

No. 127794

IN THE

## SUPREME COURT OF ILLINOIS

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PEOPLE OF THE STATE OF	)	Appeal from the Appellate Court of
ILLINOIS,	)	Illinois, No. 1-19-0493.
	)	
Plaintiff-Appellee,	)	There on appeal from the Circuit
	)	Court of Cook County, Illinois, No.
-vs-	)	16 CR 16436 (01).
	)	
	)	Honorable
CAROLINE WOODS,	)	Timothy Joseph Joyce,
	)	Judge Presiding.
Defendant-Appellant.	)	

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## BRIEF AND ARGUMENT FOR DEFENDANT-APPELLANT

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### **NATURE OF THE CASE**

After a jury trial, Caroline Woods was convicted of two counts of aggravated battery of a child causing great bodily harm and sentenced to an aggregate 50 years' imprisonment.

This is a direct appeal from the judgment of the court below. No issue is raised challenging the charging instrument.

### **ISSUE PRESENTED FOR REVIEW**

This Court's precedent holds that a defendant is denied a fair trial where a jury receives directly conflicting instructions on an essential element of the offense, one that correctly states the law and one that incorrectly states the law. At Caroline Woods's trial for aggravated battery of a child, the jury was correctly instructed that accountability liability required a knowing mental state, but incorrectly instructed that parental accountability could be established via a negligent mental state. Did this preserved instructional error deny Caroline her right to a fair trial?

## STATEMENT OF FACTS

Caroline Woods and co-defendant Andrew Richardson, her former fiancé, were charged with numerous offenses arising out of the physical abuse of her son, Z.W. (C. 19-48)<sup>1</sup> During severed but simultaneous jury (Caroline) and bench

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<sup>1</sup> The record on appeal consists of seven volumes of electronic files and one volume of exhibits. The electronic files consist of:

- *Caroline Woods - 1-19-0493 - C.pdf* (cited as “C. \_\_\_”), which includes the common law record;
- *Caroline Woods - 1-19-0493 - R.pdf* (cited as “R. \_\_\_”), which includes portions of the transcripts from the pretrial and trial proceedings;
- *Caroline Woods - 1-19-0493 - Sup C.pdf* (cited as “Sup. C. \_\_\_” and “Sup. R. \_\_\_”), which includes the State’s long-form answer to discovery, the balance of the transcripts for the pretrial and trial proceedings, as well as the transcripts for all of the post-trial proceedings;
- *Caroline Woods - 1-19-0493 - Sec C.pdf* (cited as “Sup2 Sec. C. \_\_\_”), which includes the signed jury verdict forms, the proposed jury instructions, and the pretrial and presentence investigative reports regarding Woods;
- *Caroline Woods - 1-19-0493 - Sup3 C.pdf* (cited as “Sup3 C. \_\_\_”), which includes Woods’s motion to reconsider sentence;
- *Caroline Woods - 1-19-0493 - Sup R.pdf*, which is not cited in this appeal, includes duplicate copies of the transcripts contained in *Caroline Woods - 1-19-0493 - Sup C.pdf*; and
- *Caroline Woods - 1-19-0493 - Sup2 C.pdf* (cited as “Sup2 C. \_\_\_”), which is not cited in this appeal, includes notations regarding secured documents in the record such as the verdict forms, proposed jury instructions, and the pretrial and presentence investigative reports

Portions of the electronic record relevant to Caroline’s appeal are not contained within her record, but are present in the electronic record for co-defendant Andrew Richardson, No. 1-19-0821, including, but not limited to, pretrial court filings, multiple dates of trial testimony, and the trial exhibits. This Court allowed leave on March 1, 2022, to supplement the record with the record on appeal filed in Richardson’s case. Record citations of Richardson’s electronic record are cited in this brief with the prefatory description “Richardson,” such as “Richardson Sup. R. \_\_\_.” Additionally, the five volumes of trial exhibits are filed under Richardson’s appellate case number. Exhibit materials are cited in this brief as “St. Ex. \_\_\_.”



(Richardson) trials, the pair were tried for aggravated battery of a child causing great bodily harm and permanent disfigurement (720 ILCS 5/12-3.05(b)(1) (2016)) to Z.W. by striking and burning him about the body. (C. 21, 23-25, 123; R. 356-57; Sup. R. 67-68) The jury convicted Caroline and also concluded that the offenses were accompanied by exceptionally brutal or heinous behavior indicative of wanton cruelty. (C. 188, 209; Sup2 Sec. C. 4-8; R. 413-14) Richardson was convicted of the same offenses, including the finding of exceptionally brutal or heinous behavior. (Sup. R. 581-84, 595-96; Richardson Sup. R. 728) The trial judge sentenced Caroline to an aggregate term of 50 years' imprisonment on the counts involving the infliction of great bodily harm. (C. 209; Sup. R. 595-96)

### *Trial*

Caroline grew up in south suburban Cook County, living in a house with her mother, grandmother, an aunt, and a cousin. (R. 127, 235; St. Ex. 74) Her mother died when Caroline was 15 years old. (R. 235)

In 2008, at age 16, Caroline gave birth to a son, Z.W., who was fathered by one of her classmates. (R. 127, 236-37; St. Ex. 75) Caroline is the mother of two other children, both of whom she had with Richardson: a daughter, H.R., born in 2014; and a son, L.R., born in 2017 while Caroline was in custody awaiting trial in this case. (Sup2 Sec. C. 58; R. 253, 299; Sup. R. 45, 560)

Caroline and Richardson started dating in August 2012, when she was 20 years old and he was 35. (R. 242) Three months later the pair became engaged. (R. 244) Richardson moved in with Caroline's family; Z.W. was four years old. (R. 245; St. Ex. 75)

At around the same time that Richardson moved in, a family friend alleged that Caroline's aunt was sexually abusing Z.W. (R. 247-48, 330) Caroline, who testified at trial, said she called police, and DCFS became involved. (R. 247-48) With the assistance of DCFS, Caroline obtained an order of protection against her aunt. (R. 248, 329-30, 339)

Caroline's grandmother died in 2013. (R. 246-47, 249) Richardson, Caroline, and Z.W. moved in with Richardson's father, who lived nearby. (R. 250) Caroline was pregnant with H.R. at the time, giving birth to her in January 2014. (R. 253-54)

The couple's relationship began to strain with these changes. (R. 253-56) Richardson became impatient because the children did not sleep well at night and Caroline could not quiet them down. (R. 253-54) Richardson began striking Z.W. (R. 255-56) One day, Caroline saw Richardson hit Z.W. upside the head with enough force that Z.W. stumbled. (R. 255-56, 301-02) Caroline did not call police or seek medical attention for Z.W., but she told Richardson not to do that again. (R. 255-56, 301-02) Later, Caroline intervened when Richardson tried to beat Z.W. with a belt. (R. 256) This led to an argument between Richardson and Caroline. (R. 256) During this period, Caroline would spank Z.W. with her hand on his buttocks or the back of his head when he misbehaved or became too aggressive. (R. 257-58)

Richardson's father died in March 2015, which necessitated another move. (R. 261) In summer 2015, the family moved to a one-bedroom apartment at Newport Condominiums in Chicago's Hyde Park neighborhood. (R. 31, 261; Sup. R. 411; Richardson Sup. R. 174, 270, 394) The complex consisted of two high-rise towers just west of Lake Shore Drive; the family lived in a unit on the 26<sup>th</sup> floor of the

south tower. (R. 304; Richardson Sup. R. 121-23, 174) Richardson worked as a personal trainer. (R. 263)

When the family first moved into the apartment, Z.W. slept on the living room couch and had bed-wetting issues. (R. 268) Caroline and Richardson bought an air mattress for Z.W. to sleep on in the living room, but he continued wetting the bed. (R. 268, 291-92, 334) About four or five months after moving in, Richardson said Z.W. needed his own room; Z.W. began sleeping in a closet. (R. 291-93, 334)

Richardson equipped the apartment with video surveillance cameras: two in the living room and one in the closet where Z.W. was sleeping. (R. 262; Sup. R. 235-37; St. Ex. 11-13) He wired the cameras to a hard drive in the living room that was attached to a monitor beside the television. (R. 262-63; Sup. R. 236; St. Ex. 13) The surveillance video feeds were also accessible through a smart-phone app; Caroline said only Richardson could view the footage on his phone, but Z.W. claimed Caroline's phone also could. (R. 260, 263; Richardson Sup. R. 337; St. Ex. 9 at 12:20-12:40) Richardson had been using the video surveillance equipment since the time the family lived in the south suburbs, but back then, he directed the cameras only on the front door and outside. (R. 258-60)

Richardson was controlling while they lived at Newport Condominiums. (R. 269-72) Caroline did not take the children out of the apartment when Richardson was around. (R. 270, 272) When Richardson was gone, he monitored the family's whereabouts on his phone via the surveillance cameras. (R. 272) Richardson would get angry when Caroline left the apartment, calling her and demanding details on why she was out, then ordering her to return home as soon as possible. (R.

272) Caroline did not work and financially depended on Richardson. (R. 277, 279, 300)

This controlling behavior left Caroline isolated from others. She no longer had a relationship with any family members. (R. 249, 264) Caroline never met any of Richardson's friends. (R. 264) Nor did she befriend anyone at Newport Condominiums. (R. 264) The family never went out together during their time at Newport Condominiums, nor did she and Richardson go out as a couple. (R. 269-70)

At the same time, Richardson took regular solo trips to California, which he said were work-related. (R. 293-95) Caroline estimated that Richardson took about a half-dozen of these trips. (R. 295, 305) He was away for a few days each time. (R. 294, 306)

Richardson verbally and physically abused Caroline during this period of time. (R. 268, 271-72, 275, 279, 295, 335, 338) The two argued more; Caroline said there was always something she was doing that he did not like. (R. 267) Richardson insulted Caroline and called her worthless. (R. 269) He hit her as well, punching, slapping, and grabbing her about the face and body until she had bruises. (R. 269, 271-72, 279, 295, 335, 338)

During a September 2016 argument, Richardson told Caroline he had married another woman a year earlier. (R. 294-95, 335) Richardson said the woman was very ill and he had married her only for her money. (R. 295) After Caroline told Richardson she did not believe the explanation, he punched her in the nose. (R. 295, 335)

In the midst of this turmoil, Z.W. was regularly physically abused in the home between 2014 and 2016. (R. 101-02, 111-12, 116, 210-11, 217-19, 275, 277-79, 281-83, 287, 314-16, 318, 320-21, 323; Richardson Sup. R. 158-60, 198-200, 212-13, 217-18, 221, 330, 333, 335-36, 341, 343-44, 363, 429-36, 438-40; St. Ex. 9, 77) His body was covered in scars, lacerations, and burns; he also had broken bones. (R. 99, 101-02, 104-05, 107, 116, 171-78, 182-84, 186-88, 191-95, 197-204, 210, 217-19, 314-16, 318, 320-21, 323; Richardson Sup. R. 158-60; St. Ex. 8, 58-60, 79-82, 87-88, 91, 95-103) The abuse went unreported. (R. 266-67, 275, 279-83, 287, 306, 314-16, 318, 327-28)

On October 2, 2016, Z.W. ran away from the apartment. (R. 287-88, 293-94, 307, 334, 338; Sup. R. 444-45, 447; Richardson Sup. R. 158) Richardson was in California, where he had been the previous three or four days. (R. 288, 293-94, 334; Sup. R. 445) Caroline and H.R. were out of the apartment too. (R. 287-88; 338; Sup. R. 445) Z.W. said Caroline had tied him up to a rope hanging from a clothes rod in the closet where he ate and slept. (Sup. R. 444) After she and H.R. left, Z.W. freed himself from the rope and dressed himself. (Sup. R. 444, 447) He took an elevator downstairs, exited the building, and ran towards a nearby playground. (Sup. R. 446-48, 464; St. Ex. 9 at 11:36-12:20)

After someone called 911, police arrived at the park and attended to Z.W. (Sup. R. 413-14; Richardson Sup. R. 154-56) Over roughly the next 24 hours, Z.W. made outcry statements to at least six adults, all of whom testified at trial. These adults included: police personnel; a social worker and treating physician at Comer Children's Hospital; and a forensic interviewer from the Chicago Children's Advocacy Center. (R. 97-118; Richardson Sup. R. 152-78, 192-227, 323-63, 411-55)

The outcry witnesses testified that Z.W. reported being routinely physically abused by Richardson and Caroline. (Richardson Sup. R. 159-60, 198-99, 213, 221; St. Ex. 9 at 8:10-8:38, 10:23-10:45) Z.W. told the outcry witnesses that Richardson and Caroline had struck him about the face and body with a belt, electrical cords, and a baseball bat. (Richardson Sup. R. 212, 335-36, 341, 344, 434-35; St. Ex. 9 at 1:43-2:45; St. Ex. 77 at 29:07-29:37, 36:41-39:00) He further told the outcry witnesses that Richardson had burned him about the body with a curling iron and the stove, and caused a gash on his face with a metal spray bottle. (R. 101-02, 111-12, 116, 217-18; Richardson Sup. R. 159-60, 170-71, 217-18, 325-27, 330, 341, 343-44, 363, 429-31, 435-36; St. Ex. 8; St. Ex. 9 at 3:30-4:21, 8:45-10:00; St. Ex. 58-63; St. Ex. 77 at 15:55-18:30, 18:35-24:05, 24:55-26:08, 39:20-43:15) According to the outcry witnesses, Z.W. also said Caroline beat him with a black pole from the vacuum cleaner. (R. 102, 219; Richardson Sup. R. 434-35; St. Ex. 8; St. Ex. 9 at 3:00-3:30; St. Ex. 63; St. Ex. 77 at 36:41-39:00) Z.W. described being fed a diet of okra, water, and protein drinks, as well as sometimes having to relieve himself in the closet; he was wearing a soiled diaper held together by duct tape at the time he ran away from the apartment. (R. 99, 103; Richardson Sup. R. 158, 334-35, 345-46) The outcry witnesses described seeing injuries on Z.W.'s body that were consistent with abuse. (R. 99, 101, 104-05, 107; Richardson Sup. R. 158-69, 218; St. Ex. 8, St. Ex. 9 at 3:30-4:21; St. Ex. 58-60) He walked with a limp. (Richardson Sup. R. 158)

