No. 127794

IN THE

SUPREME COURT OF ILLINOIS

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

REPLY BRIEF FOR DEFENDANT-APPELLANT

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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.

This is a straightforward case. At Caroline Woods's jury trial, People's Instruction 14 correctly informed jurors that accountability required a knowing mental state. (Op. Br. 23) But People's Instruction 15 incorrectly stated that under the law of parental accountability, a negligent mental state sufficed to trigger a parent's criminal liability. (Op. Br. 23) The prosecution concedes that People's Instruction 15 misstated the law of parental accountability. (St. Br. 16-17)[1] And the prosecution does not dispute that the trial judge abused his discretion by giving People's Instruction 15. (Op. Br. 27-28; St. Br. 17)

Because this instructional error involves directly conflicting instructions on an essential element of the charged offense – in this case, the *mens rea* requirement for accountability – the remedy is uncomplicated: Caroline should receive a new trial. When the jury receives directly conflicting instructions on the law, reversible error occurs that cannot be deemed harmless. (Op. Br. 15-22) More than 150 years of precedent from this Court, which has been incorporated into the Illinois Constitution of 1970 through the state constitutional right to a jury trial, mandates this result. (Op. Br. 15-22)

Yet the prosecution urges this Court to depart from this precedent and apply harmless-error analysis. (St. Br. 17) The prosecution suggests that the conflicting-

[1] Caroline joins the prosecution's suggestion that this Court direct the Committee on Jury Instructions in Criminal Cases to amend the Note to IPI Criminal No. 5.03 to correct this error. (St. Br. 17)

instructions rule permits harmless-error review in Caroline's case. (St. Br. 17-19, 23-25, 30-32, 36-37) This is incorrect. Much of the prosecution's argument confuses this Court's general jurisprudence regarding *erroneous* instructions with the more specific branch of precedent concerning *directly conflicting* instructions. (Op. Br. 15; St. Br. 17-19, 23-25, 30-34, 36-37) This misapprehension is fatal to the prosecution's attempts to distinguish Caroline's case from this Court's precedent regarding the conflicting-instructions rule. And the prosecution's arguments minimize the fact that this Court unanimously reaffirmed and applied that rule just this year, after Caroline filed her opening brief. *See People v. Hartfield*, 2022 IL 126729, ¶¶ 41-61 (reversing defendant's convictions and remanding for a new trial where the jury received directly conflicting instructions regarding an essential element of the charged offense of aggravated discharge of a firearm, holding that the error amounted to second-prong plain error).[2] No compelling reason exists for this Court to deviate from its long-established course.

A. 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.

As Caroline's opening brief explained, this Court has held time and again that giving directly conflicting instructions creates reversible error that is not harmless. (Op. Br. 15-22) This Court has consistently applied this precedent since at least 1869. (Op. Br. 16-22); *cf. People v. Brown*, 2022 IL 127201, ¶ 21 ("This rule is not new, having been stated by this court many times, over many years."). One of those instances involved a parental-accountability case where the jury

[2] This Court allowed Caroline's motion to cite *Hartfield* as additional authority on May 3, 2022.

received the same two conflicting instructions at issue in Caroline's case. (Op. Br. 20-23); *People v. Pollock*, 202 Ill. 2d 189, 210, 212, 215-16 (2002). *Hartfield* reaffirmed the rule again. Caroline's case falls squarely within this body of precedent. Despite the prosecution's claims to the contrary, this precedent precludes applying harmless-error review here.

1. *People v. Hartfield* reaffirmed this Court's longstanding precedent concerning directly conflicting jury instructions.

