 IL 111835, ¶ 57. Moreover, the State did not include its new change-of-intent argument in its petition for leave to appeal. Thus, this Court should hold the State to its concession and conclude that this argument is forfeited. See generally *People v. Artis*, 232 Ill. 2d 156, 177–78 (2009) (concluding that the State forfeited an argument by conceding to the contrary in the Appellate Court and failing to include it in its petition for leave to appeal). The Court should also hold the State to its initial trial and appellate theory of defendant having one singular intent during the shooting, as the State may not change its theory of the case on appeal (R902–06). *People v. Crespo*, 203 Ill. 2d 335, 344 (2001).

Accordingly, the Appellate Court did not err by concluding that the jury's guilty verdicts were legally inconsistent.

E. The Appellate Court did not err by concluding that defendant's successive post-conviction petition established that appellate counsel was ineffective by failing to raise the meritorious claim of inconsistent verdicts on direct appeal.

The Post-Conviction Hearing Act ("the Act") provides a means for defendants to challenge their convictions by alleging violations of constitutional rights. 725 ILCS 5/122-1 *et seq.* (2015); *People v. Domagala*, 2013 IL 113688, ¶ 32. The Act outlines a three-stage procedure for adjudication of post-conviction petitions. 725 ILCS 5/122-1 *et seq.* (2015); *Domagala*, 2013 IL 113688, ¶ 32. At the second stage, the trial court "must determine whether the petition and any accompanying documentation make 'a substantial showing of a constitutional violation.'" *Domagala*, 2013 IL 113688, ¶ 33 (quoting *People v. Edwards*, 197 Ill. 2d 239, 246 (2001)).

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If the trial court finds the petition makes such a showing, the petition moves to the third stage for an evidentiary hearing to determine if the petitioner is entitled to relief. *Id.* ¶ 34. The Act contemplates the filing of a single petition. *People v. Coleman*, 2013 IL 113307, ¶ 81. Any claim not raised in the original or an amended petition is waived. *Coleman*, 2013 IL 113307, ¶ 81; 725 ILCS 5/122-3 (2015). However, a petitioner may raise a defaulted claim by satisfying the cause-and-prejudice test. *Id.* ¶ 82.

The two-prong test of *Strickland v. Washington*, 466 U.S. 668 (1984), applies to claims of ineffective assistance of appellate counsel. *People v. Golden*, 229 Ill. 2d 277, 283 (2008). "A petitioner must show that appellate counsel's performance fell below an objective standard of reasonableness and that this substandard performance caused prejudice, *i.e.*, there is a reasonable probability that, but for appellate counsel's errors, the appeal would have been successful." *Id.* "Appellate counsel is not obligated to brief every conceivable issue on appeal, and it is not incompetence of counsel to refrain from raising issues which, in his or her judgment, are without merit, unless counsel's appraisal of the merits is patently wrong." *People v. Easley*, 192 Ill. 2d 307, 329 (2000). "Accordingly, unless the underlying issues are meritorious, defendant has suffered no prejudice from counsel's failure to raise them on appeal." *Id.*

In this case, defendant had a meritorious claim of inconsistent verdicts, as previously discussed. Trial counsel raised the claim of inconsistent verdicts in the trial court (C577–78, 580–82; R950–51). Nevertheless, appellate counsel did not raise the claim on direct appeal (C731, 1066–73, 1515, 1517). The evidence defendant attached to his post-conviction petition provides the reason why. In a 2006 letter to defendant, appellate counsel opined that this Court held in *Lopez*

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that "an attempt to commit second degree murder was really attempt first degree murder" because "second degree murder is first degree murder plus a mitigating factor" (C1517). Appellate counsel patently misconstrued *Lopez*. The *Lopez* Court did not hold that attempting to commit second-degree murder was the same as attempting to commit first-degree murder. The *Lopez* Court explained that intending to unlawfully kill and intending to kill in self-defense were inconsistent and could not coexist. *Lopez*, 166 Ill. 2d at 448–49. Appellate counsel's reading of *Lopez* failed to appreciate that the attempt statute requires more than the mental state for first-degree murder. It requires the intent to commit a first-degree murder—a point made by the *Lopez* Court. *Id.* at 449.

Moreover, appellate counsel neglected the plain language of the Criminal Code and this Court's prior decisions in *Harris*, *Barker*, and *Reagan.* As previously explained, these binding legal authorities compelled the conclusion that attempted murder requires the intent to kill without lawful justification. And they necessarily lead to the conclusion that the jury's guilty verdicts were legally inconsistent. Appellate counsel performed deficiently by misconstruing the law and failing to raise the meritorious claim of inconsistent verdicts on direct appeal.

Counsel's failure to raise the meritorious claim prejudiced defendant. Had counsel raised it on direct appeal, it is reasonably probable that the appeal would have been more successful than it was. Had counsel raised the meritorious claim of inconsistent verdicts, defendant would have been entitled to a reversal of his conviction of attempted murder, not merely the remand for a preliminary *Krankel* inquiry that counsel obtained for him (C731, 1066–73). See *Porter*, 168 Ill. 2d at 214–15 (reversing conviction due to inconsistent verdicts).

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Therefore, the Appellate Court did not err by concluding that defendant's successive post-conviction petition established that appellate counsel was ineffective by failing to raise the meritorious claim of inconsistent verdicts.

F. The Appellate Court did not err by concluding that post-conviction counsel performed unreasonably by failing to include in the successive post-conviction petition a contention that appellate counsel was ineffective for failing to raise the meritorious claim of instructional error on direct appeal.

Post-conviction petitioners have a statutory right to the assistance of counsel and are entitled to a reasonable level of assistance. *People v. Suarez*, 224 Ill. 2d 37, 42 (2007). The filing of a Rule 651(c) certificate creates a rebuttable presumption that counsel performed reasonably. *People v. Smith*, 2022 IL 126940, ¶ 29. Rule 651(c) provides that counsel certify that he or she (1) consulted with the petitioner to determine his contentions of deprivations of constitutional rights; (2) examined the trial court record of proceedings; and (3) made any amendments to the *pro se* petition that are necessary to adequately present the petitioner's claims. Ill. S. Ct. R. 651(c) (eff. July 1, 2017). A petitioner can overcome the presumption by showing that counsel did not substantially comply with Rule 651(c). *People v. Frey*, 2024 IL 128644, ¶ 30. The failure to file a certificate is harmless if the record demonstrates that counsel adequately fulfilled the required duties. *People v. Lander*, 215 Ill. 2d 577, 584 (2005).

In this case, post-conviction counsel did not file a Rule 651(c) certificate. Therefore, there is no presumption that counsel provided reasonable assistance. Furthermore, the record demonstrates that counsel performed unreasonably by failing to make necessary amendments. Specifically, counsel failed to amend the petition to allege a claim of ineffective assistance of appellate counsel for failing to argue on direct appeal that (1) the trial court plainly erred by erroneously defining

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the mental state of attempted murder and (2) trial counsel was ineffective by failing to oppose the erroneous jury instructions.