Police arrested Caroline on October 2 at Newport Condominiums. (Richardson Sup. R. 203, 215) There, she told officers that some of Z.W.'s scars came from a car accident years earlier, as well as a recent fall while on a stairwell. (R. 280,

321-22; Richardson Sup. R. 405, 408; St. Ex. 76 at 3:10-3:20, 4:55-5:45) Caroline denied Richardson being abusive, and said he treated her and Z.W. well. (R. 337; Richardson Sup. R. 407-09; St. Ex. 76 at 6:12-6:18) The police arrested Richardson in Los Angeles. (Richardson Sup. R. 338)

After obtaining warrants, police searched the apartment twice. (Richardson Sup. R. 203-04, 269-79, 287, 304-05, 334, 343; St. Ex. 10) Among the items investigators recovered were: the hoses from a vacuum cleaner and shop-vac; a belt; a wooden baseball bat; a white power strip; curling irons; a metal starch can; and a fabric strip. (Richardson Sup. R. 231-58, 269-79, 287, 304-05; St. Ex. 11-46)

Dr. Veena Ramaiah, the pediatrician who treated Z.W. at Comer Children's Hospital on October 3, 2016, opined that Z.W.'s injuries were caused by physical abuse and torture, noting he had so many injuries and scars from head to toe that "there were too many" to count the precise number. (R. 210) A skeletal survey revealed that Z.W. had sustained fractures to his feet and left femur several weeks to months earlier that went untreated and began healing on their own. (R. 198-204; St. Ex. 99-103) Ramaiah said it takes a "significant amount of force" to break a femur, and the fracture could explain Z.W.'s limp. (R. 204)

Z.W. testified at trial about the abuse he suffered. (Sup. R. 420-86) He made some new allegations, including a claim that Caroline had burned his genitals with a curling iron. (Sup. R. 440-42, 477) Z.W. acknowledged that he previously told police that Richardson was the one who used the curling iron to burn his penis; at trial, he said Richardson used the iron to burn him on the thigh, close to his penis, while Caroline used it on his penis. (Sup. R. 440, 477, 481) This was contrary

to what he told the outcry witnesses. (R. 101, 111-12, 217-18, 225; Sup. R. 429-31, 435-36, 440; Richardson Sup. R. 170-71, 217-18, 330, 333; St. Ex. 9 at 8:45-10:00; St. Ex. 77 at 15:55-24:05, 24:55-26:08)

At trial, Caroline admitted striking Z.W. several times on the bottom with an open hand, a belt, and a flexible piece of a vacuum attachment while the family lived at Newport Condominiums. (R. 273-74, 303-04) She denied ever hitting Z.W. with a bat, tying him up in the closet, or burning him with a curling iron. (R. 300)

Caroline testified there were times where she saw Z.W. with injuries. (R. 274-75) Richardson would beat her when she suggested taking Z.W. to the hospital. (R. 275) Caroline was not around when Richardson burned Z.W.'s stomach; she first saw the injury in July or August 2016 while Z.W. was in the shower. (R. 277-79) Caroline confronted Richardson about it, and he beat her again. (R. 279)

Richardson became increasingly violent with Z.W. during the final month before Z.W. ran away. (R. 281) Z.W. had new marks Caroline had never seen before. (R. 281) She knew about a gash on Z.W.'s eyebrow, which Richardson admitted to causing by throwing a book at Z.W.'s face. (R. 281-82) Richardson told her he caused a separate gash to Z.W.'s eye by hitting Z.W. (R. 282-83) Caroline said she did not know about the injury to Z.W.'s penis or his broken leg. (R. 320-21, 327-29)

Caroline acknowledged lying to police on October 2, 2016, about how Z.W. was injured. (R. 280) Richardson previously told Caroline to give those excuses if anyone ever questioned her. (R. 280-81) And despite knowing of Z.W.'s injuries to his face and back that day, Caroline did not bandage the wounds or get him medical treatment. (R. 315-20) Caroline last took Z.W. to the hospital in 2012. (R. 327)



Jury instructions, verdicts, sentencing, and appeal

During the jury instructions conference, Caroline objected to People's Instructions 14-16, which concerned accountability. (Sup2 Sec. C. 24-26; R. 352-55) People's Instruction 14 was the pattern instruction for accountability, IPI Criminal No. 5.03. (Sup2 Sec. C. 24) People's Instructions 15 and 16 used the first and second additional instructions contained in the Committee Note to IPI Criminal No. 5.03. (Sup2 Sec. C. 25-26) People's Instruction 15 discussed a parent's legal duty to protect her small child from danger:

A parent has a legal duty to aid a small child if the parent knows or should know about a danger to the child and the parent has the physical ability to protect the child. Criminal conduct may arise by overt acts or by an omission to act where there is a legal duty to do so.

(Sup2 Sec. C. 25) People's Instruction 16 stated that actual physical presence at the commission of a crime is not required for legal responsibility to attach. (Sup2 Sec. C. 26) Caroline asserted that the "should know" language in People's Instruction 15 was improper under *People v. Pollock*, 202 Ill. 2d 189 (2002). (R. 353-54)

The trial judge gave People's Instructions 14-16 to the jury. (R. 353-55) Regarding the defense's objection to People's Instruction 15, the trial court distinguished *Pollock* on its facts, noting that Caroline testified that she knew Richardson was abusing Z.W. (R. 354-55)

The jury found Caroline guilty on all four counts of the indictment that the prosecution proceeded on, and also found the prosecution proved that the aggravated battery was accompanied by exceptionally brutal or heinous behavior indicative of wanton cruelty; the trial judge found similarly for Richardson. (Sup2 Sec. C. 4-8; R. 413-14; Sup. R. 581-84, 595-96; Richardson Sup. R. 728) Caroline received

sentences of 25 years' imprisonment each for Counts 2 and 5; an aggregate sentence of 50 years. (C. 209; Sup. R. 595-96) Richardson received an aggregate sentence of 64 years' imprisonment: 32 years each for Counts 2 and 5. (Sup. R. 596)

Caroline appealed and the appellate court affirmed in a published opinion. *People v. Woods*, 2021 IL App (1st) 190493. Caroline raised two claims of instructional error, one of which asserted that the trial judge erred by giving the jury conflicting and inconsistent instructions on the law of accountability. Relying primarily on *Pollock* and appellate authority following *Pollock*, Caroline argued that reversible error occurs when a trial judge gives conflicting instructions that incorrectly state the law of parental accountability. The appellate court rejected the claim of error. *Woods*, 2021 IL App (1st) 190493, ¶¶ 51-68.

This Court allowed leave to appeal on January 26, 2022.

## ARGUMENT

**Caroline Woods was denied a fair trial because the trial judge gave the jury directly conflicting instructions regarding accountability liability, one of which correctly stated the requisite *mens rea* and the other misstated the applicable mental state.**

The trial judge in Caroline Woods's trial improperly instructed the jury on the applicable law. The prosecution's theory of the case rested heavily on the premise that Caroline was guilty of aggravated battery of a child because she was accountable for the actions of her former fiancé, co-defendant Andrew Richardson. (R. 364-68, 392-93; Sup. R. 401-02) Consistent with this theory, the prosecution requested that the jury be instructed on the relevant law of accountability. (Sup2 Sec. C. 24-26; R. 344-45) The trial judge granted the prosecution's request and gave instructions on the law of parental accountability. (R. 353-55, 402)

These instructions were directly contradictory on an essential element of the charged offense: the *mens rea* requirement for accountability. One instruction, IPI Criminal No. 5.03 (People's Instruction 14), correctly told jurors that accountability liability required a knowing mental state. (Sup2 Sec. C. 24; R. 402) The other instruction (People's Instruction 15), taken from the Committee Note to IPI Criminal No. 5.03 and given over Caroline's objection, incorrectly stated that a negligent mental state sufficed to trigger a parent's culpability. (Sup2 Sec. C. 25; R. 353-54, 402) The trial judge believed the latter instruction was permissible because Caroline said she knew Richardson had been abusing her son, Z.W. (R. 354-55) During closing argument, the prosecution highlighted the legally-incorrect instruction. (R. 364-68, 392-93)

Neither Illinois law nor this record supports the trial judge's decision. By giving the jury directly conflicting and contradictory instructions on an essential element of the charged offenses, the trial judge ran afoul of this Court's longstanding precedent holding that doing so is reversible error. While the trial judge used instructions taken from the Illinois Pattern Instructions, he overlooked the fact that People's Instruction 15 misstated the law. *See People v. Pollock*, 202 Ill. 2d 189, 214-16 (2002).

The facts in Caroline's record provide no basis for deviating from this Court's time-honored precedent. Contrary to the trial judge's and the appellate court's conclusions, the fact that Caroline knew Richardson was abusing Z.W. does not change the result because such error cannot be deemed harmless. Nor does it matter that Caroline was also prosecuted as a principal. Illinois law does not carve out an exception to the rule that giving contradictory instructions on parental accountability is reversible error. And while the evidence established that Caroline struck Z.W. on multiple occasions, her acts were inconsistent with causing the injuries the prosecution claimed at trial were the source of the great bodily harm. Because the instructional error here deprived Caroline of her right to a fair jury trial, this Court should reverse and remand for a new trial.

#### **A. Standards of review**

A trial court's decision to give a particular instruction is generally reviewed for an abuse of discretion. *People v. Mohr*, 228 Ill. 2d 53, 66 (2008). It is an abuse of discretion to issue instructions that are not sufficiently clear so as to avoid misleading the jury. *Id.* Whether the instructions accurately state the law is a legal question that is reviewed *de novo*. *People v. Parker*, 223 Ill. 2d 494, 501 (2006).

Caroline preserved this issue when she objected to the proposed instruction and included the error in her amended motion for new trial. (C. 200; R. 353-54)

**B. Reversible error occurs when the jury receives directly conflicting instructions on the law, one of which is a correct statement of the law, and the other is an incorrect statement of the law. Such instructional error cannot be deemed harmless.**

This appeal concerns a distinct branch of this Court's instructional-error jurisprudence: cases where the trial judge has given the jury directly conflicting instructions on the applicable law. Time and again for more than 150 years, this Court has held that giving such instructions creates reversible error that is not harmless. And this Court has previously applied this precedent specifically<sup>1</sup> to conflicting instructions on the law of parental accountability, the concept at issue in Caroline's appeal.

**1. This Court has repeatedly held that when the jury receives directly contradictory instructions, such instructional error cannot be deemed harmless.**

Jury instructions serve to provide jurors with the correct legal principles that apply to the evidence, enabling them to reach a proper conclusion based upon the applicable law and the evidence presented. *People v. Bannister*, 232 Ill. 2d 52, 81 (2008). The very purpose of jury instructions is to flag the jurors' attention to concepts that must not be misunderstood. *Lakeside v. Oregon*, 435 U.S. 333, 340 (1978). A defendant's right to a fair jury trial includes the right to have the jury properly instructed. U.S. Const., amends. VI, XIV; Ill. Const. 1970, art. I, §§ 2, 8; *Beck v. Alabama*, 447 U.S. 625, 635-36 (1980). Certain jury instructions, such as the elements of the offense and the issues instructions, are essential to a fair trial. *People v. Reddick*, 123 Ill. 2d 184, 198 (1988).

Instructions must clearly convey the applicable law, and must not be misleading or confusing. *People v. Ramey*, 151 Ill. 2d 498, 535 (1992). The erroneous inclusion of a single word in a jury instruction can be enough to confuse the jury and require a new trial. *See People v. Herron*, 215 Ill. 2d 167, 189-91 (2005) (erroneous use of “or” instead of “and” warranted a new trial).

Instructions in a criminal case are read as a whole. *People v. Terry*, 99 Ill. 2d 508, 516 (1984). In most instances, it suffices if the series of instructions, considered in their totality, fully, fairly, and comprehensively apprise the jury of the relevant legal principles at issue in the case. *People v. Nere*, 2018 IL 122566, ¶ 67 (quoting *Terry*, 99 Ill. 2d at 516). Thus, as a general rule, when the language of an instruction is inaccurate, and standing alone, might have misled the jury, others in the series may explain it, remove the error, or render it harmless. *See, e.g., People v. Miller*, 403 Ill. 561, 565 (1949).

But under Illinois law, that should not be so when two instructions are in direct conflict with each other, one that correctly states the law and another that misstates the law. *See, e.g., Pollock*, 202 Ill. 2d at 212; *People v. Haywood*, 82 Ill. 2d 540, 545 (1980); *People v. Jenkins*, 69 Ill. 2d 61, 66-67 (1977); *People v. Miller*, 403 Ill. 561, 564-65, 567 (1949); *Enright v. People*, 155 Ill. 32, 35-36 (1895). In that instance, instructional error occurs that cannot be deemed harmless. *See Pollock*, 202 Ill. 2d at 212. This principle has been a pillar of this Court’s jurisprudence dating back to the 19<sup>th</sup> Century. *See, e.g., Enright v. People*, 155 Ill. 32, 35-36 (1895); *Steinmeyer v. People*, 95 Ill. 383, 390 (1880); *Toledo, Wabash & Western Railway Co. v. Morgan*, 72 Ill. 155, 158 (1874); *Chicago, Burlington & Quincy Railroad Co. v. Payne*, 49 Ill. 499, 501, 505 (1869).

Moreover, this pre-1970 precedent carries special significance because it is incorporated into the understanding of the jury trial right guaranteed by Article I, Section 8 of the Illinois Constitution, one of the constitutional bases of Caroline's appeal. The mechanism for this incorporation is a separate but complementary state constitutional provision: Article I, Section 13, which provides that the "right of trial by jury as heretofore enjoyed shall remain inviolate." Ill. Const. 1970, art. I, § 13. That provision protects the essential common-law right to jury trial as enjoyed at the time of the 1970 Illinois Constitution's adoption. *People v. Moon*, 2022 IL 125959, ¶¶ 36, 39; *Kakos v. Butler*, 2016 IL 120377, ¶ 14; *People ex rel. Daley v. Joyce*, 126 Ill. 2d 209, 216 (1988). To be clear, Caroline is not raising Article I, Section 13 as a stand-alone basis for relief here. Nevertheless, Section 13 demonstrates that this early common-law precedent regarding directly conflicting instructions has been preserved in the 1970 Constitution.