Less than six months ago, in *Hartfield*, this Court unanimously reaffirmed the conflicting-instructions rule. *Hartfield*, 2022 IL 126729, ¶¶ 41-61. Applying second-prong plain-error analysis, this Court reversed and remanded defendant's convictions because the jury received directly conflicting instructions on an essential element of the charged offense of aggravated discharge of a firearm. *Id*. at 57-61. In doing so, *Hartfield* followed several of the precedents about the conflicting-instructions rule that Caroline cited in her opening brief, such as: *People v. Jenkins*, 69 Ill. 2d 61, 66-67 (1997); *Pollock*, 202 Ill. 2d at 212 *People v. Bush*, 157 Ill. 2d 248, 254 (1993); and *People v. Haywood*, 82 Ill. 2d 540, 545 (1980). (Op. Br. 16-20); *Hartfield*, 2022 IL 126729, ¶¶ 57-61. Those decisions held that giving directly conflicting instructions is error that cannot be deemed harmless. *Pollock*, 202 Ill. 2d at 212; *Bush*, 157 Ill. 2d at 254; *Haywood*, 82 Ill. 2d at 545; *see also Jenkins*, 69 Ill. 2d at 66-67 (applying same principle to forfeited claim via second prong of plain-error rule).

Hartfield confirmed that directly conflicting instructions are qualitatively different than most other instructional errors because they call into question "the integrity of the judicial system itself." *Hartfield*, 2022 IL 126729, ¶ 59. As this Court explained:

> Whereas a single erroneous instruction might be cured by other instructions or by some other showing of a lack of prejudice, two directly conflicting instructions on an essential element, one stating the law correctly and the other erroneously, cannot be cured this way due to the simple fact that we can never know which instruction the jury was following.

Id. Pointing to *Jenkins*, *Hartfield* emphasized that directly conflicting instructions "'put [the jury] in the position of having to select the proper instruction – a function exclusively that of the court.'" *Id*. at ¶ 58 (quoting *Jenkins*, 69 Ill. 2d at 67). When such error occurs, "'the jury cannot perform its constitutional function.'" *Id*. (quoting *Jenkins*, 69 Ill. 2d at 66).

Applying this reasoning, *Hartfield* held that the conflicting instructions given to defendant's jury constituted clear error that was reviewable under the second prong of the plain-error doctrine. *Id*. at ¶¶ 57-61. In doing so, this Court reiterated the well-established rule that with second-prong plain error analysis, the importance of the right involved is such that prejudice is presumed regardless of the strength of the evidence. *Id*. at ¶ 50 (quoting *People v. Herron*, 215 Ill. 2d 167, 187 (2005) and *People v. Blue*, 189 Ill. 2d 99, 138 (2000)). Thus, by invoking the second prong of the plain error rule, this Court found that giving jurors directly conflicting instructions to be so serious an error that it constituted one of the "'exceptional circumstances where, despite the absence of objection, application of the rule is necessary to preserve the integrity and reputation of the judicial process.'" *People v. Jackson*, 2022 IL 127256, ¶ 28 (quoting *People v. Herrett*, 137 Ill. 2d 195, 214 (1990)). Under the nomenclature this Court recently used in *Jackson*, violations of the conflicting-instructions rule are "structural" errors for purposes of applying the second prong of Illinois's plain error rule. *See Jackson*, 2022 IL 127256, ¶ 30 (emphasizing that for second-prong plain error purposes, errors may

be structural "as a matter of state law independent from the categories of errors identified by the Supreme Court [of the United States]").

Thus, in the wake of *Hartfield*, this Court's 150-year line of precedent remains settled law. The general rule remains that *erroneous* instructions are reviewed for harmless error (when preserved) or plain error (when forfeited). *Hartfield*, 2022 IL 126729, ¶ 42. But when the error involves *directly conflicting* instructions, "regardless of whether it is plain-error or harmless-error analysis, such an error is presumed to be prejudicial." *Id.* at ¶ 59.