1. A claim of error concerning the trial court's erroneous jury instructions would satisfy the plain-error doctrine.

As previously explained, the trial court incorrectly instructed the jury that the mental state for attempted murder was the intent to kill (R912–13). This error was clear and obvious, *i.e.*, plain. See generally *People v. Piatkowski*, 225 Ill. 2d 551, 564–65 (2007) (providing that, for purposes of plain-error review, an error is plain if it is clear or obvious). The court's instructions contradicted the plain language of the Criminal Code and binding precedent from this Court. Nevertheless, trial counsel did not object to the erroneous instructions (R851–58).

To bypass forfeiture and obtain relief for a plain error, a defendant must establish that the evidence at trial was "so closely balanced that the error alone threatened to tip the scales of justice against the defendant" or the error was "so serious that it affected the fairness of the defendant's trial and challenged the integrity of the judicial process." *Id.*

The evidence at trial was closely balanced concerning the primary issue of defendant's mental state at the time of the shooting. At trial, the State argued that defendant intended to kill without lawful justification (R863–81, 897–906). In contrast, defendant argued that he acted in self-defense (R881–95). The State's witnesses testified that no one in the van had a gun and it was defendant and Cole who initiated the violence (R274, 283–84, 311–12, 321, 328, 371). In contrast, the defense presented evidence that David Sr. looked at defendant and Cole with anger, opened his door, and pulled out a gun first, pointing it at defendant (R581–84). Notably, the State's witnesses testified inconsistently about whether David Sr.

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opened his door before being shot (R273, 283, 326, 382). The gunshots to David Sr.'s van were consistent with someone shooting erratically, rather than focusing on a particular target (R429–30). This was consistent with defendant's testimony that he fired his gun in fear, not looking as he fired (R584–86). Numerous State and defense witnesses testified that, at the time of the shooting, the Woods and Guy families (and their associates) were in a violent feud (R287, 292–93, 325, 459–68, 610, 612, 632, 643–45, 657–58, 664–66, 671–72, 677–78, 687–88, 700–03, 740–41). Defense witnesses testified that defendant was scared in October 2002 (R610, 631, 659, 664, 677–78, 698, 701). David Sr. had a reputation for violence in the community (R629, 660, 700–01, 729–30). And the parties stipulated that David Sr. had previously been convicted of aggravated battery (R835).

Furthermore, each of the parties' occurrence witnesses was impeached. David Jr. and defendant were impeached with prior convictions (R373–74, 589). See generally *People v. Knox*, 2014 IL App (1st) 120349, ¶ 36 (stating that a witness may be impeached with evidence of a prior conviction). And each of the State's occurrence witnesses was biased due to their familial or dating relationships. See generally *People v. Curtis*, 123 Ill. App. 3d 384, 388 (5th Dist. 1970) (stating that a witness may be impeached with evidence of bias). Specifically, Sheena was David Sr.'s daughter (R269). David Jr. was David Sr.'s nephew, making him and Sheena cousins (R362–63). And Constance was the mother of David Jr.'s three children (R306).

Ultimately, the jury found defendant guilty of second-degree murder—necessarily finding that he believed his actions were legally justified (C431–32; R912–19, 928). See 720 ILCS 5/9-2(a)(2) (2002) (providing that a person commits second-degree murder when he believes, albeit unreasonably, that the

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circumstances were such that, if they existed, would justify or exonerate the killing). Thus, the jury did not wholly accept either the State's or defendant's position at trial. The jury's guilty verdict for second-degree murder demonstrates that the evidence against defendant was not overwhelming concerning his mental state. It was a close case. See generally *People v. Thurman*, 104 Ill. 2d 326, 329–32 (1984) (holding that the plain-error doctrine was satisfied where "lawful justification" language was omitted from jury instructions concerning involuntary manslaughter and there was evidence of both recklessness and self-defense at trial).

As for the seriousness of the court's instructional error, the jury's finding that defendant believed his conduct was legally justified would make a conviction for attempted murder legally impossible, as previously explained. Erroneously instructing the jury that the mental state for attempted murder was the intent to kill enabled the jury to find defendant guilty of both second-degree murder and attempted murder, which was a legal impossibility. Had the jury been properly instructed that the mental state for attempted murder was the intent to kill without lawful justification, it would have found defendant not guilty of attemped murder in light of its second-degree murder finding that defendant believed his conduct was legally justified, meaning he did not intend to unlawfully kill. "The complete omission of an issue as central to the criminal trial as a part of the definition of the crime charged deprives the jury of the guidance it must have properly to decide the case." *People v. Ogunsola*, 87 Ill. 2d 216, 223 (1981). Therefore, the trial court's instructional error was so serious that it affected the fairness of defendant's trial and challenged the integrity of the judicial process. See generally *id.* at 221–24 (holding that an erroneous jury instruction as to the mental state required for the offense of deceptive practices satisfied the plain-error doctrine because the error rendered the trial fundamentally unfair).

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Accordingly, a claim of error concerning the trial court's erroneous jury instructions would have satisfied both prongs of the plain-error doctrine had appellate counsel raised it on direct appeal.

2. At the time of his direct appeal, defendant had a meritorious claim that trial counsel was ineffective for failing to challenge the trial court's erroneous instructions.

As previously explained, claims of ineffective assistance of counsel are governed by the standard set forth in *Strickland v. Washington*, 466 U.S. 668 (1984). *People v. Domagala*, 2013 IL 113688, ¶ 36.

It was professionally unreasonable for counsel to fail to object to the court's erroneous jury instruction. By allowing the jury to be instructed with an erroneous mental state for attempted murder, it made the State's case for that offense easier to prove than it would have been had the jury been properly instructed. Where the jury found defendant intended to kill with lawful justification for purposes of second-degree murder, it could not, as a matter of law, have found that defendant had the mental state required to be guilty of attempted murder. Yet, defense counsel allowed erroneous jury instructions that would permit such a result. Trial counsel should have objected to the proposed jury instructions for attempted murder; alerted the trial court to the plain language of the Criminal Code, requiring an intent to commit a specific offense; called the court's attention to this Court's precedent; and tendered instructions reflective of the proper mental state. If the trial court erroneously rejected counsel's argument, counsel should have then preserved the claim of error in a post-trial motion.

Furthermore, trial counsel's deficient performance prejudiced defendant. Ultimately, the jury convicted defendant of attempted murder, despite finding that he believed his conduct was legally justified (C431–32; R912–19, 928). Had

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counsel objected to the erroneous instructions, it is reasonably probable that the court would have properly instructed the jury on the mental state for attempted murder. See generally Ill. S. Ct. R. 451(a) (eff. April 8, 2013) (providing that the court should confirm that the pattern jury instructions accurately state the law). With proper instruction, it is reasonably probable that the jury would have acquitted defendant of attempted murder after finding for second-degree murder that defendant believed his conduct was legally justified.