*Enright*, a homicide prosecution, provides an early application of the conflicting-instructions rule. There, the jury received directly conflicting instructions about self-defense. *Enright*, 155 Ill. at 35-36. In reversing and remanding for a new trial, this Court reasoned:

But it is said the error in this case was cured by one or more of the instructions given at the instance of the defendant, which stated the law correctly. Conceding, as must be done, that the jury was unequivocally and positively misdirected at the instance of the prosecution, and admitting that it was properly instructed on behalf of the defendant, the question, as has been frequently said, remains, which did the jury follow? When the language of an instruction is inaccurate, and, standing alone, might have misled the jury, others in the series may explain it, remove the error, or render it harmless; but that can never be so when two instructions are in direct conflict with each other, one stating the law correctly, and the other incorrectly.

*Id.*

Over time, this Court has continued elaborating its reasoning. Directly conflicting instructions prevent the jury from performing its constitutionally-appointed function. *Jenkins*, 69 Ill. 2d at 66. In our trial-by-jury system, the trial judge is tasked with informing the jury as to the law, while the jurors apply that law in their role as the triers of fact. *Id.* at 66. The system operates from the premise that the jury abides by its constitutional function and follows the judge's instructions on the law. *Id.* at 66.

Instructions that directly conflict with one another undermine this foundational arrangement. Because jurors have not been properly informed of the law to be applied in the case, they cannot perform their constitutional function. *Jenkins*, 69 Ill. 2d at 66; *People v. Bush*, 157 Ill. 2d 248, 254-55 (1993); *Haywood*, 82 Ill. 2d at 545. Such conflicting instructions “necessarily leave[ ] the jury in the dark as to what the court declares the law to be on the particular issue under consideration.” *Miller*, 403 Ill. at 567.

Consequently, the jury finds itself in the position of having to select the proper instruction, which is an exclusive function of the trial judge. *Jenkins*, 69 Ill. 2d at 67; *see also Payne*, 49 Ill. at 505 (“While the instructions given for appellants laid down a different rule from that announced in appellee’s instructions, still the jury were, by all the instructions before them, left to select and act upon either rule as it might strike them as being most proper.”). It is impossible for a court to know which instruction the jury ended up following. *People v. Gilday*, 351 Ill. 11, 21 (1932). Thus, directly conflicting instructions leave jurors “free to adopt the law as stated in either charge, as their whims or caprices might suggest, or,



what is still worse, as their prejudices might influence them.” *Morgan*, 72 Ill. at 158.

In short, giving directly conflicting instructions creates the impermissible risk that a jury reached its verdict using the incorrect instruction. “Certainly, a person should not stand to lose his [or her] liberty because a jury has received equivocal instructions.” *Jenkins*, 69 Ill. 2d at 67 (citing *Bollenbach v. United States*, 326 U.S. 607, 613 (1946)).

This Court has applied the rule in a variety of types of cases. *Enright*, as previously noted, involved a homicide prosecution. *Enright*, 155 Ill. at 33. *Steinmeyer*, *Miller*, and *Haywood* did too. *Haywood*, 82 Ill. 2d at 542; *Miller*, 403 Ill. at 562; *Steinmeyer*, 95 Ill. at 387. *Bush* was a home invasion case. *Bush*, 157 Ill. 2d at 249-50. *Jenkins* involved an attempt murder conviction, while the defendant in *Gilday* was convicted of assault with intent to murder. *Jenkins*, 69 Ill. 2d at 63; *Gilday*, 351 Ill. at 12. In *People v. Lee*, 248 Ill. 64, 66 (1910), defendant was convicted of attempting to kill his wife by poisoning her drink. On the civil side, *Morgan* and *Payne* were both suits involving claims of negligence. *Morgan*, 72 Ill. at 156-58; *Payne*, 49 Ill. at 500.

And this Court has applied the rule to an assortment of jury instructions. Several cases involved self-defense instructions. *Jenkins*, 69 Ill. 2d at 64-65; *Miller*, 403 Ill. at 564-65; *Enright*, 155 Ill. at 35-36; *Steinmeyer*, 388-89. At least two of this Court’s decisions involved voluntary intoxication instructions. *Haywood*, 82 Ill. 2d at 544-46; *Gilday*, 351 Ill. at 17-21. *Lee* involved instructions defining reasonable doubt, while *Payne* involved comparative negligence instructions. *Lee*,

248 Ill. at 70-71. And *Bush* concerned conflicting instructions regarding the elements of home invasion. *Bush*, 157 Ill. 2d at 252-53.

The conflicting-instructions rule carries particular force where the erroneous instruction defines the issues in the case, is mandatory in character, or concerns an essential element of the charged offense. *Jenkins*, 69 Ill. 2d at 66-67; *Miller*, 403 Ill. at 567; *Bush*, 157 Ill. 2d at 255-56.

**2. Illinois law applies this principle to instances of instructional error regarding the law of parental accountability.**

In *Pollock*, this Court applied the above rule specifically to instructions involving the law of parental accountability. There, the defendant-mother was convicted of felony murder and aggravated battery of her small child, premised on a theory of accountability. *Pollock*, 202 Ill. 2d at 210. Her boyfriend admitted killing the child and denied that defendant knew of his actions. *Id.* at 218. Nor was there any evidence that defendant was present for her boyfriend's abusive acts or that she had abused the child herself. *Id.* at 218-20. The trial judge instructed the jury on the relevant law of accountability using IPI Criminal No. 5.03, as well as a non-pattern instruction that "a parent has a legal duty to aid a small child if the parent knows or should know about a danger to the child and the parent has the physical ability to protect the child." *Id.* at 211; *People v. Pollock*, 309 Ill. App. 3d 400, 405 (3d Dist. 1999). While IPI Criminal No. 5.03 correctly stated that defendant had to possess a knowing mental state to be accountable, the non-pattern instruction mistakenly diluted the *mens rea* requirement to mere negligence. *Pollock*, 202 Ill. 2d at 211-16.

The source of the erroneous instruction was language in *People v. Stanciel*, 153 Ill. 2d 218, 236-37 (1992), a consolidated appeal of two unrelated bench trials

presenting sufficiency of the evidence claims, where this Court said there was sufficient evidence in those cases to infer that the defendant-mothers “either knew or should have known” about the serious injuries their respective paramours were inflicting upon their children. Lower courts misapprehended this language and struggled to correctly instruct jurors on the law of parental accountability. To alleviate this confusion, *Pollock* clarified that non-pattern instructions adopting *Stanciel*’s “knew or should have known” language are erroneous because they misstate the relevant *mens rea* for accountability. *Pollock*, 202 Ill. 2d at 212-16.

In doing so, *Pollock* clarified the governing principles concerning parental responsibility. Illinois law recognizes the duty of a parent to protect her child from physical danger, and her failure to do so may constitute criminal conduct. *Id.* at 214-16. Accordingly, in parental accountability prosecutions, proof a parent’s aiding or abetting the principal may be deduced from the parent’s failure to act. *Id.* at 215-16. Such proof is sufficient to establish accountability liability where the parent knows of a serious and immediate threat to the child’s welfare. *Id.* at 216. According to *Pollock*, this requires evidence from which a factfinder can infer that: (1) the parent knew the child was sustaining injury; and (2) based on the severity of the injuries being sustained, the parent knew there was a substantial risk of great bodily harm if she failed to protect the child. *Id.*

In *Pollock*, the non-pattern instruction at issue was erroneous because the “knows or should know” language strayed from this formulation and mistakenly diluted the *mens rea* element for parental accountability. *Id.* at 215-16. Because the trial court in *Pollock* gave conflicting instructions, “the jury was not held to the task of finding beyond a reasonable doubt that defendant possessed the requisite

*mens rea* for felony murder predicated on aggravated battery of a child.” *Id.* at 216. And because accountability was a fundamental element of the charged offense, this Court held that the instructional error was could not be deemed harmless, citing *Bush* and *Haywood*. *Id.* at 212, 216.

Soon after *Pollock*, the appellate court correctly applied these principles in another instructional error case involving parental accountability. *People v. Burton*, 338 Ill. App. 3d 406, 412-14 (1st Dist. 2003). There, the trial court also gave the jury conflicting instructions on accountability: IPI Criminal No. 5.03 and a non-pattern instruction that included the same incorrect “knows or reasonably should know” *mens rea* language used in *Pollock*. *Id.* at 412. The appellate court reversed and remanded, citing *Pollock*, *Bush*, and *Haywood*. *Id.* at 414.

**C. Because the jury received directly contradictory instructions on the essential element of accountability, this Court should reverse Caroline’s convictions and remand for a new trial.**

As demonstrated above, Illinois law provides that where a jury receives conflicting instructions on an essential element of the offense, one that correctly states the law and one that incorrectly states the law, reversible error occurs that cannot be deemed harmless. *Pollock* specifically applied this principle to prosecutions where the trial judge gives conflicting instructions to the jury on the required mental state concerning the law of parental accountability.

The same instructional error from *Pollock* also happened here. Under this Court’s precedent, Caroline should receive a new trial.

1. **The jury received the same conflicting instructions on the law of parental accountability used in *People v. Pollock* that this Court held to be reversible error.**

At the prosecution's request, the trial judge in Caroline's case instructed the jury on the law of accountability using IPI Criminal No. 5.03. This was People's Instruction 14. As given, the instruction stated:

A person is legally responsible for the conduct of another person when, either before or during the commission of an offense, and with the intent to promote or facilitate the commission of an offense, he knowingly solicits, aids, abets, agrees to aid, or attempts to aid the other person in the planning or commission of an offense. The word "conduct" includes any criminal act done in furtherance of the planned and intended act.

(Sup2 Sec. C. 24; R. 402)

Over Caroline's objection, the judge also gave People's Instruction 15, which spoke more specifically to the law of parental accountability. This instruction stated:

A parent has a legal duty to aid a small child if the parent knows or should know about a danger to the child and the parent has the physical ability to protect the child. Criminal conduct may arise by overt acts or by omission to act where there is a legal duty to do so.

(Sup2 Sec. C. 25; R. 402) The source of People's Instruction 15 is the Committee Note to IPI Criminal No. 5.03. (Sup2 Sec. C. 25; R. 353) The trial judge read People's Instruction 15 immediately after giving IPI Criminal No. 5.03. (R. 402) These are the same conflicting instructions the jury received in *Pollock*. People's Instruction 15 incorrectly described the *mens rea* element of accountability. That instruction told jurors Caroline could be accountable if she did not know, but should have known, that Richardson was abusing Z.W. See *Pollock*, 202 Ill. 2d at 215-16.

Here, the prosecution's case was premised on Caroline being accountable for Richardson's actions. (Sup2 Sec. C. 24-26, 28-30; R. 364-68, 392-93; Sup. R. 401-02) Thus, the *mens rea* of accountability was an essential element of the charged

offense. *Pollock*, 202 Ill. 2d at 209, 216. Intent to promote or facilitate the commission of the offense could be proven by evidence that Caroline shared Richardson's criminal intent or that the two had a common criminal design. 720 ILCS 5/2-9(c) (2016); *Pollock*, 202 Ill. 2d at 213-14 (citing *Stanciel*, 153 Ill. 2d at 234-35). But accountability must comport with the requirements of the crime. *Id.* at 209 (quoting *Stanciel*, 153 Ill. 2d at 234). Aggravated battery of a child requires a knowing or intentional mental state. 720 ILCS 5/12-3.05(b)(1) (2016); *Pollock*, 202 Ill. 2d at 209. Therefore, to find Caroline accountable for aggravated battery of a child under the law of parental accountability, the jury was required to find beyond a reasonable doubt that she knew Richardson abused Z.W. in the past, yet took no action to protect Z.W. from Richardson. *Pollock*, 202 Ill. 2d at 209, 215-16. Attempting to establish this, the prosecution spent considerable time telling the jury that Caroline was liable under an accountability theory. (R. 364-68, 392-93; Sup. R. 401-02)

To be sure, the prosecutors here did not refer to the "knows or should know" language in the erroneous instruction as frequently in *Pollock*: it happened just once here. (R. 366) But the context in which the prosecution did so gave special emphasis to that language. Specifically, the prosecution in Caroline's case expressly highlighted the erroneous language to the jury during closing argument while asserting that it met its burden of proof for accountability liability. (R. 365-66)

During closing argument, the prosecution told jurors that the trial judge would be giving three separate instructions about the law of legal responsibility. (R. 365) The first instruction (People's Instruction 14) would be the language from IPI Criminal No. 5.03. (R. 365-66) The second instruction (People's Instruction 16) was that actual physical presence at the commission of the crime was not a

requirement for legal responsibility. (R. 366) Then the prosecution emphasized People's Instruction 15:

And most importantly in this case, His Honor will tell you that a parent has a legal duty to aid a small child if the parent knows or should know about a danger to the child, and the parent has the physical ability to protect the child. Criminal conduct may arise by overt acts or by omission to act where there is a legal duty to do so.

(R. 366) Simply put, the prosecution told the jury that the most important instruction regarding accountability in this case was the one that misstated the law.

The jury was left to guess at how to make sense of the contradictory instructions. The erroneous "knows or should know" language in People's Instruction 15 signaled to jurors that a negligent mental state sufficed to find Caroline accountable for Richardson's acts. Such dilution of the *mens rea* element of accountability is precisely what *Pollock* held to be impermissible. *Cf. Pollock*, 202 Ill. 2d at 216 ("It is clear that the jury was not held to the task of finding beyond a reasonable doubt that defendant possessed the requisite *mens rea* for felony murder predicated on aggravated battery of a child.") Because Caroline's convictions for aggravated battery of a child were premised on the prosecution's theory that she was accountable for Richardson's acts, accountability was an essential element of the offense charged; consequently, the instructional error cannot be deemed harmless. *Pollock*, 202 Ill. 2d at 216.

2. **Even though People's Instruction 15 tracks the language in IPI Criminal No. 5.03's Committee Note, the trial judge acted unreasonably in giving the instruction because it misstated the law regarding the applicable *mens rea* element.**

The fact that People's Instruction 15 was based on language in the Committee Note to IPI Criminal No. 5.03 does not change the result. In general, trial courts must provide the IPIs that correspond to the crime charged. *People v. Durr*, 215

Ill. 2d 283, 300-01 (2005). But trial judges must still ensure that those pattern instructions accurately state the law. *Bannister*, 232 Ill. 2d at 81. Relatedly, Supreme Court Rule 451(a) requires trial judges to instruct the jury using the IPIs unless they determine that the pattern instructions are incorrect. Ill. S. Ct. R. 451(a); *Durr*, 215 Ill. 2d at 300-01. Here, despite being language taken from the Committee Note to IPI Criminal No. 5.03, People's Instruction 15 unequivocally misstates the law.