This is why Caroline's case is straightforward. Her appeal involves directly conflicting instructions, a type of instructional error with its own distinct analytical rules. Accountability was an essential element of the charged offense. (Op. Br. 13, 22-24) The parties agree that People's Instruction 15 misstated the *mens rea* for accountability by informing jurors that a negligent mental state sufficed to convict. (Op. Br. 23; St. Br. 16-17) The trial judge also gave jurors a directly conflicting instruction, IPI Criminal No. 5.03, which correctly stated that accountability required a *mens rea* of knowledge. (Op. Br. 23) Therefore, "[r]eversal and remand are necessary" because the conflicting-instructions rule applies. *Hartfield*, 2022 IL 126729, ¶ 61. And under that rule, this preserved instructional error is not subject to harmless-error analysis. (Op. Br. 15-27); *id.* at ¶ 57 (quoting *Pollock*, 202 Ill. 2d at 212; *Bush*, 157 Ill. 2d at 254; and *Haywood*, 82 Ill. 2d at 545.[3]

[3] Additionally, as this Court noted, the prosecution in *Hartfield* acknowledged that the conflicting-instructions rule is not a dead letter in the context of properly preserved claims. *See Hartfield*, 2022 IL 126729, ¶ 57 ("The State argues that this principle only applies in harmless-error analysis.").

If that was not enough, Caroline's case involves the exact same conflicting instructions on the law of parental accountability at issue in *Pollock*. (Op. Br. 20-23) Applying the conflicting-instructions rule, *Pollock* held the error was not harmless, citing *Bush* and *Haywood*. (Op. Br. 21-22) And in *Hartfield*, this Court cited *Pollock*, *Bush*, and *Haywood*, reaffirming the logic of those precedents. *Hartfield*, 2022 IL 126729, ¶¶ 57-61.

Against this great weight of authority, the prosecution asks this Court to apply harmless error anyway. (St. Br. 17) The reasons the prosecution gives, and the authorities it cites, are unpersuasive.

2. The fact that Caroline was prosecuted under both principal and accomplice theories of liability does not mean that the instructional error here is subject to harmless-error analysis.

First, the prosecution argues that harmless-error analysis applies because Caroline was prosecuted under both principal and accomplice theories of liability. (St. Br. 17-19, 23-25) The prosecution cites four cases as support for this contention: *People v. Davis*, 233 Ill. 2d 244, 270-71 (2009); *People v. Williams*, 161 Ill. 2d 1, 51-52 (1994); *People ex rel. City of Chicago v. Le Mirage, Inc*., 2013 IL App (1st) 093547, ¶¶ 81-85; and *People v. Pena*, 317 Ill. App. 3d 312, 319 (2d Dist. 2000). (St. Br. 18) None of those instructional-error cases, however, involve directly conflicting instructions. *See Davis*, 233 Ill. 2d at 252, 274-75 (applying the one-good-count rule in murder prosecution where defendant was convicted under all three theories of first degree murder); *Williams*, 161 Ill. 2d at 50-52 (capital defendant argued accountability instruction was unwarranted because there had been no evidence presented to support an accountability theory of guilt; no other instruction directly conflicted the accountability instruction); *Le Mirage*, 2013 IL App (1st)

093547, ¶¶ 74-85 (contemnors objected to trial judge giving jury IPI Criminal No. 5.11 where no corporation was respondent to indirect criminal contempt petition at time of trial; the instruction, as given, correctly stated the law and did not conflict with another instruction misstating the law); *Pena*, 317 Ill. App. 3d at 317-21 (defendant's instructional-error claim focused on omission of accountability from the issues instructions for charged offenses; trial judge also gave jury IPI Criminal No. 5.03, which correctly stated the law regarding accountability). As Caroline has demonstrated, the rules for analyzing directly conflicting instructions are different than those used for other erroneous instructions. The prosecution's argument overlooks this distinction.

3. The fact that Caroline knew her former fiancé was physically abusing her son does not mean that the instructional error here is subject to harmless-error analysis.

Next, the prosecution asserts that harmless-error analysis should be applied because Caroline knew Andrew Richardson, her former fiancé, was physically abusing Z.W., her son. (St. Br. 25, 31-34) According to the prosecution, this Court sometimes applies harmless-error analysis in directly conflicting instructions cases. (St. Br. 25, 31-32) As support fo this claim, the prosecution points to *People v. Jones*, 81 Ill. 2d 1, 10 (1979), and two later decisions citing *Jones*: *People v. Leger*, 149 Ill. 2d 355, 404 (1992); and *People v. Hopp*, 209 Ill. 2d 1, 10-11 (2004). (St. Br. 31-32) This argument is unconvincing. This Court has not carved such an exception to the conflicting-instructions rule, and the *Jones* line of cases does not provide adequate support for doing so here.