Therefore, defendant had a meritorious claim of ineffective assistance of trial counsel at the time of his direct appeal.

3. Appellate counsel was ineffective for failing to argue plain error and ineffective assistance of trial counsel with regard to the erroneous jury instructions.

Again, the *Strickland* test applies to claims of ineffective assistance of appellate counsel. *Golden*, 229 Ill. 2d at 283.

In this case, appellate counsel did not argue on direct appeal that the trial court's jury instructions concerning attempted murder were erroneous. The only claim he raised was a request to remand for a preliminary *Krankel* inquiry (C731, 1066–73, 1515, 1517). Thus, assuming *arguendo* that appellate counsel believed the instructions were erroneous, failing to raise the issue on direct appeal cannot be explained as a matter of strategy due to having a better issue to raise. However, the record reveals why appellate counsel did not raise the issue: he did not identify the jury instructions as erroneous. As previously explained, counsel misconstrued this Court's decision in *Lopez* and the mental state for attempted murder (R1517).

It was professionally unreasonable for appellate counsel not to challenge the erroneous jury instructions on direct appeal because it was a meritorious claim and defendant would have been entitled to relief pursuant to the plain-error doctrine

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and on the basis of ineffective assistance of trial counsel. See *People v. Easley*, 192 Ill. 2d 307, 329 (2000) (stating that to show that appellate counsel's performance was deficient, a defendant must show that the underlying claim of error was meritorious).

Furthermore, appellate counsel's deficient performance prejudiced defendant. Had appellate counsel challenged the instructional error, it is reasonably probable the Appellate Court would have found the claims to have merit because defendant would have established that the instructions for attempted murder were erroneous; the claimed error satisfied the plain-error doctrine; and defendant demonstrated ineffective assistance of trial counsel. The result of defendant's direct appeal would have been different, as he would have obtained more than a remand for a mere preliminary *Krankel* inquiry.

Therefore, appellate counsel was ineffective during defendant's direct appeal for failing to argue plain error and ineffective assistance of trial counsel with regard to the erroneous jury instructions.

The State argues appellate counsel could not have been ineffective because trial counsel invited the instructional error (State's Br. at 21–23). The State did not raise the issue of invited error in the Appellate Court or in its petition for leave to appeal. It merely argued the jury instructions were correct (State's App. Ct. Br. at 15–17; PLA at 6–9). Consequently, the State has forfeited these claims. See *People v. Lucas*, 231 Ill. 2d 169, 175 (2008) (providing that the State forfeits an argument in this Court if it did not raise it in the Appellate Court); *Artis*, 232 Ill. 2d at 177–78 (providing that the State forfeits a claim if not made in its petition for leave to appeal); see also Ill. S. Ct. R. 341(h)(7), (i) (eff. Oct. 1, 2020) (providing that the brief of the appellee shall conform to the requirements of paragraph (h),

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item (7), which provides that points not argued are forfeited); Ill. S. Ct. R. 315(c)(5) (eff. Oct. 1, 2021) (stating that a petition for leave to appeal shall contain "a short argument" stating why review by the Supreme Court is warranted and why the decision of the Appellate Court should be reversed or modified).

Forfeiture aside, the State's argument is incorrect. Even assuming *arguendo* that trial counsel invited the instructional error, the invited-error doctrine would only foreclose appellate counsel from raising the instructional error in the context of a plain-error argument. See generally *People v. Ramirez*, 2013 IL App (4th) 121153, ¶ 79 (recognizing that invited errors are not subject to plain-error review). It would not excuse appellate counsel from arguing that trial counsel deprived defendant of the effective assistance of counsel by failing to object to the instructional error. See generally *People v. Villarreal*, 198 Ill. 2d 209, 228 (2001) (addressing a claim of ineffective assistance in submitting verdict forms even though invited-error doctrine precluded challenging forms themselves); *People v. Brown*, 2023 IL App (4th) 220400, ¶ 31 (recognizing that invited error blocks a defendant from raising the error on appeal, absent ineffective assistance of counsel).

Regardless, trial counsel did not invite the instructional error. The erroneous instructions were offered by the State, not trial counsel (C481–82; R854). Further, trial counsel's statement in this case that he had "no objection" to the instructions amounted to a failure to both "recognize the objectionable nature of the matter at issue" and "make a timely assertion of a known right," which sounds in forfeiture, not invited error (R854). *People v. Hibbler*, 2019 IL App (4th) 160897, ¶ 51. A statement by counsel that there is "no objection" means exactly that and no more. By voicing that he had no objection, counsel merely left it to the court to determine whether the instruction should be given; he did not expressly agree that the

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instruction should be given. At worst, counsel's statement was ambiguous as to whether he was agreeing that the court should give the instruction and, thus, should not be construed so strictly against defendant as to be deemed invited error.

Defendant recognizes that this Court found in *People v. Parker*, 223 Ill. 2d 494, 498–99, 508 (2006), that the invited-error doctrine applied where defense counsel merely stated that he had "[n]o objection" to an instruction. Should this Court choose to entertain the State's forfeited invited-error argument, defendant would ask this Court to revisit its decision in *Parker* and conclude for the reasons provided that counsel does not invite error merely by stating "no objection" during an instruction conference. Given how it is a matter of routine for litigants to say "no objection" during instruction conferences to signify they have no objection to an instruction, this Court's decision in *Parker* essentially forecloses plain-error review for erroneous jury instructions that are not subject to an objection.

Therefore, this Court should reject the State's contention that appellate counsel was not ineffective because trial counsel invited the instructional error.

4. Post-conviction counsel performed unreasonably by not raising defendant's meritorious claim that appellate counsel was ineffective for failing to argue the claim of instructional error.

Post-conviction counsel did not amend defendant's successive petition to challenge the trial court's erroneous jury instructions for attempted murder (C1862–69, 1910–19, 1943–48). Counsel should have asserted a claim that appellate counsel was ineffective for failing to raise the issue on direct appeal through the plain-error doctrine and on the basis of a claim of ineffective assistance of trial counsel. As previously explained, both claims were meritorious.

Post-conviction counsel's failure to raise the claim was particularly troubling because defendant raised it in his *pro se* successive petition. The claim of

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instructional error would have been entirely consistent with the other arguments made in counsel's amended petition (C1501, 1509–14, 1517, 1779–92). To be sure, counsel was already arguing the following: attempted murder required the intent to kill without lawful justification; the intent to kill without lawful justification was inconsistent with the intent to kill in self-defense; the jury's guilty verdicts were legally inconsistent where the jury had found defendant believed his conduct was legally justified; and appellate counsel was ineffective for concluding that it was not possible to challenge the conviction of attempted murder (C1866–69, 1912–15, 1919, 1944–46, 1987–88; R1619–24, 1676–82). There was simply no reason for counsel to abandon the issue when amending the petition. Thus, he deprived defendant of the reasonable assistance of counsel.