As previously noted, *Pollock* clarified confusion about the law of parental accountability generated by *Stanciel*. Nearly a decade after *Pollock* was decided, though, a new source of confusion emerged. In 2011, this Court's Committee on Pattern Jury Instructions in Criminal Cases amended the Committee Note to IPI Criminal No. 5.03 to include three additional instructions concerning accountability to use as needed. *See* Appendix. The first additional instruction, concerning parental accountability, misstates the law. It says:

(1) A parent has a legal duty to aid a small child if the parent knows or should know about a danger to the child and the parent has the physical ability to protect the child. Criminal conduct may arise by overt acts or by an omission to act where there is a legal duty to do so.

IPI Criminal No. 5.03, Committee Note (1) (eff. Oct. 2011); *see* Appendix.

But under *Pollock*, this instruction is incorrect. The "knows or should know" language is the same erroneous *mens rea* formulation taken from *Stanciel* that *Pollock* said could not be used in conjunction with the accountability language found in the text of IPI Criminal No. 5.03. *Pollock*, 202 Ill. 2d at 214-16.

The 2011 amendment to IPI Criminal No. 5.03's Committee Note has created an unintended consequence: any time a trial judge gives that additional instruction



from the Committee Note together with the text of IPI Criminal No. 5.03 during a parental accountability case, reversible error is bound to occur under this Court's longstanding precedent—including *Pollock*—holding that giving directly conflicting instructions is error that cannot be deemed harmless.

While the Committee's inclusion of erroneous language to the parental accountability instruction in IPI Criminal No. 5.03 was undoubtedly inadvertent, the mistake underscores the reason why Supreme Court Rule 451(a) and this Court's precedent place a duty upon trial judges to double-check the accuracy of the IPI text. Drafting errors happen. Thus, at trial, the judge remains responsible for ensuring that jurors receive accurate statements of the applicable law. *See Jenkins*, 69 Ill. 2d at 66 (“In our judge-and-jury system it is the duty of the court to inform the jury as to the law.”).

The trial judge here abused his discretion by giving People's Instruction 15. Using the “knows or should know” language from *Stanciel*, the instruction told jurors that a *mens rea* of negligence was sufficient to establish liability. (Sup2 Sec. C. 25; R. 402) This is incorrect. Because aggravated battery of a child requires a *mens rea* of knowledge, accountability liability required a knowing mental state. 720 ILCS 5/12-3.05(b)(1) (2016); *Pollock*, 202 Ill. 2d at 209. Thus, even though the source of the text for People's Instruction 15 was the suggested language provided in the Committee Note to IPI Criminal No. 5.03, the trial judge should not have given the instruction since it misstated the law. *Pollock*, 202 Ill. 2d at 215-16.

And at trial, the judge was aware of this infirmity. During the instructions conference, Caroline told the judge that People's Instruction 15 misstated the law

by including the “knows or should know” language. (R. 353-54) Caroline specifically cited *Pollock* while making the argument. (R. 353-54)

During a trial, a judge’s duty is to “give the jury proper guidance, not to generate confusion.” *Jenkins*, 69 Ill. 2d at 66. Despite being in a Committee Note in the IPIs, the language in People’s Instruction 15 was erroneous. The trial judge was thus obligated to deny the proffered instruction. Instead, he gave it to the jury and created confusion about an essential element of the charged offense. Doing so denied Caroline her right to a fair trial.

**3. The fact that Caroline knew her former fiancé was physically abusing her son does not change the fact that the instructional error here denied her a fair trial.**

Here, both the trial judge and the appellate court tried distinguishing *Pollock* on the ground that Caroline knew that Richardson was abusing Z.W. (R. 355-56); *Woods*, 2021 IL App (1st) 190493, ¶ 62. This purported distinction fails. To be sure, Caroline testified she was aware of some of what Richardson had done to Z.W. (R. 274-75, 277-79, 281-83) But *Pollock* did not limit its holding to cases where the defendant-mother was unaware of the abuse a third-party was inflicting upon her child. Instead, *Pollock* stands for the proposition that regardless of whether a jury hears evidence that the parent knew her child was being abused, instructions such as People’s Instruction 15 misstate the law, and constitute reversible error, because the “knows or should know” language signals to jurors that a negligent mental state suffices to find the parent accountable for the acts of the principal. *Pollock*, 202 Ill. 2d at 215-16. Thus, the jury here was not held to the task of finding beyond a reasonable doubt that Caroline possessed the requisite *mens rea* for aggravated battery of a child. *Id.* at 216.

The appellate court previously recognized this point soon after *Pollock* was decided. See *Burton*, 338 Ill. App. 3d at 411-14. *Burton* held that under *Pollock*, this error was not harmless even when the defendant-mother had known about her boyfriend's abuse of her child. *Id.*

But in Caroline's case, the appellate court cast aside *Burton*, claiming the analysis there "was limited to a brief summary of *Pollock* and then a one-sentence holding." *Woods*, 2021 IL App (1st) 190493, ¶ 66. While *Burton*'s analysis is terse, the appellate court here overlooked the procedural history of *Burton*, which explains that brevity. In *Burton*, the appellate court initially rejected defendant's instructional error argument in a Rule 23 order issued before *Pollock* was decided. *Burton*, 338 Ill. App. 3d at 408. Then this Court issued a supervisory order directing the appellate court to reexamine the instructional error issue in light of *Pollock*. *Id.* Given that *Burton* contained the identical error identified in *Pollock*, coupled with this Court's supervisory order, the appellate court's analysis on remand became very straightforward: apply the rule of *Pollock*. The appellate court did so, held that the trial court committed reversible error, and remanded for a new trial. *Burton*, 338 Ill. App. 3d at 413-14.

Moreover, the reasoning of the trial judge and the appellate court in Caroline's case overlooks the great weight of relevant authority that predates *Pollock*, let alone *Burton*. As previously discussed, this Court has repeatedly and consistently held since at least the 1860s that when a jury receives directly conflicting instructions on the law, error occurs that is not harmless. See, e.g., *Jenkins*, 69 Ill. 2d at 66-67; *Miller*, 403 Ill. at 564-65, 567; *Enright*, 155 Ill. at 35-36; *Payne*, 49 Ill. at 501, 505.

Caroline's jury was left in the dark as to what the trial judge declared the law to be on an essential element of the offense. *Miller*, 403 Ill. at 567. This was the fault of the trial judge, not the jury. *Jenkins*, 69 Ill. 2d at 66. Because the jurors were not given proper guidance, they were, by definition, unable to perform their constitutional function and follow the trial judge's instructions on the law. *Id.* The trial judge's abuse of discretion also left jurors free to select one instruction over the other "as their whims or caprices might suggest" or "as their prejudices might influence them." *Morgan*, 72 Ill. at 158. Such circumstances are antithetical to the concept of a fair jury trial. And in the proceedings below, none of the tribunals presiding over Caroline's case acknowledged these considerations.

**4. The fact that Caroline was prosecuted under both principal and accomplice theories of liability does not change the fact that the instructional error here denied her a fair trial.**

The appellate court found *Pollock* further distinguishable because Caroline was tried under both principal and accountability theories of liability. *Woods*, 2021 IL App (1st) 190493, ¶ 62. This purported distinction is flawed for several reasons.

First, the appellate court's contention misapprehends the facts of *Pollock*. In *Pollock*, like here, defendant was prosecuted as both a principal and accessory. *Pollock*, 202 Ill. 2d at 206. During opening statements in *Pollock*, the prosecution told the jury that it would prove defendant either killed her child herself or allowed her boyfriend to do so. *Id.* Thus, as *Pollock* demonstrates, this instructional error is reversible error even where the prosecution simultaneously pursues principal and accountability theories of guilt at trial. That is what the prosecution did here, spending considerable time in opening statement and closing argument emphasizing

to the jury that Caroline was guilty under accountability principles. (R. 364-68, 392-93; Sup. R. 401-02)

Second, contrary to the appellate court's assertion, this was not a case where the evidence "overwhelmingly established that [Caroline] was a principal just as much as she was accountable for Richardson's acts." *Woods*, 2021 IL App (1st) 190493, ¶ 68. Here, to find Caroline guilty of Counts 2 and 5 as a principal, the jury had to conclude that the prosecution had proven beyond a reasonable doubt that she had inflicted great bodily harm upon Z.W. (C. 21, 24)

During closing argument, the prosecution articulated its theory on what constituted the great bodily harm here: Z.W.'s broken feet and femur, the burns, and the gashes to his face. (R. 369-70)

Yet the evidence consistently pointed to Richardson as the one who inflicted those injuries. Z.W. told the outcry witnesses that Richardson had caused the gash on his forehead and was the one who had burned him. (R. 101-02, 111-12, 116, 218; Richardson Sup. R. 159-60, 217-18, 330, 431-32, 435-36, St. Ex. 9 at 8:45-10:00; St. Ex. 77 at 18:35-24:05, 24:55-26:08, 39:20-43:15) Dr. Veena Ramaiah testified that a "significant amount of force" was needed to break a femur; Richardson was the one who was a personal trainer. (R. 203-04, 263) Although Z.W. alleged at trial that Caroline also burned him, none of the outcry witnesses corroborated his claim that he told them about this too. (R. 101, 111-12, 217-18, 225; Sup. R. 429-31, 435-36, 440; Richardson Sup. R. 170-71, 217-18, 330, 333; St. Ex. 9 at 8:45-10:00; St. Ex. 77 at 15:55-24:05, 24:55-26:08) And while Caroline admitted to striking Z.W. with her hand, a belt, and a flexible piece of vacuum hose, she denied ever burning him or striking him with a bat. (R. 273-74, 300, 303-04)

Third and perhaps most importantly, *Pollock* did not limit its reasoning to cases where the defendant-parent was prosecuted only under an accomplice liability theory. The appellate court cites no specific portion of *Pollock* as support for this contention. *Woods*, 2021 IL App (1st) 190493, ¶ 62. And viewing *Pollock* within the broader context of this Court's precedent concerning directly conflicting instructions, creating such a limitation makes no sense. A prosecution that pursues both principal and accomplice theories of culpability only increases the complexity of the case. This heightens the risk for juror confusion when given contradictory instructions, especially when it concerns an essential element of the charged offense. And that, in turn, is unacceptable in a system of adjudication that is grounded in the promise of a fair trial. Such risks are avoided by simply reading *Pollock* in harmony with the basic rule underlying this Court's precedent on this subject: giving directly conflicting instructions to the jury creates error that cannot be deemed harmless.

#### **D. Conclusion**

Caroline Woods was entitled to a fair jury trial. But because of instructional error, she did not receive one. The trial judge gave the jury directly conflicting instructions on an essential element the charged offense. An extensive body of precedent from this Court holds that such error cannot be deemed harmless. And one of these earlier decisions, *Pollock*, specifically held so within the context that occurred in Caroline's case: directly conflicting instructions on the required mental state under the law of parental accountability. Consistent with precedent, including *Pollock*, this Court should apply its longstanding jurisprudence concerning this unique type of instructional error, and reverse and remand for a new trial.

**CONCLUSION**

For the foregoing reasons, Caroline Woods, Defendant-Appellant, respectfully requests that this Court reverse her convictions and remand for a new trial.

Respectfully submitted,

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COUNSEL FOR DEFENDANT-APPELLANT

**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 33 pages.

/s/Matthew M. Daniels  
MATTHEW M. DANIELS  
Assistant Appellate Defender



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## IN THE CIRCUIT COURT OF COOK COUNTY

PE OF THE STATE OF ILLINOIS ) CASE NUMBER 16CR1643601  
 V. ) DATE OF BIRTH 11/06/91  
 CA WOODS ) DATE OF ARREST 10/02/16  
 Defen IR NUMBER 2332932 SID NUMBER 032042861

 ORDER OF COMMITMENT AND SENTENCE TO  
 ILLINOIS DEPARTMENT OF CORRECTIONS  
 =====

The above named defendant having been adjudged guilty of the offense(s) enumerated below is hereby sentenced to the Illinois Department of Corrections as follows:

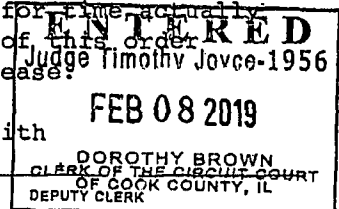
Count	Statutory Citation	Offense	Sentence	Class
002	<u>720-5/12-3.05(B)(1)</u>	AGG BTRY/CHILD <13/PERM D	YRS. 025 MOS.00	X
and said sentence shall run consecutive to count(s) 005				
005	<u>720-5/12-3.05(B)(1)</u>	AGG BTRY/CHILD <13/PERM D	YRS. 025 MOS.00	X
and said sentence shall run consecutive to count(s) 002				
_____			YRS. _____ MOS. _____	_____
and said sentence shall run (concurrent with)(consecutive to) the sentence imposed on:				
_____			YRS. _____ MOS. _____	_____
and said sentence shall run (concurrent with)(consecutive to) the sentence imposed on:				
_____			YRS. _____ MOS. _____	_____
and said sentence shall run (concurrent with)(consecutive to) the sentence imposed on:				

On Count \_\_\_\_\_ defendant having been convicted of a class \_\_\_\_\_ offense is sentenced as a class x offender pursuant TO 730 ILCS 5/5-5-3(C)(8).

On Count \_\_\_\_\_ defendant is sentenced to an extended term pursuant to 730 ILCS 5/5-8-2.

The Court finds that the defendant is entitled to receive credit for time actually served in custody for a total credit of 0859 days as of the date of this order. Defendant is ordered to serve 0003 years Mandatory Supervised Release.

IT IS FURTHER ORDERED that the above sentence(s) be concurrent with the sentence imposed in case number(s) \_\_\_\_\_ AND: consecutive to the sentence imposed under case number(s) \_\_\_\_\_



IT IS FURTHER ORDERED THAT AGGREGATE CREDIT. COUNT 4 MERGES INTO 2. COUNT 6 MERGES INTO COUNT 5. MITT TO ISSUE

IT IS FURTHER ORDERED that the Clerk provide the Sheriff of Cook County with a copy of this order and that the Sheriff take the defendant into custody and deliver him/her to the Illinois Department of Corrections and that the Department take him/her into custody and confine him/her in a manner provided by law until the above sentence is fulfilled.