Hopp, for instance, is not even a case involving directly conflicting instructions. *See Hopp*, 209 Ill. 2d at 6-7. There, in a conspiracy to commit murder

case, defendant's instructional-error claim concerned the trial judge's failure to give a definitional instruction for first degree murder, which was the offense that was the subject of the alleged conspiracy. *Id*.

More importantly, none of the three decisions in the *Jones* line of cases acknowledge the conflicting-instructions rule. *Jones*, 82 Ill. 2d at 10; *Hopp*, 209 Ill. 2d at 10-11; *Leger*, 149 Ill. 2d at 404. In doing so, the *Jones* cases overlook more than a century of precedent regarding directly conflicting instructions that was already on the books and contained no such limitations or exceptions to its rule that such error cannot be deemed harmless. *E.g.*, *Jenkins*, 69 Ill. 2d at 66-67; *People v. Miller*, 403 Ill. 561, 564-65, 567 (1949); *People v. Gilday*, 351 Ill. 11, 21 (1932); *People v. Lee*, 248 Ill. 64, 66 (1910); *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). That is especially problematic because this Court's pre-1970 precedent on conflicting instructions is incorporated into the understanding of the jury trial rights guaranteed by our state constitution. (Op. Br. 17)

Additionally, *Jones*, *Leger*, and *Hopp* are contrary to *Hartfield*. As previously discussed, *Hartfield* reaffirmed the conflicting-instructions rule. *Hartfield*, 2022 IL 126729, ¶¶ 41-61. This Court declared, once again without qualification, that errors involving directly conflicting instructions are presumed prejudicial, "regardless of whether it is plain-error or harmless-error analysis." *Id*. at ¶ 59.

4. The prosecution's attempts to distinguish *Pollock*, *Hartfield*, and this Court's other precedent concerning the conflicting-instructions rule are unavailing.

As Caroline demonstrated in her opening brief, this Court need look no further than *Pollock* to resolve this appeal. (Op. Br. 22-25) The conflicting instructions on the law of parental accountability that the trial judge gave in Caroline's case are the same ones at issue in *Pollock*. (Op. Br. 23) Expressly applying this Court's existing precedent concerning the conflicting-instructions rule, *Pollock* held that reversible error occurred. (Op. Br. 20-22) The prosecution posits several arguments suggesting that *Pollock* is not controlling precedent here, but they are all unavailing.

First, Caroline has not misapprehended *Pollock*'s holding; the prosecution has. (St. Br. 22-23) Contrary to the prosecution's assertion, *Pollock*'s holding, along with its underlying reasoning, is not narrowly circumscribed. (St. Br. 22-23) *Pollock* expressly reaffirmed that giving directly conflicting instructions is an error that "cannot be deemed harmless" because jurors have received improper guidance, which prevents them from performing their constitutional function. *Pollock*, 202 Ill. 2d at 212 (citing *Bush*, 157 Ill. 2d at 254; *Haywood*, 82 Ill. 2d at 545; and *Jenkins*, 69 Ill. 2d at 67). And *Hartfield* cited *Pollock* to reaffirm the proposition once again. *Hartfield*, 2022 IL 126729, ¶ 57.

Second, *Pollock* is not distinguishable because the trial prosecutor here made only a single reference to the incorrect language in People's Instruction 15. (St. Br. 36-37) The trial prosecutor's repeated mentions of the "knows or should know" language in *Pollock* was not the determinative fact this Court relied upon in finding reversible error. *See Pollock*, 202 Ill. 2d at 216 ("*Moreover*, in light of the prosecutor's high degree of emphasis on the 'should have known' standard,