Accordingly, the Appellate Court did not err when it concluded that post-conviction counsel performed unreasonably by failing to amend defendant's successive post-conviction petition to include a claim that appellate counsel was ineffective for failing to raise the meritorious claim of instructional error.

G. The Appellate Court did not err by concluding that outright reversal of defendant's attempted-murder conviction was the appropriate remedy.

As a remedy for defendant's meritorious post-conviction claims, the Appellate Court concluded that remanding for a new trial was not appropriate. It also concluded that a remand for further post-conviction proceedings was not appropriate. Instead, the Appellate Court held that the proper remedy was to reverse outright defendant's conviction of attempted murder. *Guy*, 2023 IL App (3d) 210423, ¶¶ 81–88. The Appellate Court's decision was not erroneous.

1. The only appropriate remedy for the trial court's instructional error and the jury's inconsistent verdicts was the reversal of the conviction of attempted murder without a remand for a new trial.

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Generally, the relief required for a prejudicial instructional error is a new trial. See, *e.g.*, *People v. Hartfield*, 2022 IL 126729, ¶¶ 59–61. A new trial is likewise the general remedy for inconsistent verdicts arising due to inconsistent findings on a material fact. See, *e.g.*, *People v. Price*, 221 Ill. 2d 182, 188 (2006); *People v. Porter*, 168 Ill. 2d 201, 214–15 (1995). In such circumstances, a new trial is logically necessary to obtain a conclusive determination by a jury as to the existence or nonexistence of said material fact.

Unlike the typical case of inconsistent verdicts, there is no need in this case to remand for a new trial for a conclusive jury determination of a material fact, particularly defendant's state of mind at the time of the shooting. The jury did not make inconsistent factual findings concerning defendant's state of mind. Rather, the verdicts were inconsistent as a matter of law because a defendant cannot intend to kill with lawful justification (as the jury found when finding defendant guilty of second-degree murder) while also intending to kill without lawful justification (which is what the law required the jury to find to convict him of attempted murder). The legally inconsistent verdicts arose because the court's erroneous instructions enabled the jury to find defendant guilty of both second-degree murder and attempted murder, which was a legal impossibility given the circumstances of this case. See generally *People v. Ousley*, 297 Ill. App. 3d 758, 763 (3d Dist. 1998) (explaining that legally inconsistent verdicts may arise due to a trial court's erroneous statement of the law in jury instructions and that such error does not cure the inconsistency or extinguish the need for relief).

More specifically, a jury has found defendant guilty of second-degree murder. In doing so, it necessarily found defendant believed, albeit unreasonably, that his use of force was legally justified under the circumstances, *i.e.*, he intended

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to kill with lawful justification (C431–32; R914–17). The State conceded this point in the Appellate Court (App. Ct. Oral. Arg. at 17:54–18:19). *Guy*, 2023 IL App (3d) 210423, ¶ 84. When the jury found defendant guilty of attempted murder, it necessarily found—consistent with the jury instructions—that defendant intended to kill. It did not find that defendant intended to commit first-degree murder, or intended to kill without lawful justification, because it was not properly instructed that this was the mental state for attempted murder (C431–32; R912–13). Jurors are presumed to follow the trial court's instructions. *People v. Birge*, 2021 IL 125644, ¶ 40. Consequently, the jury only once answered the material question of whether defendant intended to act with or without lawful justification. And it found that he intended to act with lawful justification when it found him guilty of second-degree murder (R914–17, 928). The finding that defendant intended to kill with lawful justification, for purposes of second-degree murder, did not conflict with the finding that defendant intended to kill, for purposes of attempted murder. Consequently, a jury has conclusively determined that defendant intended to kill with lawful justification. That finding was not erroneous as it was not infected by the court's instructional error. Had the jury been properly instructed as to the mental state for attempted murder, it would have found defendant not guilty of that charge, having found he intended to act with lawful justification for purposes of its second-degree murder verdict.

For these reasons, a remand for a new trial is not a sensible remedy for the instructional errors and inconsistent verdicts. A retrial for first- or second-degree murder would inappropriately ask a second jury to decide defendant's state of mind and guilt for these offenses after an initial jury has already done so without error. To be sure, the propriety of the conviction of second-degree murder is not

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even before this Court. Defendant has not argued in this appeal that the conviction is invalid. And the circuit court left the conviction of second-degree murder intact during post-conviction proceedings, as it granted relief only with respect to attempted murder. The jury's finding that defendant intended to kill with lawful justification must survive this appeal.

A retrial for only the offense of attempted murder would also be inappropriate. A second jury could potentially make a factual finding that is contrary to what the first jury found. More specifically, a second, properly instructed jury could find defendant guilty of attempted murder, necessarily finding that he intended to kill without lawful justification. This would conflict with the first jury's finding that defendant intended to kill with lawful justification. In essence, a remand would open the door to inconsistent verdicts all over again.

Furthermore, principles of double jeopardy preclude a retrial. U.S. Const., amend. V; Ill. Const. 1970, art. I, § 10. Double jeopardy bars retrial for the same offense after an acquittal or a conviction. *People v. Kimble*, 2019 IL 122830, ¶ 28. Double jeopardy also incorporates the doctrine of collateral estoppel in criminal cases. *People v. Daniels*, 187 Ill. 2d 301, 320 (1999). "Collateral estoppel, or issue preclusion, 'means * * * that when an issue of ultimate fact has once been determined by a valid and final judgment, that issue cannot again be litigated between the same parties in any future lawsuit.'" *Id.* (quoting *Ashe v. Swenson*, 397 U.S. 436, 443 (1970)). Issue preclusion in the context of a single cause of action or claim, or in a continuation of a prior proceeding, is known as "direct estoppel." *Id.* at 320 n.3. "Claims of collateral estoppel and direct estoppel may be decided by application of the same rules." *Id.*

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The doctrine applies where (1) an issue was raised and litigated in a previous proceeding; (2) the determination of the issue was a necessary and critical part of the final judgment in the prior trial; and (3) the issue sought to be precluded in a later trial is the same one decided in the previous trial. *Id.* at 321. Thus, if the record of the prior trial illustrates that the verdict could not have been rendered without deciding the particular matter, the judgment on that verdict will estop the parties in all future litigation as to that matter. *People v. Wharton*, 334 Ill. App. 3d 1066, 1077 (4th Dist. 2002). The record must be examined both "rationally" and "realistically." *Id.* at 1078. And one should "assume that the jury did not reach its verdict through 'mental gymnastics.'" *Id.*

In this case, the issue of defendant's mental state at the time of the shooting was raised and litigated at trial. Determining defendant's mental state was a necessary and critical task for the jury to decide whether defendant was guilty of first-degree murder, second-degree murder, or attempted murder, as each offense required a particular state of mind and the court instructed the jury to determine defendant's mental state (C24–26; R912–17). See 720 ILCS 5/9-1(a)(1)–(2) (2002) (articulating mental state required for first-degree murder); 720 ILCS 5/9-2(a)(2) (2002) (articulating mental state required for second-degree murder); 720 ILCS 5/8-4(a) (2002) (articulating mental state required for attempt). The jury ultimately found defendant guilty of second-degree murder and attempted murder. In light of the verdict and the court's jury instructions, the jury necessarily found that defendant intended to kill and that he believed his conduct was legally justified (C431; R912–17, 928). This determination was a necessary and critical part of the jury's verdict and the final judgment. Should this case be remanded for a new

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trial, a jury would have to reconsider this issue. Therefore, the requirements of direct estoppel are satisfied.