DATED FEBRUARY 08, 2019

CERTIFIED BY V WIMBERLY

DEPUTY CLERK

VERIFIED BY \_\_\_\_\_

ENTER: 02/08/19

JUDGE: JUDGE TIMOTHY JOSEPH

1956

CCG N305

A-5

C 209

TO THE APPELLATE COURT OF ILLINOIS  
IN THE CIRCUIT COURT OF COOK COUNTY  
CRIMINAL DIVISION

PEOPLE OF THE STATE OF ILLINOIS

-vs-

CAROLINE WOODS

No. 16 CR 1643601  
Trial Judge: TIMOTHY JOYCE  
Attorney: SAMUEL MORGAN

## NOTICE OF APPEAL

An Appeal is taken from the order of judgment described below:

APPELLANT'S NAME: CAROLINE WOODS

IR # 2332932

D.O.B. November 6, 1991

APPELLANT'S ADDRESS: IDOC

APPELLANT'S ATTORNEY: STATE APPELLATE DEFENDER

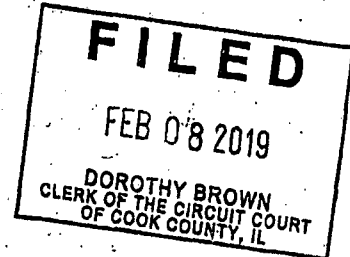
ADDRESS: 203 N. LASALLE, 24TH FLOOR, CHICAGO, IL 60601

OFFENSE: AGGRAVATED BATTERY TO CHILD

JUDGMENT: VERDICT - GUILTY

DATE: 9/14/18

SENTENCE: Fifty (50) years IDOC



*[Signature]*  
APPELLANT'S ATTORNEY

VERIFIED PETITION FOR REPORT OF PROCEEDINGS  
COMMON LAW RECORD AND FOR APPOINTMENT OF COUNSEL ON APPEAL

Under Supreme Court Rules 605-608, appellant asks the Court to order the Official Court Reporter to transcribe an original and copy of the proceedings, file the original with the Clerk and deliver a copy to the appellant; order the Clerk to prepare the Record on Appeal and to Appoint Counsel on Appeal. Appellant, being duly sworn, says that at the time of his conviction he was and is unable to pay for the Record or an appeal lawyer.

*[Signature]*  
ORDER

IT IS ORDERED the State Appellate Defender be appointed as counsel on appeal and the Record and Report of Proceedings be furnished appellant without cost.

Dates to be transcribed:

PRE-TRIAL MOTION DATE(S): June 13, July 26, 2018

JURY TRIAL DATE(S): September 10-14, 2018

SENTENCING DATE(S):

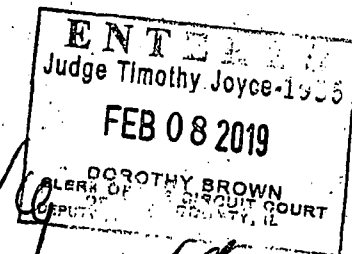
DATE:

*28/19*

ENTER:

JUDGE

*[Signature]*  
*19/10*



A-6



# Illinois Official Reports

## Appellate Court



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Decisions  
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the accuracy and  
integrity of this  
document  
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### *People v. Woods, 2021 IL App (1st) 190493*

Appellate Court  
Caption

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v.  
CAROLINE WOODS, Defendant-Appellant.

District & No.

First District, Third Division  
No. 1-19-0493

Filed

September 22, 2021

Decision Under  
Review

Appeal from the Circuit Court of Cook County, No. 16-CR-  
16436(01); the Hon. Timothy Joseph Joyce, Judge, presiding.

Judgment

Affirmed.

Counsel on  
Appeal

James E. Chadd, Douglas R. Hoff, and Matthew M. Daniels, of State  
Appellate Defender's Office, of Chicago, for appellant.

Kimberly M. Foxx, State's Attorney, of Chicago (Alan J. Spellberg,  
Janet C. Mahoney, and David H. Iskovich, Assistant State's  
Attorneys, of counsel), for the People.

Panel

JUSTICE McBRIDE delivered the judgment of the court, with  
opinion.  
Presiding Justice Gordon and Justice Ellis concurred in the judgment  
and opinion.

## OPINION

¶ 1 Following a jury trial, defendant Caroline Woods was convicted of two counts of aggravated battery based on the striking and burning of Z.W., born October 22, 2008. Defendant and codefendant Andrew Richardson were tried separately and simultaneously, with defendant by a jury and Richardson by the trial court. The trial court subsequently sentenced defendant to two consecutive terms of 25 years, for an aggregate term of 50 years.

¶ 2 On appeal, defendant argues that the trial court (1) abused its discretion when it denied her request for a jury instruction on the lesser-included offense of aggravated battery of a child involving bodily harm and (2) incorrectly instructed the jury on accountability.

¶ 3 The evidence presented at defendant's September 2018 jury trial disclosed the following.

¶ 4 Mason Arion was walking his dog at a park near 4800 South Lake Shore Drive in Chicago at around 10 a.m. on October 2, 2016. He noticed a young male child "sort of jogging" north along Lake Shore Drive. He explained that the child was "sort of jogging" because the child was "sort of limping" and did not appear to be able to run at full speed. He observed the child for "a little bit" because he did not want to scare him into the road. As he caught up to the child, Arion approached him and asked where he was going and where he was coming from. Arion observed scars and bruises on the child's face, arms, and legs. A minute or two later, a police officer arrived at the location. Arion did not learn the name of the child. After the officer arrived, he provided his information to the officer and told the officer what he had observed. Arion identified a photograph of the child in open court.

¶ 5 Sergeant Troy Williams was working on October 2, 2016, as a patrol sergeant, in uniform and driving a marked patrol car. His uniform included a body camera. Shortly before 11 a.m., he heard a radio call of "an approximately seven-year-old running northbound on Lake Shore Drive" near 47th and 48th Streets. It was not typical for a sergeant to respond to routine calls on the radio, but because of the nature of the call, he went to the scene. He drove to the area near 47th Street and Lake Shore Drive, which had a playground and baseball fields. As he approached the area, Arion raised his hand to get Sergeant Williams's attention. He spoke with Arion and then with the child, whom he identified as Z.W. Sergeant Williams observed facial scars and bruises as well as a limp. He also noted what appeared to be a diaper protruding from Z.W.'s waistband.

¶ 6 Z.W. told Sergeant Williams that he "just wanted to go to the park." The sergeant asked Z.W. about the observed injuries, and Z.W. told him that they were "punishment wounds from his parents." Sergeant Williams asked who his parents were, and Z.W. answered "Caroline," "Carol," and "Richardson." Z.W. showed Sergeant Williams a burn wound or scar on his back and told him that he had been placed on a stove by his father "Richardson." When the sergeant asked Z.W. where he lived, Z.W. pointed at two buildings south of where they were, 4800 South Chicago Beach Drive.

¶ 7 Sergeant Williams notified the dispatcher that he found the child and called for the fire department because of the child's condition. An ambulance was sent to the scene, and the paramedics examined Z.W. He also spoke with his lieutenant, Jacob Alderden. Officer Frances Frye also arrived at the scene. Sergeant Williams directed the ambulance to 4800 South Chicago Beach Drive, and he relocated to that location as well to help find out where Z.W. lived. Officer Mandy Tucker also arrived at the scene.

¶ 8 Z.W. initially led the officers into the north building. Officer Tucker's body camera was on and operating at this time, and Sergeant Williams turned on his body camera as well. They went up to the twenty-sixth floor, and Z.W. went to an apartment, turned the knob, and then knocked. No one answered the door. The officers knocked on a couple other doors and determined that Z.W. did not live on that floor. They returned to the lobby. Sergeant Williams spoke with the doorman while Z.W. returned to the ambulance. As he was standing in the lobby, a woman entered with a baby. Sergeant Williams learned her name was Caroline Woods, and he identified her as the defendant in open court. He had a conversation with defendant in the presence of Officer Tucker, and defendant was placed in custody at the scene. Sergeant Williams estimated that he had been with Z.W. for about 20 to 30 minutes before defendant entered the lobby. During his conversation with defendant, she told Sergeant Williams that Z.W. was injured in a car accident and from falling down the stairs. She also told him that Richardson treated Z.W. very well.

¶ 9 Officer Frances Frye was working on October 2, 2016, as a uniformed patrol officer in a marked vehicle. Shortly before 11 a.m., the officer heard a call over the police radio of a child running northbound around the 4800 block of South Lake Shore Drive. Officer Frye proceeded to that location and observed Sergeant Troy Williams with a child, Z.W., as well as Arion. He observed that Z.W. "looked battered" and had bruises "all over his body," including on his face and arms. After speaking with Sergeant Williams, Officer Frye tried to determine where Z.W. lived. Z.W. pointed to a building that was part of multiple residential high-rise buildings. He went into the lobbies of multiple buildings to ask security and the doormen if they knew Z.W. He was unable to locate Z.W.'s residence, but other officers located Z.W.'s building.

¶ 10 Officer Mandy Tucker responded to a call on October 2, 2016, to assist in the scene at 4800 South Chicago Beach Drive. When she arrived, Sergeant Williams and Lieutenant Alderden were with Z.W. Officer Tucker was in uniform with a body camera, which she activated when she arrived at the location. She went with officers to the twenty-sixth floor of the north tower to look for Z.W.'s apartment. She later returned to the lobby and was with Sergeant Williams when defendant entered the lobby with a little girl. Officer Tucker identified defendant in open court. She was present, and her body camera was recording, while Sergeant Williams spoke with defendant. The videotape of the body camera footage was admitted into evidence and played for the jury.

¶ 11 Defendant told Officer Tucker that she went to throw garbage out and, when she returned, Z.W. was not there. She also said that Z.W. was in a car accident five or six years ago and that he fell down the stairs. Officer Tucker did not observe any bruises on defendant. Defendant told her that she used to have a fiancé who was not abusive and treated Z.W. very well. Defendant also said her aunt was abusive to Z.W. four years ago.

¶ 12 Lieutenant Jacob Alderden monitored the call that Sergeant Williams responded to of a child running along Lake Shore Drive on October 2, 2016. He spoke with Sergeant Williams and then went to the scene at 4800 South Chicago Beach Drive. He joined Sergeant Williams and other officers on the twenty-sixth floor of the north tower. He observed Z.W. and noticed "obvious injuries to his face." After the attempts to find Z.W.'s apartment were unsuccessful, he returned to the lobby, and defendant showed up with Z.W.'s sister. Lieutenant Alderden identified defendant in open court. Z.W. was in the ambulance, and Lieutenant Alderden went to speak with him. Z.W. told him that he was routinely beaten by his mother and father. Z.W. started to detail how he sustained the injuries, including which weapons were used. Lieutenant

Alderden stopped talking to Z.W. because he directed another sergeant to obtain a search warrant for defendant and Richardson's residence. He then resumed a conversation with Z.W., during which Officer Jaime Garcia-Okon was present. Officer Garcia-Okon was wearing a body camera, and the conversation was recorded. Z.W. told the lieutenant that he last attended school for prekindergarten and was enrolled in home school. The recording of the conversation was played during the trial.

¶ 13 During the recorded conversation, Z.W. told the officers that defendant and Richardson hit him with a baseball bat, belt, vacuum, and a metal bottle. Richardson burned him by holding him over a hot stove. Z.W. said that he was not fed when Richardson was out of town.

¶ 14 Later that evening, around 7:30 p.m., Lieutenant Alderden returned to 4800 South Chicago Beach Drive to execute a search warrant with several other officers, including Sergeant Williams and Officer Garcia-Okon, on Richardson and defendant's residence. Lieutenant Alderden observed a small closet with a radio, suitcase, three empty cans of okra, two water bottles, a fork, and a hanging cord. The closet also smelled strongly of urine. He also observed a television monitor that was attached to a closed-circuit security system, which included cameras from the closet and the living room. A recording from the body camera of Sergeant Kochanny, who participated in the search warrant execution, was admitted into evidence and played before the jury.

¶ 15 Officer Jerry Doskocz was employed as an evidence technician with the Chicago Police Department and was assigned to assist in executing the search warrant at 4800 South Chicago Beach Drive. He photographed and inventoried several items from the apartment, including a black wooden baseball bat, a black belt, a hair straightener, a vacuum cleaner with a black attached hose, a metal starch can, and a white power strip. He also photographed the security system throughout the apartment with cameras in the closet and living room, a small television with the camera feed, and a hard drive.

¶ 16 Detective Brian Boeddeker was assigned to investigate the child abuse of Z.W. on October 2, 2016. He went to Comer Children's Hospital and met with Z.W. in the emergency room with another officer and an evidence technician present. He observed visible injuries on Z.W. During the interview, Z.W. identified Richardson from a photograph as his dad.

¶ 17 Z.W. described the abuse he suffered. He told the detective that his mother and father hit him on the feet with a black baseball bat. His father burned him on the kitchen stove. His mother and father beat him about the head and the back of neck with a black belt. Detective Boeddeker observed a bandage on the right side of Z.W.'s face as well as a sore or an injury to the bridge of his nose and other injuries in different stages of healing and scarring all over his head. Z.W. said he received the injury above his eyebrow when his father hit him with a metal spray bottle a few weeks earlier. Detective Boeddeker also observed injuries to Z.W.'s genital area, including an injury to the left side of Z.W.'s penis from when Richardson burned his penis with a black curling iron. Z.W. told the detective he received injuries from multiple items, including a vacuum cleaner hose, electrical cords, a belt, a black baseball bat, the stove, and a black curling iron.

¶ 18 Z.W. also discussed his living situation. He lived with Richardson, defendant, and his sister H.W. in an apartment. His parents slept in a bedroom, and a crib for H.W. was kept in the same bedroom. Z.W. slept in a closet next to the bathroom. He did not have a bed but slept on the floor. Z.W. stated that he was in the closet all day every day. Z.W. ate canned okra and drank water and protein drinks. Z.W. did not know how often he ate but said it was usually light

outside when he was able to eat food. Z.W. was sometimes allowed to use the bathroom, but if he was not let out of the closet, he had to go to the bathroom in the closet.