the fact that the jury was also instructed using the IPI standard instruction on accountability does not alter our opinion that reversal is required.") (emphasis added). Instead, *Pollock*'s analysis focused on the fact that the trial judge gave the jury conflicting instructions about the *mens rea* requirement for parental accountability. *See id.* ("Because defendant's conviction was premised upon the State's theory that defendant was accountable for the actions of [defendant's boyfriend], accountability was a fundamental element of the offense charged and the error in instruction cannot be deemed harmless."). This Court's precedent concerning the conflicting-instructions rule has not turned on whether one of the parties emphasized the incorrect instruction while addressing the jury. *See Hartfield*, 2022 IL 126729, ¶¶ 41-61; *Jenkins*, 69 Ill. 2d at 66-67; *Miller*, 403 Ill. at 564-65, 567; *Gilday*, 351 Ill. at 21; *Lee*, 248 Ill. at 66; *Enright*, 155 Ill. at 35-36; *Steinmeyer*, 95 Ill. at 390; *Morgan*, 72 Ill. at 158; *Payne*, 49 Ill. at 501, 505.

Here, of course, the prosecutor did emphasize People's Instruction 15 in closing argument, a fact Caroline noted in her opening brief. (Op. Br. 24-25) The prosecution acknowledges that the trial prosecutor referred to People's Instruction 15 as the most important accountability instruction the jury was receiving. (St. Br. 35) But in responding to Caroline's point, the prosecution attempts to recast this remark. (St Br. 35) On appeal, the prosecution suggests the trial prosecutor meant that the parental-duty rule signified that there was no need to prove Caroline actively facilitated Richardson's acts because she was legally required to protect Z.W. "once she actually knew" about the abuse. (St. Br. 35) Even if this explanation accurately describes the trial prosecutor's motives, it is not what the prosecutor actually said. Here the prosecutor told the jurors that the law of parental

accountability applies where the parent "knows or should know" about a danger to her small child. (R. 366)

Third, *Pollock* is not distinguishable because defendant in that case "sharply disputed that she knew her boyfriend was abusing her son." (St. Br. 36) As will be discussed further in Section B of this reply, Caroline, like defendant in *Pollock*, disputed that she was guilty under an accountability theory for the physical abuse her fiancé inflicted upon her child. And in both cases, jurors received the same two conflicting instructions on the mental-state requirement for parental accountability. (Op. Br. 23)

Furthermore, the prosecution's attempts to distinguish *Hartfield* and the other precedent cited by Caroline about the conflicting-instructions rule also fall short. (St. Br. 24-25) As this brief already demonstrated, *Hartfield* did much more than "merely address[] an incorrect instruction regarding the elements of aggravated discharge of a firearm." (St. Br. 24) Instead, *Hartfield* declared – once again – that directly conflicting instructions create error that cast doubt on the integrity of the judicial system. *Hartfield*, 2022 IL 126729, ¶ 50. That concern is what has driven this Court's consistent position on conflicting instructions for more than 150 years. *E.g.*, *Bush*, 157 Ill. 2d at 254-55; *Haywood*, 82 Ill. 2d at 545; *Jenkins*, 69 Ill. 2d at 66-67; *Miller*, 403 Ill. at 567; *Gilday*, 351 Ill. at 21; *Morgan*, 72 Ill. at 158. While the conflicting-instructions rule may be a distinct subcategory of this Court's instructional-error jurisprudence, its coverage is not narrow. That is why this Court has applied the rule across a variety of different types of cases and an assortment of different jury instructions – including in cases involving instructions about the law of parental accountability. (Op. Br. 19-22) The prosecution's arguments invite this Court to miss the forest for the trees.

B. Even if this Court applies harmless-error analysis, it should still reverse Caroline's convictions and remand for a new trial because the prosecution has not met its burden of establishing that the instructional error was harmless beyond a reasonable doubt.

For the reasons already discussed, Caroline maintains that harmless-error analysis is improper here. Yet even if this Court concludes that harmless-error review is appropriate, Caroline's convictions should still be reversed and remanded for a new trial because the prosecution has not met its burden of proving that the trial judge's abuse of discretion was harmless beyond a reasonable doubt.