Citing *Currier v. Virgina*, 585 U.S. 493, 504 (2018) (plurality opinion by Gorsuch, J., joined by Roberts, C.J., and Thomas and Alito, J.J.), the State argues that double jeopardy does not incorporate the doctrine of issue preclusion (State's Br. at 41–42). The State neglects that it cites to a plurality opinion, which is not binding precedent. *CTS Corp. v. Dynamics Corp. of Am.*, 481 U.S. 69, 81 (1987) (plurality opinions are nonbinding). Regardless, the Court has explicitly recognized that the doctrine applies in criminal cases. *Yeager v. United States*, 557 U.S. 110, 119 n. 4 (2009) (citing *United States v. Oppenheimer*, 242 U.S. 85 (1916)). The Court has not ruled otherwise since.

The State also argues that issue preclusion requires a judgment of acquittal (State's Br. at 41). However, "[i]n criminal prosecutions, as in civil litigation, the issue-preclusion principle means that 'when an issue of ultimate fact has once been determined by a *valid and final judgment*, that issue cannot again be litigated between the same parties in any future lawsuit.'" *Bravo-Fernandez v. United States*, 580 U.S. 5, 7–8 (2016) (quoting *Ashe*, 397 U.S. at 443) (emphasis added). The doctrine "is operative whether the judgment in the first action is in favor of the plaintiff or of the defendant." Restatement (Second) of Judgments § 27 (1980); see also *Bravo-Fernandez*, 580 U.S. at 7 n. 1 (citing the Restatement in context of issue preclusion); *Yeager*, 557 U.S. at 119 n. 4 (same). Moreover, double jeopardy applies in the context of acquittal or conviction. *Ohio v. Johnson*, 467 U.S. 493, 498 (1984).

Accordingly, the only appropriate remedy for the trial court's instructional error and the jury's inconsistent verdicts is the reversal of the conviction of attempted

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murder without a remand for a new trial.

2. Where the dispositive issues in this appeal are purely legal questions, it was in the interest of judicial economy to reverse defendant's conviction of attempted murder instead of remanding for further post-conviction proceedings.

Generally, the remedy for the erroneous second-stage dismissal of a post-conviction claim is to remand for a third-stage evidentiary hearing. See, *e.g.*, *People v. Towns*, 182 Ill. 2d 491, 521–22 (1998). Similarly, remand is generally the remedy for post-conviction counsel's failure to make necessary amendments to a petition. See, *e.g.*, *People v. Addison*, 2023 IL 127119, ¶ 44.

However, the dispositive issues here are purely legal questions. Whether defendant was deprived of the effective assistance of appellate counsel for failing to raise the claim of inconsistent verdicts on direct appeal, and whether post-conviction counsel provided unreasonable assistance by failing to raise a claim of ineffective assistance of appellate counsel concerning the erroneous instructions, depend on the following legal questions: (1) what mental state is required for attempted murder; (2) did the trial court properly convey that mental state to the jury; and (3) were the jury's guilty verdicts legally inconsistent.

Remanding for a third-stage evidentiary hearing for defendant's claim of ineffective assistance of appellate counsel pertaining to inconsistent verdicts, where there is no need to resolve conflicts in evidence or issues of credibility, would be a waste of judicial resources. Moreover, remanding because of post-conviction counsel's unreasonable assistance would also be a waste of judicial resources because, as explained above, a remand would necessarily result in the reversal of defendant's conviction of attempted murder as a matter of law due to the instructional error.

Therefore, reversal of defendant's conviction of attempted murder, instead of remanding for further post-conviction proceedings, was the appropriate remedy

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for defendant's claims on appeal because it was in the interest of judicial economy, as well as principles of finality by preserving the jury's finding that defendant believed his conduct was legally justified. See generally *People v. Buffer*, 2019 IL 122327, ¶¶ 44–47 (vacating the defendant's sentence and remanding for a new sentencing hearing in the interest of judicial economy, instead of remanding for second-stage post-conviction proceedings, because resolving the issue of the propriety of the defendant's sentence did not require factual development); see also *People v. Bailey*, 2017 IL 121450, ¶ 49 (choosing to review a question of law in the interest of judicial economy instead of remanding the matter for the circuit court to address).

The State argues a conviction should be entered for aggravated battery with a firearm if the appropriate remedy is not a retrial (State's Br. at 43–45). The State suggests the Appellate Court erred by declining to enter such a conviction for the reason that the State "'never charged defendant with aggravated battery with a firearm'" (State's Br. at 43, quoting *Guy*, 2023 IL App (3d) 210423, ¶ 85). The State is not being entirely forthright with its argument.

The reason why the Appellate Court did not enter a conviction for aggravated battery with a firearm was because the State never requested that the Appellate Court do so. It did not make the request in its brief (See State's App. Ct. Br. at 2–17). And it did not make the request at oral argument. Making matters worse, the Appellate Court issued an order the week before oral argument, providing that "the parties are directed to be prepared to address at oral argument the question of remedy, assuming for the sake of analysis that defendant were to prevail on the merits of his inconsistent-verdict argument" (*People v. Guy*, No. 3-21-0426, Order of June 9, 2023) (A-1). Ultimately, the State failed to do so. The Appellate Court emphasized in its opinion that "[t]he State makes no meaningful argument

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as to remedy, but it states in conclusory fashion that the remedy should be to remand for a new trial. It does not specify whether it favors a remand for a new trial on all charges or just on the attempted first degree murder charge." *Guy*, 2023 IL App (3d) 210423, ¶ 82. To be sure, the State argued in its brief to the Appellate Court that, if the court were to conclude that the jury's verdicts were inconsistent, "remand for a new trial would be required." The State cited no authority to oppose defendant's argument that a new trial was inappropriate in the circumstances of this case. And it did not specify which charges should be retried (State's App. Ct. Br. at 12). Then at oral argument, the State merely argued that if the Appellate Court were to grant defendant relief, the court should remand for the State to determine how to go forward (App. Ct. Oral Arg. at 23:36–25:15). Thus, the Appellate Court's criticism of the State's argument as to remedy was accurate. Moreover, the Appellate Court directly asked the State at oral argument what would happen with an aggravated-battery offense should the court vacate the conviction of attempted murder. The State responded, "That offense would not survive" (App. Ct. Oral Arg. at 23:36–25:15).