¶ 19 Z.W. told Detective Boeddeker that on October 2, 2016, he wanted to leave the apartment to tell the police that his mother and father were being mean to him. He knew that his parents were not home. He stated that his mother installed a video camera inside his closet that was pointed at him. Both Richardson and defendant showed Z.W. their cell phones, which showed images of him from the camera, and Z.W. knew that his parents could watch him at any time.

¶ 20 As part of his investigation, Detective Boeddeker attempted to find Richardson. After speaking with someone in Country Club Hills, Illinois, he received a phone number with a Los Angeles area code. He then obtained an arrest warrant for Richardson. He subsequently learned that Richardson had been arrested on the warrant on October 11, 2016, in Los Angeles. On October 18, 2016, Detective Boeddeker flew to Los Angeles to take custody of Richardson and bring him to Illinois. The detective identified Richardson in open court.

¶ 21 Alison Alstott was a forensic interviewer supervisor for the Chicago Children's Advocacy Center in October 2016 and was assigned to interview Z.W. on October 3, 2016, at Comer Children's Hospital. During the interview, detectives, an individual from the Department of Children and Family Services (DCFS), and an assistant state's attorney were present behind a curtain to observe. Z.W. was introduced to these individuals and was aware they were listening on the other side of the curtain. No one other than Alstott asked questions during the interview. The interview was recorded, admitted into evidence, and played for the jury. In the interview, Z.W. discussed his injuries and how they were caused by Richardson and defendant, which were generally consistent with his description of his injuries to the police officers.

¶ 22 Gabrielle Aranda works as a social worker at Comer Children's Hospital pediatric emergency room. On October 2, 2016, she was working and met with Z.W. According to Aranda, Z.W. was wearing a soiled diaper held together with duct tape. He had abrasions above his right eyebrow, on the bridge of his nose, on the left side of face, the back of his left ear, and on his back. He also had old scars over his entire body.

¶ 23 Z.W. told her he lived with Richardson, defendant, and his sister. He said the abrasions on his face occurred when he was struck with a bottle by Richardson. Aranda indicated that Z.W. had an open lesion on his back that Z.W. received when Richardson placed him on the stove. Z.W. also said Richardson burned the back of his ear and his genitals. Z.W. told her that defendant beat him with a pole, which left marks on his body.

¶ 24 Z.W. explained that he left his residence that day for two reasons: he wanted to play in the playground, and he wanted to tell the police that Richardson was beating him every day. He told her that the last time he had eaten was lunch the previous day. He said he slept in a closet and was sometimes allowed to leave to use the restroom, but he was not allowed all the time, which was why he was wearing a diaper. Aranda identified photographs of Z.W. taken while he was in the emergency room. Z.W. told Aranda that Richardson and defendant had threatened to throw him out the window and, on numerous occasions, they told him that they wanted him dead.

¶ 25 Dr. Veena Ramaiah is a pediatric emergency room physician and child abuse pediatrician at Comer Children's Hospital. On October 2, 2016, she received a call from the pediatric emergency room social worker informing her about a child with high concerns of abuse or neglect. Dr. Ramaiah examined Z.W. on October 3, 2016. Z.W. was seven years old at the time of the examination. He was walking around and interactive. Dr. Ramaiah identified

photographs taken of Z.W. either in her presence or in the emergency room the day before. She described Z.W.'s injuries, both healed and scarred, in the photographs, including on Z.W.'s face, neck, collarbone, shoulder, chest, abdomen, arms, legs, thighs, groin, and penis. Dr. Ramaiah testified that the burn on Z.W.'s back went through multiple layers of skin. She also stated that tests indicated an issue with Z.W.'s liver, but a computed tomography scan was negative. Dr. Ramaiah stated that the elevated liver enzymes could have indicated an old injury to his liver. A skeletal survey of X-rays of Z.W.'s body was conducted. The X-rays showed that toes on Z.W.'s feet had been broken weeks to months earlier but were healing. The X-ray of Z.W.'s left femur showed healing around a fracture or break of the bone that occurred weeks earlier. According to Dr. Ramaiah, the healing femur could be the cause of Z.W.'s limp. Dr. Ramaiah testified that to break the femur of a seven-year-old child would require "a significant amount of force" because it is a "very thick" and "strong" bone.

¶ 26 When asked if she was able to count the number of scars and injuries Z.W. had, Dr. Ramaiah responded, "No, there were too many." Dr. Ramaiah's medical diagnosis of Z.W. was physical abuse and a victim of torture, the first time she had diagnosed torture.

¶ 27 Z.W. testified that he was born on October 22, 2008, and was nine years old at the time of the trial. He was in the fourth grade. He identified Richardson and defendant in open court. Z.W. lived with them in three places. He lived in the yellow house from when he was a baby until he was four years old and lived there with defendant and defendant's grandmother. Later, Richardson moved in with them. After defendant's grandmother passed away, he moved to the blue house and lived with Richardson, defendant, and Richardson's father. Z.W. was four years old when they moved to the blue house. Z.W.'s sister H.W. was born when they lived in the blue house. After Richardson's father died, they moved from the blue house to an apartment in Chicago when he was six years old.

¶ 28 While he lived in the yellow house, Richardson would hurt him by tying him up to a bed, and then Richardson hit Z.W. on the back with a baseball bat. Richardson also hit Z.W. with a wire and a belt. No one else hurt him when he lived in the yellow house. Richardson did the same things to hurt Z.W. when they lived in the blue house. No one else hurt him when he lived in the blue house.

¶ 29 In the apartment, Z.W. slept in the closet. The door could be locked, and Richardson or defendant would tie Z.W.'s hand behind his back to a rope that was hanging from a metal bar. He was sometimes allowed to use the bathroom. If he was not allowed to use the bathroom, he would try to hold it. He had to wear diapers. He ate okra and water in the closet. There was a camera in the closet so they could "keep an eye on" him.

¶ 30 Richardson hurt Z.W. when they lived in the apartment. Z.W. testified that Richardson put his face in the bathtub and toilet with water in it. Richardson also put a bag over his head. Richardson also picked him up and burned his face and back on the stove. Z.W. stated that he still had a scar on his back from the burn. Z.W.'s genitals were burned by defendant with a curling iron and the stove. Richardson and defendant put tape over his mouth when he tried to talk. Richardson hit Z.W. in the face with a bat while defendant hit his feet with the bat. He was also hit with a can in the head. He indicated that he had a scar above his left eyebrow.

¶ 31 On October 2, 2016, defendant tied Z.W. up to the rope in the closet because she had to go to the store. Richardson was in California. After defendant left with H.W., Z.W. was able to untie the knot and went on the elevator. He went outside and saw that he was one block behind defendant and H.W. He then went to the park and the man, Arion, with his dog found him and

called for help. Before that day, Z.W. had left the apartment one time to go shopping with defendant. He did not attend school and did not go to the doctor.

¶ 32 Ronnie Rush worked as a chief engineer for the Newport Condominiums, located at 4800 South Chicago Beach Drive, in October 2016. He was in charge of heating and cooling as well as fixing plumbing. He identified Richardson and defendant in court as residents from the building. He saw defendant almost every morning when she would leave the building around 8 or 9 a.m. with a baby girl in a stroller. He saw Richardson less frequently, maybe once or twice a week. The only time he saw Richardson and defendant together was in their unit.

¶ 33 In the summer of 2016, Rush was called to their unit to investigate a leak. He met Richardson in the hallway and entered the unit with him after Richardson knocked on the unit door. Defendant opened the door with H.W. in her arms. Rush observed a little boy on the couch. This was the first time Rush had observed the little boy. He identified Z.W. from a photograph in court as the little boy he observed. Rush noticed marks on Z.W.'s face, neck, and a little bit of his chest. Richardson sat on the couch very close to Z.W. Rush also noticed that Z.W. was holding a dog shock collar, which he described as black with little prongs coming out of it. Rush did not contact the police or building management about Z.W. because Richardson told him Z.W. was defendant's nephew that he had picked up because an aunt was sexually abusing the boy.

¶ 34 While he was inside the unit, Rush observed lots of cameras and a closet that was set for "sleeping quarters," with a pillow and a blanket on the floor. He also saw a strap hanging from the clothes rod. Rush had his lunch with him when he went into the apartment. Z.W.'s eyes "got like really big like he wanted some," so Rush then shared his juice and sandwich with Z.W.

¶ 35 On October 2, 2016, Rush received a call that there was a lost boy in the lobby and they were trying to find his unit. He went to the lobby, and as he was entering, he observed defendant coming in at the same time. He also saw Z.W. with the police.

¶ 36 Marsha Byndom lived in the condominium building located at 4800 South Chicago Beach Drive in Chicago during 2015 and 2016. There are two towers, a south tower and a north tower, attached by a lobby. She resided in the south tower. Byndom identified Richardson and defendant as residents of the building in 2015 and 2016. She observed defendant walking down the street, pushing a stroller with a little girl, and looking at her phone. She did not observe any other children with defendant. Byndom saw defendant "every day or so" but never observed another child with defendant. Byndom would see defendant and the little girl while Byndom was downstairs smoking. Byndom met Richardson when she first moved into the building, and he asked if she wanted him to be her personal trainer, but she declined. Richardson continued to ask, but she kept declining. She saw Richardson three or four times a week either coming into the building or on the rooftop deck.

¶ 37 In January 2017, Byndom went to the police station and gave a statement. She also identified both Richardson and defendant from photo arrays. Byndom never saw Z.W. while she resided in the building.

¶ 38 After the State rested, defendant moved for a directed verdict, which the trial court denied.

¶ 39 Defendant testified in her own defense. She grew up in Country Club Hills, Illinois, in the yellow house described by Z.W., with her mother, grandmother, and aunt. Defendant became pregnant with Z.W. when she was 16. Z.W.'s father was defendant's high school boyfriend.

Defendant met Richardson in August 2012 when Z.W. was almost four years old. She began dating Richardson, and the relationship lasted until 2016. Richardson proposed to her after two months, but defendant initially declined. When he proposed a month later, defendant accepted. Richardson moved into the yellow house in November 2012 with defendant, Z.W., her grandmother, her aunt, and her cousin.

¶ 40 Around November or December 2012, there was an allegation that defendant's aunt was sexually abusing Z.W. Defendant called the police, DCFS became involved, and a protection order was entered against her aunt. Her aunt and cousin then moved out of the house. Defendant's grandmother passed away in July 2013, and they moved to Richardson's father's house, described by Z.W. as the blue house. They lived there for approximately a year-and-a-half. Richardson worked as a personal trainer and supported them. Defendant did not have a job but received welfare. H.W. was born in January 2014.

¶ 41 Defendant testified that Richardson was "very good" with Z.W. She did not observe him strike Z.W. while they lived in the yellow house. While living in the blue house, defendant observed Richardson hit Z.W. in the back of head, which caused the child to stumble. She told Richardson not to hit Z.W., and Richardson said okay. Later when Z.W. broke something of importance to Richardson, he struck Z.W. with a belt. Defendant jumped in and told Richardson to stop. Defendant admitted that she would spank Z.W. on his bottom and hit the back of his head with her hand because Z.W. was either being too aggressive or misbehaving.

¶ 42 Richardson's father passed away in March 2015, and they then moved to the apartment in Chicago. When they moved into the apartment, Richardson set up cameras in the apartment, including two in the living room. Richardson continued to work as a personal trainer but did not have a consistent schedule. Defendant did not have a relationship with anyone in her family, and she did not make any friends when she moved into the apartment. Defendant decided to homeschool Z.W. in late 2013 after the school reported that Z.W. was too aggressive with other children. Defendant would take Z.W. and H.W. to the park and a recreation center when Richardson was not home. The whole family, including Richardson, never went out together while they lived in the apartment.

¶ 43 When they moved to the apartment, Richardson was often "agitated" with Z.W. and would yell at Z.W. for little things. Defendant described her relationship with Richardson as "tense." When they first moved into the apartment, defendant and H.W. slept in the bedroom, and Z.W. slept on the couch. Richardson sometimes slept in the bedroom and sometimes on the couch. Z.W. had problems wetting the couch while he slept, so they bought an air mattress for him. Richardson struck Z.W. while they lived in the apartment. He also began to punch or grab defendant. He pushed her to the ground and told her she was "worthless and nothing." Her relationship with Richardson worsened, and he became more violent toward her, and she was afraid of him. He would monitor her movement from the cameras and call her if she left the apartment to ask where she was going and told her to go home as soon as possible. She did not find out that Richardson had married someone else in October 2015 until around September 2016. She has never met this person. Richardson told her that he only married this woman for her money and she was very sick. When defendant said she did not believe him, Richardson grabbed her arms and told her she had to believe him. Defendant told him to let her go, and then he punched her in the nose.

¶ 44 Defendant observed Richardson hit Z.W. with a belt and his hand, but nothing else. She admitted to hitting Z.W. with a belt and hose attachment from a vacuum cleaner. According to



defendant, if she noticed a scratch or gash on Z.W. and recommended taking him to the hospital, Richardson would "beat" her. She did not discover the scars on Z.W.'s stomach until long after it happened, around July or August 2016. She observed Z.W. in the shower and confronted Richardson. Richardson told her that Z.W. was misbehaving so he punished him. Defendant yelled at Richardson, and he punched her in the face. Defendant did not leave Richardson because she had nowhere to go and no money to support the children. She did not call the police because she did not expect them to help and thought they would blame her. She did not tell the police the truth the day Z.W. ran away because she was afraid. She admitted that Z.W. did not fall down the stairs. Richardson had previously told her to tell people that Z.W. was in a car accident or fell down the stairs. Richardson had become more violent toward Z.W., and she would see new marks on his body. Richardson told her he threw a book at Z.W. and it "accidentally" hit him in the face, causing a gash on Z.W.'s nose. She did not remember having a shock collar in the apartment.

¶ 45 She denied that Rush let her into the building every day. She also did not recognize Byndom from the building. She also denied leaving the apartment every day with H.W. Z.W. had not left the apartment in the two weeks before he ran away because of a gash on his forehead. On the morning of October 2, 2016, she left the apartment with H.W. to throw a blanket away in the dumpster downstairs because Z.W. had vomited on it. Z.W. was asleep on the couch when she left.