The abuse of discretion here is a constitutional error that affects Caroline's rights to due process and a fair jury trial. Moreover, Caroline fully preserved this issue. (C. 199-201; Sup2 Sec. C. 24-26; R. 352-55) Therefore, reversal is required unless it is clear that the error was harmless beyond a reasonable doubt. *People v. Mohr*, 228 Ill. 2d 53, 69 (2008); *People v. Thurow*, 203 Ill. 2d 352, 363 (2003). This Court must reverse unless the evidence was so overwhelming that the error could not have affected the verdict. *Id.* A constitutional error is not harmless beyond a reasonable doubt if it might have contributed to the conviction. *People v. Patterson*, 217 Ill. 2d 407, 428 (2005). Nor is this standard met just by showing that there was sufficient evidence that a reasonable jury, viewing the evidence in a light most favorable to the prosecution, could have found in its favor. *People v. Dennis*, 181 Ill. 2d 87, 95 (1998). The prosecution bears the burden of proving that a constitutional error was harmless. *Patterson*, 217 Ill. 2d at 428.

The prosecution asserts that the error here was harmless because (1) there was overwhelming evidence proving Caroline guilty as a principal, and (2) the defense conceded the issue of accountability. (St. Br. 17-19, 23-25, 30-32, 36-37) Neither argument is persuasive.

1. There is not overwhelming evidence that Caroline is guilty of aggravated battery of a child as a principal.

The prosecution's case did not overwhelmingly prove Caroline guilty of the charged offenses as a principal. As the opening brief discussed, securing a conviction under a principal theory of liability required proving that Caroline inflicted great bodily harm by burning (Count 5) or striking (Count 2) Z.W. (Op. Br. 31)

Regarding Count 5, the evidence here proved that Richardson, not Caroline, was the one who burned Z.W. (Op. Br. 31) There is no dispute that Richardson was the only one who burned Z.W. on the stove. (Op. Br. 31; St. Br. 5-6, 9) The prosecution does not deny that Z.W. made outcry statements in 2016 alleging that Richardson, and no one else, burned him on the penis, thighs, and ear. (Op. Br. 31; St. Br. 4-9, 27-28) Instead, the prosecution points to Z.W.'s trial testimony that Caroline burned him on the penis. (St. Br. 21, 27-28) On this record, Z.W.'s testimony cannot qualify as overwhelming evidence that Caroline was proven guilty of Count 5 as a principal.

To begin, the testimony of the outcry witnesses rebuts Z.W.'s new allegation. (Op. Br. 31) In 2016, Z.W. told Detective Bryan Boedekker, Comer Children's Hospital social worker Gabrielle Aranda, Comer Hospital pediatrician Veena Ramaiah, and forensic interviewer Alison Alstott of the Chicago Children's Advocacy Center that Richardson was the one who burned him on the penis, scrotum, groin, and thighs with a curling iron. (R. 101-02, 106, 116, 217-18; Richardson Sup. R. 333, 435-36; St. Ex. 77 at 39:20-43:15)

The prosecution acknowledges that its outcry witnesses did not corroborate Z.W.'s new allegation, but tries to minimize that impeachment by suggesting that the inconsistent testimony is understandable given Z.W.'s age, the number of injuries

he sustained, and that he made his outcries to strangers. (St. Br. 28) This argument overlooks much.

For example, Z.W. made his outcries to trained investigators. Three of the outcry witnesses were police officers: Boedekker, Sergeant Troy Williams, and Lieutenant Jacob Alderden. (Richardson Sup. R. 152, 159-61, 192-93, 199-200, 323-24, 330-37; St. Ex. 9) Aranda, the social worker, had 15 years of experience working in the pediatric emergency room at Comer. (R. 98) Forensic interviewer Alstott was a supervisor at the children's advocacy center and had 4 ½ years of experience training others in forensic interviewing technique. (Richardson Sup. R. 412-13) And Ramiah, a physician board certified in child-abuse pediatrics, is on the faculty at the University of Chicago's medical school and one of the pediatricians on Comer's Child Advocacy and Protective Services team. (R. 161-64) Z.W.'s outcry witnesses were a group of skilled and experienced professionals who knew how to develop rapport with abused and neglected children and gather all available information relevant to their investigations.