Points not argued in a brief, or argued without citation to authority, are forfeited. Ill. S. Ct. R. 341(h)(7), (i) (eff. Oct. 1, 2020); *People v. Ward*, 215 Ill. 2d 317, 332 (2005). The forfeiture rule applies to the State, not just the defendant, in criminal cases. *People v. Salamon*, 2022 IL 125722, ¶ 70. Here, the State not only forfeited an argument in the Appellate Court that a conviction should be entered for aggravated battery with a firearm by not making it in that court, it also forfeited any argument as to remedy by failing to address the issue in a meaningful way with supporting authority, even after the Appellate Court ordered it to do so. Additionally, the State's response during oral argument that the offense

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of aggravated battery with a firearm "would not survive" if the Appellate Court vacated the conviction of attempted murder invited the Appellate Court not to enter a conviction for aggravated battery with a firearm. See generally *People v. Reed*, 2020 IL 124940, ¶ 39 (stating that a party may not request to proceed in one manner and then later contend that the course of action was error); *People v. McAdrian*, 52 Ill. 2d 250, 254 (1972) (stating that waiver is particularly pertinent when the conduct of a party induces a court to rule as it did).

Ultimately, the power of a reviewing court to reduce the degree of an offense of conviction is *discretionary*. See Ill. S. Ct. R. 615(b)(3) (stating that a reviewing court "may" reduce the degree of the offense of which the appellant was convicted); *People v. Ullrich*, 135 Ill. 2d 477, 484 (1990) (the word "may" signifies discretion). An abuse of discretion occurs when a ruling is arbitrary, fanciful, unreasonable, or when no reasonable person would adopt the same view. *People v. Ward*, 2011 IL 108690, ¶ 21. Given the State's conduct in the Appellate Court, the Appellate Court's decision not to enter a conviction for aggravated battery with a firearm cannot be categorized as arbitrary, fanciful, or unreasonable. As this Court has explained, courts of review should not resolve questions of law that are not raised, briefed, and argued by the parties. *People v. Washington*, 2023 IL 127952, ¶ 48. Moreover, "'[courts] do not, or should not, sally forth each day looking for wrongs to right.'" *People v. Givens*, 237 Ill. 2d 311, 324 (2010) (quoting *Greenlaw v. United States*, 554 U.S. 237, 244 (2008)).

Therefore, the Appellate Court did not err by failing to enter a conviction for aggravated battery with a firearm.

Aside from forfeiting the request in the Appellate Court, the State has also forfeited the request in this Court by failing to make it in the Appellate Court

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and in its petition for leave to appeal. See *Lucas*, 231 Ill. 2d at 175 (the State forfeits an argument if it failed to raise it in the Appellate Court); *Artis*, 232 Ill. 2d at 177–78 (argument forfeited when not in petition for leave to appeal); see also Ill. S. Ct. R. 315(c)(5) (eff. Oct. 1, 2021) (a petition for leave to appeal shall contain "a short argument" stating why review by this Court is warranted and why the decision of the Appellate Court should be reversed or modified). In its petition, the State argued only that "vacating defendant's attempt first degree murder conviction without remand for a new trial was improper" (State's PLA at 2, 8). The petition did not even mention aggravated battery with a firearm.

Until briefing in this Court, the State had chosen an all-or-nothing approach with respect to the charge concerning Sheena. It wanted a conviction of attempted murder and did not want to risk a conviction, instead, on a lesser offense. The State did not charge defendant with aggravated battery with a firearm (C24–26). It opposed a jury instruction for that offense (R854–55). And, as previously explained, it did not pursue a conviction for aggravated battery with a firearm in the Appellate Court or in its petition for leave to appeal. This Court should not rescue the State from its strategic decisions as doing so would encourage the State to wait without risk before seeking a conviction on a lesser offense.

Accordingly, this Court should decline the State's request for entry of a conviction for aggravated battery with a firearm due to its strategic decisions and repeated forfeitures.

H. The State has forfeited, waived, and implicitly conceded the issue of cause for defendant's failure to raise the claims in his initial post-conviction petition.

The State contends that defendant "failed to show the cause necessary to file a successive postconviction petition" (State's Br. at 18). The State did not raise

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this contention in the Appellate Court, as the Appellate Court noted in its opinion. *Guy*, 2023 IL App (3d) 210423, ¶ 20. The State also did not raise it in its petition for leave to appeal. Therefore, the State has repeatedly forfeited any argument concerning cause. See *Lucas*, 231 Ill. 2d at 175 (stating that arguments not made in the Appellate Court are forfeited in this Court); *Artis*, 232 Ill. 2d at 177–78 (stating that arguments not raised in a petition for leave to appeal are forfeited).

In essence, the State is asking this Court to overturn the Appellate Court's judgment on a basis not included in its petition *in lieu of* considering the issues that it actually did raise in the petition. Doing so would be a waste of judicial resources as this Court would not be addressing the issues that it deemed so significant as to warrant discretionary review.

Significantly, the State presented a cause argument in the circuit court (C1889, 1971; R1607–10). Thus, by not making the argument again in the Appellate Court or in its petition for leave to appeal, the State intentionally abandoned and waived the issue, as opposed to merely forfeiting it. See generally *People v. Brusaw*, 2023 IL 128474, ¶ 17 & n. 1 (equating abandonment with waiver, which is defined as the intentional relinquishment or abandonment of a known right); *People ex rel. Waller v. McKoski*, 195 Ill. 2d 393, 398 (2001) (the State abandoned an argument made in the circuit court by not later making it on appeal). In addition, defendant presented a cause argument to the Appellate Court in his opening brief (App. Ct. Op. Br. at 38–39). The State chose not to respond to it. Thus, the State has implicitly conceded that defendant has demonstrated cause. See *People v. Brown*, 2017 IL 121681, ¶ 27 (the State's decision to not respond to appellant's argument that trial counsel performed unreasonably was an "implicit concession").

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The State insists that it has not forfeited its cause argument because it argued in Case No. 3-21-0423, which the Appellate Court consolidated with Case No. 3-21-0426, that defendant had not established cause (State's Br. at 20). This Court should not be persuaded. The Appellate Court consolidated the appeals "for the purposes of decision," not for the purposes of briefing and argument. *People v. Guy*, App. Ct. No. 3-21-0426 (Order of May 15, 2023) (A-2). Case No. 3-21-0423 was the State's appeal following the circuit court's partial granting of defendant's petition. Case No. 3-21-0426 was defendant's appeal following the partial denial of the petition and included the claims for which the Appellate Court granted defendant relief. *Guy*, 2023 IL App (3d) 210423, ¶¶ 1, 86. Thus, each appeal involved *different claims*. See *id.* Significantly, this Court has held that section 122-3 of the Post-Conviction Hearing Act "applies to claims and not to petitions"; therefore, "a petitioner must establish cause and prejudice as to each individual claim asserted in a successive petition." *Pitsonbarger*, 205 Ill. 2d at 463. It logically follows that when the State argues that a petitioner has not demonstrated cause or prejudice, the State must do so for each claim. Consequently, to the extent the State argued insufficient cause in Case No. 3-21-0423, its argument pertained only to claims in that appeal. It did not pertain to the claims in Case No. 3-21-0426, which are the only claims before this Court.