¶ 46 Defendant had Z.W. eat okra in the closet because he was spilling it on the floor. Everyone in the apartment ate okra because Richardson said it was supposed to help with weight. Everyone also drank protein shakes. Z.W. also ate spaghetti, macaroni and cheese, hamburgers, and pizza. Z.W. began sleeping in the closet around four to five months after they moved into the apartment because Z.W. continued to have issues wetting the bed. It was Richardson's idea. She denied that the closet had a lock from the outside. Initially, Z.W. only slept in the closet because of the bedwetting issue, but then Richardson said Z.W. needed his own room, referring to the closet. She admitted they were being evicted from the apartment. Richardson took multiple trips to California, and while he was away, she let Z.W. sleep on the couch. When Richardson observed Z.W. on the couch from the camera, he would become mad and call her. When he returned, he would make Z.W. go back to the closet and would beat defendant.

¶ 47 Defendant denied ever hitting Z.W. with a bat, burning him on the stove or with a curling iron, tying him up, putting his head in a toilet or tub of water, putting a bag over his head, or threatening to throw him out of the window or that she wanted him dead. She knew that Z.W. had a scar on his penis but did not know he had been injured in his genitals. She claimed she did not know Z.W. had broken his femur because she thought he had walked "funny to begin with" and was "pigeon-toed." She admitted to telling Sergeant Williams that Z.W. was burned on his back when he fell out of the shower and onto a curling iron.

¶ 48 The defense then rested. During the jury instruction conference, defendant objected to the State's proposed instructions regarding accountability. Instruction 14 was the pattern instruction for accountability, while instructions 15 and 16 stated propositions 1 and 2 from the Committee Notes. Illinois Pattern Jury Instructions, Criminal, No. 5.03 (approved Oct. 28, 2016) (hereinafter IPI Criminal No. 5.03). The trial court agreed to give the instructions over defendant's objection. Defendant then requested to instruct the jury on the lesser-included offense of aggravated battery causing bodily harm, which the trial court denied.

¶ 49 Following closing arguments, the jury found defendant guilty of four counts of aggravated battery of a child and that the offenses were accompanied by exceptionally brutal and heinous behavior indicative of wanton cruelty. At sentencing, the court sentenced defendant to two consecutive terms of 25 years, for an aggregate term of 50 years in prison, for aggravated battery of a child based on great bodily harm. The court merged the counts of aggravated battery of a child based on permanent disfigurement into the counts of aggravated battery of a child based on great bodily harm.

¶ 50 This appeal followed.

¶ 51 Defendant raises two issues on appeal. We first consider defendant's claim that the jury received contrary and conflicting instructions on accountability. Specifically, defendant asserts that the instructions provided conflicting mental states and deprived her of a fair jury trial. The State maintains that the trial court properly instructed the jury on accountability principles.

¶ 52 "The function of the instructions is to convey to the jurors the correct principles of law applicable to the facts so that they can arrive at a correct conclusion according to the law and the evidence." *People v. Williams*, 181 Ill. 2d 297, 318 (1998). "It is the trial court's burden to insure the jury is given the essential instructions as to the elements of the crime charged, the presumption of innocence, and the question of burden of proof." *Id.* The giving of jury instructions is generally reviewed for an abuse of discretion; when the question is whether the jury instructions accurately conveyed to the jury the law applicable to the case, the review is *de novo*. *People v. Pierce*, 226 Ill. 2d 470, 475 (2007).

¶ 53 The trial court instructed the jury from IPI Criminal No. 5.03 on the theory of accountability:

"A person is legally responsible for the conduct of another person when, either before or during the commission of an offense, and with the intent to promote or facilitate the commission of an offense, he knowingly solicits, aids, abets, agrees to aid, or attempts to aid the other person in the planning or commission of an offense.

The word 'conduct' includes any criminal act done in furtherance of the planned and intended act."

¶ 54 In addition, the Committee Note for IPI Criminal No. 5.03 sets forth additional instructions "modified by the Committee to be consistent with style, language and form of IPI-Criminal Instructions":

"(1) A parent has a legal duty to aid a small child if the parent knows or should know about a danger to the child and the parent has the physical ability to protect the child. Criminal conduct may arise by overt acts or by an omission to act where there is a legal duty to do so.

(2) Actual physical presence at the commission of a crime is not a requirement for legal responsibility." IPI Criminal No. 5.03 Committee Note.

¶ 55 Both additional instructions were given to the jury over defendant's objection. Defendant contends that the first additional instruction misstated the *mens rea* element of accountability because the instruction told the jurors that defendant could be held accountable if she did not know, but should have known, that Richardson was abusing Z.W.

¶ 56 The additional accountability instructions concern parental accountability and originate from the supreme court's decision in *People v. Stanciel*, 153 Ill. 2d 218 (1992). In that case, the supreme court considered the consolidated appeals of two mothers, each of whom was held

accountable for the murder of her child by a live-in boyfriend. The *Stanciel* court held that the mother's knowledge of ongoing abuse by her boyfriend, coupled with the continued, sanctioned exposure of the child to the abuse, was sufficient to hold the mother accountable for the murder of the child. *Id.* at 237. The supreme court pointed out that it had long recognized the affirmative duties of parents to protect their small children from threats by third persons. *Id.* at 236. The court found that, while the mothers did not aid the principals in the pattern of abuse that resulted in the deaths of the children, the evidence presented against the mothers was sufficient "to provide the inference that they both either knew or should have known of the serious nature of the injuries which the victims were sustaining." *Id.* at 237. The court held that, under the circumstances presented, "the defendants had an affirmative duty to protect their children from the threat posed" by the perpetrators and, rather than fulfilling the duty, the defendants entirely ignored the dangers and thereby aided the perpetrators in murdering the children. *Id.* The supreme court specifically concluded that intent remained a requirement of accountability and that guilt must be proven through the knowledge and sanction of a danger. *Id.*

¶ 57 Years later, the supreme court in *People v. Pollock*, 202 Ill. 2d 189 (2002), clarified the language in *Stanciel* regarding the *mens rea* required for parental accountability. In *Pollock*, the defendant was the mother of a three-year-old girl who was murdered by the mother's boyfriend. The boyfriend admitted that he had caused the child's death, and he told police that the defendant was unaware of his actions. *Id.* at 203. The defendant was convicted of first degree murder and aggravated battery of a child based on the sole theory of accountability. *Id.* at 209. During the trial, there was no evidence that the defendant abused her child. In addition, there was no evidence that the defendant was present when her child was abused or was aware of any abusive acts committed by her boyfriend. Throughout opening and closing statements, the State repeatedly argued that the defendant "knew or should have known" about the abuse committed by her boyfriend and that, by allowing the boyfriend to have access to the child, the defendant was accountable for his actions. *Id.* at 206-07. Relying on language from *Stanciel*, the State tendered the following nonpattern instruction, which the trial court allowed and read to the jury: " 'A parent has a legal duty to aid a small child if the parent knows or should have known about a danger to the child and the parent has the physical ability to protect the child.' " *Id.* at 208. The jury subsequently found the defendant guilty of felony murder and the predicate felony, aggravated battery of a child. *Id.* at 209. At sentencing, the trial court stated, " 'The finding of guilty was based not upon her own direct action, but upon her failure to act to protect her child from the actions of her live-in boyfriend.' " *Id.*

¶ 58 On appeal to the supreme court, the defendant argued that, in order for her to be held accountable for the predicate felony, the jury was required to find beyond a reasonable doubt that she possessed a knowing or intentional state of mind, but the nonpattern parental accountability instruction and the State's argument misstated the required *mens rea* by informing the jury that it could find her guilty if she did not know of the abuse but should have known. *Id.* at 209-10. In addressing the defendant's argument, the supreme court stated that it was a misconstruction of *Stanciel* to assert that a parent's legal duty to protect his or her child may be imposed if the parent does not know, but should know, of a danger. *Id.* at 215. The court explained that the term "knew or should have known" as used in *Stanciel* was in reference to the mother's awareness of the severity of the injuries sustained by her child, not the mother's awareness of the existence of the abuse. *Id.*

“Rather than diluting the knowing or intentional *mens rea* requirement for accountability, *Stanciel*, instead, stands for the proposition that when proof that a parent aided and abetted an offense is to be deduced from an omission to act, the parent must know of a serious and immediate threat to the welfare of the child. That is, there must be evidence from which it can be inferred that the parent knew that the child was sustaining injury and, based on the severity of the injuries being sustained, knew that there was a substantial risk that death or great bodily harm would result if the parent did not act to protect the child.” *Id.*

¶ 59 The *Pollock* court further reasoned:

“In sum, we conclude that a parent may not sit idly by while another person abuses her child. Parents are required to intercede on their child’s behalf and, if they fail to act, they risk being held responsible for the other person’s criminal conduct. By failing to act, the parent may be deemed to have implicitly sanctioned the criminal behavior and, therefore, may be held accountable for the abusive conduct. Even in situations where the parent is not present at the time when the abuse resulting in death takes place, the parent may be held accountable for the criminal conduct resulting in death, if it is proved that the parent knew that the child had been abused by the principal in the past and, because of the nature of previous injuries sustained by the child, also knew there was a substantial risk of serious harm, yet took no action to protect the child from future injury by the abuser.” *Id.* at 215-16.

¶ 60 Under the facts of that case, the supreme court found that the law of accountability was misstated in the instruction and in the State’s repeated argument that the defendant could be found guilty if she did not know, but should have known, that her boyfriend was abusing her child. *Id.* at 216. The court concluded that the error was not harmless because the State’s case was exclusively premised on the defendant’s accountability. *Id.*

¶ 61 During the jury instruction conference in the present case, defense counsel directed the trial court to the decision in *Pollock*. In its ruling, the court distinguished the circumstances here from those in *Pollock* and found:

“Here’s what I’m not going to instruct in this matter, and I’ll tell you why. And the reason is because in *Pollock*, that was a scenario where there was evidence by which it was possible that the defendant did not know of the purported abuse by the other person. By virtue of Ms. Woods’ testimony, it is clear that Ms. Woods did know. So I don’t think taking the, should know, out is appropriate in this [case] because Ms. Woods acknowledged by virtue of her testimony that she did know. So unlike *Pollock* where there was purportedly an instance where the instructions had the potential effect to put criminal liability upon a person who, A, might not have known and perhaps could not have known, that’s not the scenario that we have here on the evidence. That’s why I’m not going to give this, over your well-stated objection—why I’m not going to change that instruction over your well-stated objection.”

¶ 62 As the trial court observed, the evidence in this case overwhelmingly established that defendant was aware of the injuries sustained by Z.W. and inflicted by Richardson. In her own testimony, defendant recounted how she treated the wounds and gashes left on Z.W.’s body after Richardson harmed him. Further, while defendant denied being present in the room when Richardson burned Z.W. on the stove, she admitted to observing the injury and scars on Z.W.’s back. She knew the abuse of Z.W. was ongoing and conceded that she did not leave with Z.W.

or contact anyone for help. As the supreme court held in *Pollock*, the phrase “should have known” in the instruction refers to defendant’s awareness of the severity of Z.W.’s injuries. In contrast with *Pollock*, defendant was fully aware of the abuse and injuries inflicted on Z.W. and either knew or should have known the severity of those injuries. Moreover, unlike in *Pollock*, defendant was tried for both her own actions as a principal and under the accountability theory for Richardson’s actions. In *Pollock*, no evidence was introduced showing that the defendant had committed any acts of physical abuse. The defendant there was accountable for her omissions, her failure to act when she found small bruises a few days before her daughter died and failed to act. Here, Richardson’s abuse of Z.W. continued over months and years, with much of the abuse known by defendant, who did nothing to protect Z.W.

¶ 63

Additionally, unlike in *Pollock*, the prosecutor in this case only referred to the instruction once during closing arguments when she read the instruction to the jury.

“His Honor will also instruct you that actual physical presence at the commission of a crime is not a requirement for legal responsibility. And most importantly in this case, His Honor will tell you that a parent has a legal duty to aid a small child if the parent knows or should know about a danger to the child, and the parent has the physical ability to protect the child. Criminal conduct may arise by overt acts or by omission to act where there is a legal duty to do so.

Ladies and gentlemen, Caroline Woods not only inflicted harm—great bodily harm—to [Z.W.] herself, but she stood by and moved three times with the person who was doing it to her son: Her paramour. And she did nothing. She not only didn’t aid [Z.W.]—because, frankly, Neosporin on a cut that needed stitches isn’t aid—she facilitated it. She ignored it, and she did nothing. She did nothing to stop it. She did nothing to help [Z.W.] She did not call anyone. She did not go to the police. She did absolutely nothing. She is legally responsible for every wound on that boy’s body. She is legally responsible for every time that not only did she do something, but every single time Andrew Richardson did something to that boy. It’s just as though she did it herself.

When Andrew Richardson was holding him on that stove, melting away at his skin, causing those scars, it’s just the same as though Caroline Woods—who was in the other room at the time—was doing it herself with her own hands. When he burned him, when he hit him with the bat, it’s just as though that hair iron was in her hand. It’s just as though that bat was in her hands. It makes no difference. She’s responsible.

The law recognizes that she had a duty to protect [Z.W.]—a duty that she failed; a duty that she not only didn’t account for, she did everything to prevent [Z.W.] from getting help from anybody else. She took him out of school so that nobody would see his injuries. She didn’t take him out of the apartment when Andrew was gone. She put that camera outside of [Z.W.’s] closet. She’s the one who was putting a diaper on him when Andrew was in California. She’s the one who was keeping him in that closet when Andrew was in California. She’s Andrew’s partner in crime.”

¶ 64

The prosecutor explicitly argued that defendant knew of Z.W.’s injuries and failed to act to protect Z.W. from Richardson. In *Pollock*, the supreme court observed that the State placed a “high degree of emphasis on the ‘should have known’ standard.” *Pollock*, 202 Ill. 2d at 216. Here, as a clear distinction, the prosecutor only referenced that phrase once while reciting the language from the jury instructions and focused on defendant’s actions that made her accountable for Richardson’s abusive acts.

¶ 65

Moreover, the jury instructions make it clear that the State was never relieved of its burden of proof. The accountability and issues instructions do not state that defendant “knew or should have known,” and neither minimized the requirement of a knowing mental state. As quoted above, the accountability instruction explicitly instructed the jury of the knowing mental state. As to the elements of aggravated battery of a child, the jury was instructed as follows.

“A person commits the offense of aggravated battery of a child when he, being a person of the age of 18 years or more, knowingly and by any means causes great bodily harm or permanent disfigurement to any child under the age of 13 years.