While Z.W. certainly sustained many injuries, that does not explain why he did not tell anyone in 2016 that Caroline had burned him on the penis. (St. Br. 28) Hospital staff at Comer knew about the burns on the penis, groin, and thighs at that time, and contemporaneously documented the injuries. (R. 101-04, 106, 116, 171-72, 191-95, 217; St. Ex. 62, 95-96) And during that hospitalization, Z.W. talked about those burns and who inflicted them: Richardson. (R. 101-02, 106, 116, 217-18; Richardson Sup. R. 435-36; St. Ex. 77 at 39:20-43:15)

The length of the interviews does not help the prosecution's contention either. (St. Br. 28) None of the outcry witnesses said they had insufficient time to interview Z.W. (R. 97-120, 162-229; Richardson Sup. R. 152-90, 192-229, 323-81, 411-55)

Moreover, Z.W. had follow-up discussions about his abuse after 2016. Alstott interviewed Z.W. a second time, in 2018, after he made new allegations. (Richardson Sup. R. 352-53, 441) During that forensic interview, Z.W. said (1) Richardson tried setting his penis on fire using matches, and (2) Richardson struck his penis with a belt about 50 times. (Richardson Sup. R. 352-53) Z.W. did not allege that Caroline had burned his penis with a curling iron. (Richardson Sup. R. 352-53, 441)

Nor does the physical evidence corroborate Z.W.'s trial allegation that Caroline burned him. (St. Br. 28) The prosecution notes that police recovered a hair iron, a bat, and a belt from the living room of the family's apartment. (St. Br. 28) But this fact is of very little probative value. The entire apartment was cramped and cluttered, which could explain why those three objects were found strewn about in the living room. (St. Ex. 10, 12, 14, 16-17, 19-20, 24, 32, 40) Additionally, the medical evidence did not establish that any of the burns to Z.W.'s penis were new. (R. 191-95)

And contrary to the prosecution's assertion, Caroline's October 3, 2016, statement to Boedekker about the burn to Z.W.'s back is not overwhelming evidence that she inflicted that injury with a curling iron. (St. Br. 28) The prosecution confronted Caroline with this statement at trial during cross-examination. (R. 322-23) The injury the prosecution was referring to was the burn on Z.W.'s lower back, not his penis. (R. 322; St. Ex. 91) Z.W. told Williams, Alderden, Aranda, and Ramaiah that Richardson caused the burn by placing him on the stove. (R. 101, 112, 218; Richardson Sup. R. 160, 217-18; St. Ex. 9 at 8:45-10:00) He also told Boedekker and Alstott that his burns from the stove were inflicted by Richardson. (Richardson Sup. R. 330, 431) Ramaiah agreed that the injury was consistent with a burn from a stove. (R. 187-88, 218; St. Ex. 91) At trial, Z.W.

testified that Richardson sustained that injury when Richardson burned him on the stove. (Sup. R. 443) And during opening statement and closing argument, the prosecution said Richardson was the one who placed Z.W. on the stove and burned his lower back. (R. 363; Sup. R. 402)

Turning to Count 2, the evidence does not conclusively prove that Caroline caused great bodily harm to Z.W. by striking him. (Op. Br. 31; St. Br. 25-30) For purposes of harmless-error analysis, there is not overwhelming evidence that Caroline caused the gash on Z.W.'s forehead. (St. Br. 29) Z.W. may have alleged this at trial, but the record rebuts the claim. In his outcry statements to Alderden, Aranda, Boedekker, Alstott, and Ramaiah, Z.W. said Richardson caused the injury by hitting him with a bottle. (R. 101, 111, 217; Richardson Sup. R. 218, 331, 344, 429, 432; St. Ex. 9 at 3:30-4:21) And during opening statement, the prosecution said Richardson caused the gash on Z.W.'s face. (Sup. R. 401) Thus, while Z.W.'s trial testimony about the gash may form the basis for a successful sufficiency-of-the-evidence argument about Caroline's principal liability on Count 2, it does not meet the standard for proving harmlessness beyond a reasonable doubt. *Dennis*, 181 Ill. 2d at 87.