Forfeiture and concession aside, defendant has demonstrated cause for not raising the claims of instructional error and inconsistent verdicts (via claims of ineffective assistance of trial and appellate counsel) in his initial post-conviction petition. It is well established that in post-conviction proceedings, "[t]he doctrine of waiver does not bar review of an issue when the waiver arises from ineffective assistance of appellate counsel." *People v. Foster*, 168 Ill. 2d 465, 474 (1995); see

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also *People v. Flores*, 153 Ill. 2d 264, 282 (1992) ("[T]he doctrine of waiver ought not to bar consideration of issues under the Act where the alleged waiver stems from incompetency of appellate counsel."). In other words, ineffective assistance of counsel is cause. *Flores*, 153 Ill. 2d at 280. "Thus, where a petitioner, in a second or subsequent post-conviction petition, raises a meritorious sixth amendment claim, considerations of finality provide an insufficient basis for the courts to compromise the constitutional protections afforded a post-conviction petitioner under the Act and are, necessarily, overridden." *Id.* at 278. "Moreover, where a defaulted claim stems from the incompetency of appellate counsel and results in prejudice to the defendant, there can be no doubt that the proceeding on the first petition was deficient in a fundamental way." *Id.*

Here, the record establishes that the failure to raise the claims on direct appeal and in defendant's initial post-conviction petition resulted from the incompetency of appellate counsel. In his motion for leave and his successive post-conviction pleadings, defendant alleged that appellate counsel advised him that it was not possible to challenge his conviction of attempted murder and to focus on other, new claims in a post-conviction petition. Defendant further alleged that he trusted counsel, so he did not raise the claims in his first petition. Defendant alleged that he had cause to raise them in a successive petition due to ineffective assistance of counsel. Defendant supported his allegations with letters that appellate counsel wrote to him in 2006 and 2010. In the letters, appellate counsel advised defendant that it was "not possible to challenge your attempt first degree murder conviction" and that if defendant were to file a post-conviction petition, he should focus on other, new issues that were "not really talked about in the current record." Although appellate counsel advised defendant that he could allege a claim of

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ineffective assistance of appellate counsel to preserve "old issues," appellate counsel told defendant that, "having seen the issues that were and were not raised so far in your case, I suggest you focus on new issues" (C1515, 1517, 1522–23). Essentially, counsel advised that it would be futile for defendant to claim he was ineffective.

The State argues that "[defendant's] assertion that direct appeal counsel incorrectly advised him not to raise the inconsistent verdicts issue in his initial postconviction petition cannot constitute cause because direct appeal counsel did not represent petitioner in the initial postconviction proceedings, where petitioner proceeded pro se" (State's Br. at 18). None of the authority cited by the State stands for this proposition.

The State cites *People v. Ramey*, 393 Ill. App. 3d. 661, 667–69 (1st. Dist. 2009), which addressed whether the failure of post-conviction counsel to amend a defendant's initial post-conviction petition to include issues the defendant himself did not raise could constitute cause for the defendant to later raise the issues in a successive petition (State's Br. at 19). Here, defendant's allegation of cause was not on the basis of a deficiency of post-conviction counsel relative to defendant's initial petition.

The State also cites *People v. Flores*, 153 Ill. 2d 264 (1992) (State's Br. at 19). However, the *Flores* Court did not hold that a petitioner cannot establish cause by demonstrating that direct-appeal counsel advised him not to raise a claim in an initial post-conviction petition because, in counsel's professional opinion, the claim lacked merit.

Accordingly, this Court should decline to address the State's cause argument because it has forfeited, waived, and conceded the issue. If this Court does address the issue, it should nevertheless conclude that defendant has demonstrated cause.

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I. The State is not immune from principles of forfeiture and waiver when litigating as the appellant in this Court simply because it was the appellee in the Appellate Court.

The State argues that because it was the appellee in the Appellate Court, it may raise a ground in this Court that was not presented in the Appellate Court to sustain the circuit court's judgment, as long as there is a factual basis for it (State's Br. at 20–21, 37). The State's argument makes no exception for issues that it waived or conceded in the Appellate Court or failed to raise in its petition for leave to appeal. In essence, the State is arguing that it is immune from principles of forfeiture and waiver as the appellant in this Court simply because it was the appellee in the Appellate Court. Defendant would be remiss not to make several points in response.

At the outset, it is well established that rules of waiver and forfeiture apply to the State. *People v. Salamon*, 2022 IL 125722, ¶ 70; *People v. Williams*, 193 Ill. 2d 306, 347–48 (2000); see also Ill. S. Ct. R. 341(h)(7), (i) (eff. Oct. 1, 2020). This includes when a State concedes an issue in the Appellate Court or forfeits an issue by failing to raise it in its petition for leave to appeal. *People v. Urzua*, 2023 IL 127789, ¶ 67; *Artis*, 232 Ill. 2d at 177–78. However, defendant recognizes that this Court has stated that an appellant in this Court, who was the appellee in the Appellate Court, may raise a ground to affirm the circuit court's judgment even if it was not raised in the Appellate Court. *People v. Schott*, 145 Ill. 2d 188, 201 (1991). The rationale that this Court provided for this rule was that the appellee in the Appellate Court "did not make the issues in that court." *Id.*

A strict application of this rule in criminal appeals would swallow the principle that forfeiture and waiver are applicable to the State. Further, it would violate due process. In the vast majority of criminal appeals, the State is the appellee

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in the Appellate Court. Consequently, if this Court were to strictly apply the rule advanced by the State in all criminal appeals, allowing the State to freely raise forfeited or waived issues in this Court simply because it was the appellee in the Appellate Court, the State would essentially be immune from forfeiture and waiver. The essence of due process is fairness, integrity, and honor in the operation of the criminal justice system. *People v. Stapinski*, 2015 IL 118278, ¶ 51. To that end, due process requires a "balance of forces between the accused and his accuser." *Wardius v. Oregon*, 412 U.S. 470, 474 (1973); U.S. Const., amend. XIV; see also Ill. Const. 1970, art. I, § 2. When the State provides for procedural rules governing litigation between the prosecution and the accused, the procedure must be "a two-way street" where the parties have reciprocal rights and duties. See, *e.g.*, *Wardius*, 412 U.S. at 471–79 (holding that due process requires reciprocal discovery rights); *Washington v. Texas*, 388 U.S. 14, 17–23 (1967) (striking down a Texas rule allowing only the prosecution to call accomplices as witnesses). Strict application of the rule advanced by the State would result in grossly disparate rules of waiver and forfeiture for the State and criminal defendants.