To sustain the charge of aggravated battery of a child, the State must prove the following propositions. First proposition: That the defendant, or one for whose conduct she is legally responsible, knowingly caused great bodily harm to [Z.W.]; and, second proposition, that when the defendant, or one for whose conduct she is legally responsible, did so, she was of the age of 18 years or older; and, third proposition, that when the defendant, or one for whose conduct she is legally responsible, did so, [Z.W.] was under 13 years.”

Additionally, the State’s burden of establishing defendant acted knowingly was repeated three more times for each specific charge of aggravated battery of a child. We find there was no confusion or inconsistency in the issues instructions. Thus, the jury was properly informed of the required mental state.

¶ 66

Defendant also relies on *People v. Burton*, 338 Ill. App. 3d 406, 414 (2003), for support. However, the *Burton* court’s analysis was limited to a brief summary of *Pollock* and then a one-sentence holding: “In light of *Pollock*, we must reverse Burton’s conviction and remand for a new trial.” *Id.* The reviewing court did not engage in an analysis of its facts in comparison to *Pollock*. For this reason, we find this case offers little support for defendant’s position.

¶ 67

As the supreme court reasoned in *Pollock*, “there must be evidence from which it can be inferred that the parent knew that the child was sustaining injury and, based on the severity of the injuries being sustained, knew that there was a substantial risk that death or great bodily harm would result if the parent did not act to protect the child.” *Pollock*, 202 Ill. 2d at 215. The circumstances in this case satisfy this reasoning. Here, the evidence overwhelmingly established that defendant knew of the injuries Richardson inflicted on Z.W. and failed to take any action to protect her son. Z.W. was found limping along Lake Shore Drive and told multiple officers about the abuse he suffered by defendant and Richardson. Z.W. said that defendant hit his feet with a baseball bat, and medical evidence indicated his toes had been broken. He was observed with visible injuries and bruises and was wearing a soiled, duct-taped diaper. X-rays showed that Z.W.’s femur had been broken, but defendant admitted that she was unaware of the injury. Multiple burns were found on Z.W.’s body. He told the police that Richardson had burned his back on the stove. He also described being burned near his genitals and thigh by both defendant and Richardson with a curling iron. Z.W. described being forced to stay and sleep in a closet and being watched on cameras by Richardson and defendant. Defendant admitted that she knew Z.W. was sustaining injuries, and yet she did nothing. Significantly, she admitted that she failed to act to protect Z.W. while Richardson was away in another state. Based on the circumstances of this case, the trial court acted within its discretion to instruct the jury on defendant’s parental accountability and no error occurred.

¶ 68 Finally, this is not simply a failure to act case as was *Pollock*; the State pursued and overwhelmingly established that defendant was a principal just as much as she was accountable for Richardson's acts.

¶ 69 Defendant next contends that the trial court abused its discretion and denied her right to a fair trial and to present a defense when it refused to instruct the jury on the lesser-included offense of aggravated battery causing bodily harm. Specifically, defendant contends that this was error because her testimony as well as some of the State's evidence provided a basis from which the jury could conclude that, while Z.W. suffered injuries consistent with great bodily harm, defendant was only culpable for injuries causing bodily harm. We dispose of this contention on several grounds.

¶ 70 First, the jury was instructed, and the State's evidence proved defendant guilty, under two separate theories: (1) as a principal, for the offense of aggravated battery of a child in that she knowingly caused great bodily harm and permanent disfigurement to Z.W., and (2) as an accomplice, for the offense of aggravated battery of a child in that she was accountable for Richardson's conduct, in both respects, causing great bodily harm and permanent disfigurement to Z.W. Here, defendant has not challenged that her convictions were supported by proof beyond a reasonable doubt under either or both theories. Similar to a general verdict, where the jury was not asked to determine whether defendant was guilty on a specific theory, we can therefore conclude that the jury found her guilty either as a principal or an accomplice or both. See *People v. Bobo*, 375 Ill. App. 3d 966, 978 (2007) (when the jury returned a general verdict form for aggravated kidnapping, the trial court could presume that the jury found the defendant guilty on both theories: he inflicted great bodily harm to the victim and he committed aggravated sexual abuse on her, and ample evidence was presented to support both theories).

¶ 71 Further, since defendant has conceded that Richardson's conduct, for which she was accountable, caused both great bodily harm and nothing less than great bodily harm, and permanent disfigurement to Z.W., the State did not have to prove defendant herself actually inflicted great bodily harm. And because the accountability theory was properly before the jury and the jury could have found defendant accountable for Richardson's acts, which caused great bodily harm and nothing less, defendant was not entitled to the instruction on the lesser-included offense of aggravated battery of a child causing "bodily harm." Accordingly, the trial court did not err in refusing defendant's request for this instruction.

¶ 72 Second, we can also conclude, based upon the evidence presented and the four separate verdict forms submitted to and returned by the jury in this case on the counts of aggravated battery of a child causing great bodily harm and/or permanent disfigurement, that not only could the jury find Woods accountable for all the acts committed by Richardson but the jury did find defendant guilty under an accountability theory for Richardson's conduct causing great bodily harm and/or permanent disfigurement.

¶ 73 We know this because of the evidence presented concerning Richardson's acts, the burning and the striking of Z.W. with a baseball bat, and by the four separate verdicts the jury returned against defendant, which found she was (1) guilty of aggravated battery of a child causing great bodily harm by burning Z.W., (2) guilty of aggravated battery of a child causing permanent disfigurement by burning Z.W., (3) guilty of aggravated battery of a child causing great bodily harm by striking Z.W. about the body, and (4) guilty of aggravated battery of a child causing permanent disfigurement by striking Z.W. about the body. Again, and because defendant has never challenged that Richardson's acts caused no less than great bodily harm and permanent

disfigurement to Z.W. and the jury found defendant accountable for Richardson's conduct, the trial court did not err in refusing to give the lesser-included offense instruction of aggravated battery of a child causing only "bodily harm."

¶ 74 We also add that challenging the instruction on accountability does not change or alter this fact, nor has defendant argued or suggested, in any way, that it has.

¶ 75 Nevertheless, even if the trial court erred in refusing the instruction, any error was harmless. See *People v. Amaya*, 321 Ill. App. 3d 923, 929 (2001) (an error in the jury instructions will not warrant a new trial unless the result of the trial would have been different had the jury been instructed properly). As discussed above, the evidence against defendant was overwhelming. Z.W. was found limping along Lake Shore Drive and told multiple officers about the abuse he suffered by defendant and Richardson. Z.W. said that defendant hit his feet with a baseball bat, and medical evidence indicated his toes had been broken. He was observed with visible injuries and bruises and was wearing a soiled, duct-taped diaper. Defendant admitted that she struck Z.W. with a belt and the hose from a vacuum. X-rays showed that Z.W.'s femur had been broken, but defendant testified that she never noticed the injury. Z.W. reported that Richardson had burned his back on the stove and he had been burned by his genitals and thigh with a curling iron. Defendant admitted that she discovered the burn marks on Z.W. but denied burning him herself. Defendant also admitted that Z.W. was forced to eat and sleep in the closet. Z.W. said that defendant tied him to a cord in the closet on the day he escaped, and a cord matching Z.W.'s description was discovered in the closet during a police search of the apartment. The police observed that the closet had empty okra cans and smelled strongly of urine. Police found a baseball bat and vacuum in the apartment that matched Z.W.'s description. Dr. Ramaiah was unable to count the scars and injuries on Z.W. because there were "too many." She also diagnosed Z.W. as a victim of torture, the first time she had diagnosed torture.

¶ 76 Therefore, if the trial court erred in the failing to give a lesser-included instruction, which we do not find, any error was harmless. Given the overwhelming evidence of defendant's guilt, the result of the trial would not have been different with the instruction of a lesser-included offense. See *id.*

¶ 77 Based on the foregoing reasons, we affirm the decision of the circuit court of Cook County.

¶ 78 Affirmed.



TO THE APPELLATE COURT OF ILLINOIS  
IN THE CIRCUIT COURT OF COOK COUNTY  
CRIMINAL DIVISION

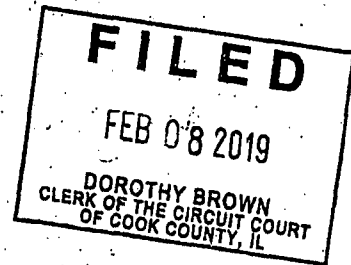
PEOPLE OF THE STATE OF ILLINOIS

-vs-

CAROLINE WOODS

No. 16 CR 1643601  
Trial Judge: TIMOTHY JOYCE  
Attorney: SAMUEL MORGAN

## NOTICE OF APPEAL



An Appeal is taken from the order of judgment described below:

APPELLANT'S NAME: CAROLINE WOODS

IR # 2332932

D.O.B. November 6, 1991

APPELLANT'S ADDRESS: IDOC

APPELLANT'S ATTORNEY: STATE APPELLATE DEFENDER

ADDRESS: 203 N. LASALLE, 24TH FLOOR, CHICAGO, IL 60601

OFFENSE: AGGRAVATED BATTERY TO CHILD

JUDGMENT: VERDICT - GUILTY

DATE: 9/14/18

SENTENCE: Fifty (50) years IDOC

  
APPELLANT'S ATTORNEY

VERIFIED PETITION FOR REPORT OF PROCEEDINGS  
COMMON LAW RECORD AND FOR APPOINTMENT OF COUNSEL ON APPEAL

Under Supreme Court Rules 605-608, appellant asks the Court to order the Official Court Reporter to transcribe an original and copy of the proceedings, file the original with the Clerk and deliver a copy to the appellant; order the Clerk to prepare the Record on Appeal and to Appoint Counsel on Appeal. Appellant, being duly sworn, says that at the time of his conviction he was and is unable to pay for the Record or an appeal lawyer.

  
ORDER

IT IS ORDERED the State Appellate Defender be appointed as counsel on appeal and the Record and Report of Proceedings be furnished appellant without cost.

Dates to be transcribed:

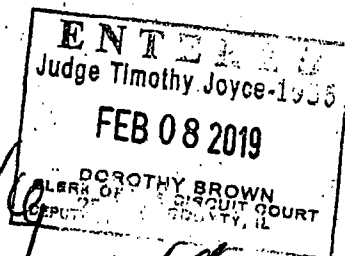
PRE-TRIAL MOTION DATE(S): June 13, July 26, 2018

JURY TRIAL DATE(S): September 10-14, 2018

SENTENCING DATE(S):

DATE: 2-8-19ENTER: 2-8-19

JUDGE



A.23

# ILLINOIS PATTERN JURY INSTRUCTIONS

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CRIMINAL

FOURTH EDITION

Volume 1

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## MENTAL STATE, ACCOUNTABILITY, AND RESPONSIBILITY

5.01C Actual Knowledge (New) [10]

5.03 Accountability

5.01C Actual Knowledge (New)

Actual knowledge is direct and clear knowledge, that is, knowledge of such information as would lead a reasonable person to inquire further.

### Committee Note

In *People v. Wilson*, 402 Ill. App. 3d 181, 193, 1 N.E.2d 769 (3d Dist. 2010), the Appellate Court held that Section 12-30(a)(2) of the Criminal Code of 1961 (Code) (720 ILCS 5/12-30(a)(2) (West 2010) (Violation of an Order of Protection) mandates that a defendant have acquired actual knowledge of the order of protection. Proof by the State of constructive knowledge is insufficient.

5.03 Accountability

### Committee Note

[To be added to the end of the current Committee Note]

The three instructions given, in addition to 5.03, are set forth below as modified by the Committee to be consistent with style, language and form of IPI-Criminal Instructions:

(1) A parent has a legal duty to aid a small child if the parent knows or should know about a danger to the child and the parent has the physical ability to protect the child. Criminal conduct may arise by overt acts or by an omission to act where there is a legal duty to do so.

(2) Actual physical presence at the commission of a crime is not a requirement for legal responsibility.

(3) Intent to promote or facilitate the commission of an offense may be shown by evidence that the defendant shared a criminal

## ACCOUNTABILITY & RESPONSIBILITY

### 5.03

intent of the principal or evidence that there was a common criminal design.

# ABILITY AND TY

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A person commits the offense of reckless homicide when he intentionally or recklessly causes the death of another person, without lawful justification, by driving a motor vehicle (operating a snowmobile) recklessly and in a manner likely to cause death or death bodily harm.

It is noted that the vehicle was not damaged and the driver was not injured. The vehicle was towed to the nearest police station and the driver was taken to the hospital. The driver was found to have a blood alcohol level of 0.15 percent. The driver was charged with driving under the influence of alcohol. The driver was released on bond and is scheduled to appear in court on the next business day.

*[Faint, illegible text]*

There are three ways to get to the top of the mountain. The first way is to go straight up the mountain. The second way is to go around the mountain. The third way is to go down the mountain and then up the other side.

No. 127794

IN THE

## SUPREME COURT OF ILLINOIS

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PEOPLE OF THE STATE OF	)	Appeal from the Appellate Court of
ILLINOIS,	)	Illinois, No. 1-19-0493.
	)	
Plaintiff-Appellee,	)	There on appeal from the Circuit
	)	Court of Cook County, Illinois, No.
-vs-	)	16 CR 16436 (01).
	)	
CAROLINE WOODS,	)	Honorable
	)	Timothy Joseph Joyce,
	)	Judge Presiding.
Defendant-Appellant.	)	

---

## NOTICE AND PROOF OF SERVICE

Mr. Kwame Raoul, Attorney General, 100 W. Randolph St., 12th Floor, Chicago, IL 60601, [eserve.criminalappeals@ilag.gov](mailto:eserve.criminalappeals@ilag.gov);

Ms. Kimberly M. Foxx, State's Attorney, Cook County State's Attorney Office, 300 Daley Center, Chicago, IL 60602, [eserve.criminalappeals@cookcountyil.gov](mailto:eserve.criminalappeals@cookcountyil.gov);

Ms. Caroline Woods, Register No. Y34708, Logan Correctional Center, R.R. 3, P.O. Box 1000, Lincoln, IL 62656

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 April 12, 2022, 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 defendant-appellant in an envelope deposited in a U.S. mail box in Chicago, 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/Alicia Corona  
 LEGAL SECRETARY  
 Office of the State Appellate Defender  
 203 N. LaSalle St., 24th Floor  
 Chicago, IL 60601  
 (312) 814-5472  
 Service via email is accepted at  
[1stdistrict.eserve@osad.state.il.us](mailto:1stdistrict.eserve@osad.state.il.us)