Nor do the scars on Z.W.'s stomach constitute overwhelming evidence of Caroline's guilt as a principal on Count 2. (St. Br. 21) Dr. Ramaiah said this was a pattern-mark injury consistent with a burn from an electric stove range. (R. 182-84; St. Ex. 87-88) The evidence was clear that Richardson was the one who burned Z.W. on the stove.

The prosecution's arguments about who broke Z.W.'s femur are likewise inadequate for harmless-error purposes. (St. Br. 29) To be sure, Z.W. testified that Caroline hit his feet with a baseball bat, which was consistent with his outcry

statements to some of the outcry witnesses. (Sup. R. 441; Richardson Sup. R. 212, 435) Police indeed recovered a bat from the apartment, and the medical evidence established that Z.W. had sustained fractures to both feet. (R. 200-03; Sup. R. 234-35; St. Ex. 11, 99-100) Dr. Ramaiah also said Z.W. had a broken femur. (R. 203-04; St. Ex. 101) But Caroline denied using a bat to strike Z.W.; she testified that she used only her hand, a belt, and a flexible piece of vacuum hose. (R. 273-74, 300, 303-04) Moreover, Z.W. said Caroline was not the only one to hit him with a bat; in his outcry statements, Z.W. also said Richardson did so too. (Richardson Sup. R. 212, 330, 343, 344; St. Ex. 9 at 1:43-2:20) And the fact that Caroline was four inches taller than Richardson does not conclusively prove that she was the one who broke Z.W.'s femur. (St. Br. 29)

2. The instructional error was not harmless because the defense did not concede accountability liability.

The prosecution contends that if the jury convicted Caroline under an accountability theory of liability, the instructional error here was harmless because the defense conceded her guilt as an accomplice. (St. Br. 32-34, 36-37) This argument is incorrect. Caroline did not concede the issue of accountability.

The prosecution seizes upon a single sentence in defense counsel's closing argument, where he said, "We all have a duty as parents to protect our children." (St. Br. 34) But looking at that isolated statement within its proper context, the defense did not concede that Caroline was accountable for Richardson's acts.

Trial counsel's opening statement and closing argument show that Caroline's theory of defense was reasonable doubt. (R. 383-87; Sup. R. 406-10) The defense's primary point was that while Caroline sometimes struck Z.W. for disciplinary reasons, she never crossed the line into inflicting abuse; only Richardson did that.

(R. 383-87) Regarding accountability, the defense's theory was that the prosecution failed to prove that Caroline breached her legal duty to protect Z.W. from Richardson. (R. 383-87) The jury had to resolve that contested issue, and the trial judge gave People's Instruction 15 as the relevant law to apply in making that decision. And the parties agree that People's Instruction 15 misstated the law of parental accountability. (Op. Br. 23; St. Br. 16-17)

Thus, this is not a case where an erroneous instruction could have no effect on the outcome of the trial. (St. Br. 34) There is a distinct chance that this error might have contributed to the jurors convicting Caroline as an accomplice to Richardson, for the judge gave them conflicting instructions on accountability and there is no way to know which version they ended up using. *See Hartfield*, 2022 IL 126729, ¶ 59.

Consequently, the prosecution fails to carry its burden of proving this error harmless beyond a reasonable doubt. This Court should reverse Caroline's convictions 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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CERTIFICATE OF COMPLIANCE

I certify that this reply brief conforms to the requirements of Rules 341(a) and (b). The length of this reply brief, excluding pages or words contained in the Rule 341(d) cover, the Rule 341(h)(1) statement of points and authorities, the Rule 341(c) certificate of compliance, and the certificate of service, is 19 pages.

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IN THE

SUPREME COURT OF ILLINOIS

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

NOTICE AND PROOF OF SERVICE

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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 September 29, 2022, the Reply Brief 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 Reply Brief to the Clerk of the above Court.

/s/Kelly Kuhtic
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