Furthermore, the rationale for the rule advanced by the State does not justify excusing the State from its waivers and concessions in the Appellate Court or its failure to include issues in its petition for leave to appeal. The State, not defendant, controlled what defense arguments the State responded to, and when the State made concessions, that influenced the Appellate Court's judgment. By drafting the petition for leave to appeal, the State, not defendant, made the issues in this Court. Compare *Schott*, 145 Ill. 2d at 201 (declining to apply forfeiture to the State as the appellant due to its failure to raise an argument in the Appellate Court as appellee) with *Urzua*, 2023 IL 127789, ¶ 67 (applying forfeiture to the

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State as the appellant where it not only failed to raise an issue as the appellee in the Appellate Court but also failed to raise the issue in its petition for leave to appeal); *Artis*, 232 Ill. 2d at 163–64, 177–78 (applying forfeiture to the State's argument that this Court should reinstate a conviction the Appellate Court vacated pursuant to the one-act, one-crime doctrine where the State conceded in the Appellate Court that the conviction should be vacated under the doctrine and also failed to argue in its petition for leave to appeal that the conviction was a different act, making the doctrine inapplicable); *People v. O'Neal*, 104 Ill. 2d 399, 407–08 (1984) (applying forfeiture to the State as the appellant where it not only failed to raise the issue as the appellee in the Appellate Court but also failed to raise the issue in its petition for leave to appeal). Therefore, the rule advanced by the State does not provide a basis to excuse it from its waivers, concessions, or failure to include issues in its petition for leave to appeal.

Accordingly, this Court should not permit the State to raise issues in this Court that it failed to raise in the Appellate Court and its petition for leave to appeal, which include issues that the State waived or conceded in the Appellate Court, simply because it was the appellee in the Appellate Court.

J. Conclusion

The mental state for attempted murder is the intent to kill without lawful justification. The trial court incorrectly instructed the jury that the mental state was only the intent to kill. This erroneous instruction enabled the jury to return legally inconsistent guilty verdicts for second-degree murder and attempted murder.

Defendant's successive post-conviction petition established that he was deprived of the effective assistance of appellate counsel because counsel failed to raise these claims on direct appeal. Furthermore, post-conviction counsel

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performed unreasonably by abandoning defendant's *pro se* claim that appellate counsel was ineffective for not raising the instructional error on direct appeal.

Reversal of defendant's conviction for attempted murder without remanding for a new trial was the appropriate remedy for defendant's claims in this appeal. There was no need to remand for further post-conviction proceedings because the issues presented were strictly legal questions. Remanding for a new trial would be inappropriate because the parties have already litigated, and a jury has necessarily determined in a valid and final judgment, that defendant's mental state at the time of the offense was the intent to kill with lawful justification. The jury's determination on that material issue is unchallenged in this appeal. A new trial would invite a second jury to reach a contrary finding.

This Court should affirm the Appellate Court's judgment, as it was not erroneous in any respect. The State's arguments to overturn it lack merit and, in many cases, are subject to multiple layers of forfeiture or waiver.

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CONCLUSION

Travaris Guy respectfully requests that this Court affirm the Appellate Court's judgment. Should this Court reverse the Appellate Court's judgment, a remand would be appropriate for the Appellate Court to address the State's appeal in Case No. 3-21-0423.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages or words contained in the Rule 341(d) cover, the Rule 341(h)(1) table of contents and statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342, is 47 pages.

/s/Dimitri Golfis
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APPENDIX TO THE BRIEF

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STATE OF ILLINOIS

THIRD DISTRICT APPELLATE COURT

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June 9, 2023

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RE: People v. Guy, Travaris T.
General No.: 3-21-0426
County: Will County
Trial Court No: 02CF1974

The Court has this day, June 09, 2023, entered the following order in the above entitled case:

In People v. Guy, 3-21-0426, the parties are directed to be prepared to address at oral argument the question of remedy, assuming for the sake of analysis that defendant were to prevail on the merits of his inconsistent-verdict argument.

Zachary A. Hooper
Clerk of the Appellate Court

c: James William Glasgow
Justin Andrew Nicolosi

SUBMITTED - 28729570 - Nicole Weems - 7/30/2024 2:18 PM

STATE OF ILLINOIS

THIRD DISTRICT APPELLATE COURT

Zachary A. Hooper
Clerk of the Court
815-434-5050

1004 Columbus Street
Ottawa, Illinois 61350
AC3@IllinoisCourts.gov

May 15, 2023

Dimitrios George Golfis
Office of the State Appellate Defender
770 E. Etna Road
Ottawa, IL 61350-1014

RE: People v. Guy, Travaris T.
General No.: 3-21-0426
County: Will County
Trial Court No: 02CF1974

The Court has this day, May 15, 2023, entered the following order in the above entitled case:

On the Court's Own Motion, Appeal Nos. 3-21-0423 and 3-21-0426 are consolidated for the purposes of decision. The lead case shall be No. 3-21-0426.

Zachary A. Hooper
Clerk of the Appellate Court

c: James William Glasgow
Justin Andrew Nicolosi

SUBMITTED - 28729570 - Nicole Weems - 7/30/2024 2:18 PM

No. 129967

IN THE

SUPREME COURT OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS, Respondent-Appellant, -vs- TRAVARIS T. GUY, Petitioner-Appellee.	)))))))))))	Appeal from the Appellate Court of Illinois, Third District, Nos. 3-21-0423 & 3-21-0426. There on appeal from the Circuit Court of the Twelfth Judicial Circuit, Will County, Illinois, No. 02 CF 1974. Honorable David Carlson, Judge Presiding.

NOTICE AND PROOF OF SERVICE

Mr. Kwame Raoul, Attorney General, 115 S. LaSalle St., Chicago, IL 60603, eserve.criminalappeals@ilag.gov;

Mr. Thomas D. Arado, Deputy Director, State's Attorneys Appellate Prosecutor, 628 Columbus, Suite 300, Ottawa, IL 61350, 3rddistrict@ilsaap.org;

Mr. James Glasgow, Will County State's Attorney, 121 N. Chicago St., Joliet, IL 60432, jglasgow@willcountyillinois.com;

Mr. Travaris Guy, Register No. K76336, Western Illinois Correctional Center, 2500 Rt. 99, Mt. Sterling, IL 62353.

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct. On July 30, 2024, the Brief and Argument was filed with the Clerk of the Supreme Court of Illinois using the Court's electronic filing system in the above-entitled cause. Upon acceptance of the filing from this Court, persons named above with identified email addresses will be served using the Court's electronic filing system and one copy is being mailed to the petitioner-appellee in an envelope deposited in a U.S. mail box in Ottawa, Illinois, with proper postage prepaid. Additionally, upon its acceptance by the Court's electronic filing system, the undersigned will send 13 copies of the Brief and Argument to the Clerk of the above Court.

/s/Nicole Weems
DOCKET CLERK
Office of the State Appellate Defender
770 E. Etna Road
Ottawa, IL 61350
(815) 434-5531
Service via email will be accepted at
3rddistrict.eserve@osad.state.il.us

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