

No. 130779
IN THE
SUPREME COURT OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the Appellate Court of Illinois, No. 2-23-0268.
)	
Plaintiff-Appellee,)	There on appeal from the Circuit Court of the Twenty-Third Judicial Circuit, Kendall County, Illinois, No. 21 CF 122.
-vs-)	
)	
ISAIAH WILLIAMS,)	Honorable
)	Joseph R. Voiland,
Defendant-Appellant.)	Judge Presiding.

REPLY BRIEF FOR DEFENDANT-APPELLANT

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ARGUMENT

This Court should reverse Isaiah Williams’s conviction because the jury was given conflicting instructions on an essential element of the offense. The Court should further resolve the conflict between Illinois Pattern Jury Instructions, Criminal, Nos. 11.49 and 11.50 when a defendant is accused of threatening a sworn law enforcement officer.

This argument involves two instructions, both part of the Illinois Pattern Jury Instructions given at Isaiah Williams’s trial, one that correctly defines the offense and the other that does not. Illinois Pattern Jury Instructions, Criminal, Nos. 11.49 and 11.50 (approved July 18, 2014) (hereinafter IPI Criminal Nos. 11.49 and 11.50). The State in its response brief does not dispute that IPI Criminal No. 11.49 is missing an element that was required to be proven at trial—that the threat “must contain specific facts indicative of a unique threat to the person, family or property of the officer and not a generalized threat of harm.” 720 ILCS 5/12-9(a-5) (2021). The other relevant instruction given, IPI Criminal No. 11.50, contains this element, creating an inconsistency because the same offense is defined in two different ways. Because this was an essential element that was disputed at trial, this Court should reverse under either Illinois Supreme Court Rule 451(c), second-prong plain error, or ineffective assistance of counsel, and remand for a new trial.

In its response brief, the State argues that the instructions do not conflict, the element in question was not in dispute, and various claims of procedural default or inability to appeal the issue to this Court. (St. Br. 8-22) As explained below, the State is incorrect on all points.

A. The instructions at issue in this case conflicted and giving them at trial constituted reversible error.

In his opening brief, Williams argued that a conflict existed between the

two instructions given which followed the previous cases this Court has issued concerning conflicting instructions, those cases holding that such conflicts constitute second-prong plain error necessitating reversal. (Op. Br. 6-16) In its response, the State argues that no conflict exists between the instructions. (St. Br. 11-20) This argument not only contradicts previous decisions by this Court but the State also fails to cite any case where a court has found similar instructions did not conflict. (St. Br. 11-20) Even at the most basic level, when two instructions given to the jury purport to define the same matter, as IPI Criminal Nos. 11.49 and 11.50 do in this case, and those definitions differ on an essential matter, it creates a conflict because the jury is being presented inconsistent definitions of the offense. The absence of an element in the definition instruction contradicts an issues instruction containing it, because one instruction tells the jury the element is necessary whereas the other instruction is completely missing any mention of that element. The State asks this Court to depart from its previous jurisprudence to now hold conflicts only occur if one instruction directly countermands the other (*e.g.*, one instruction contains the “unique threat” language and the other instruction states there is *not* a requirement of a “unique threat”). (St. Br. 18) This Court should reject the State’s position and hold that two instructions defining the same issue, one correctly and one incorrectly, constitute a conflict requiring reversal.

As an initial matter, IPI Criminal No. 11.49 conflicts with IPI Criminal No. 11.50 because it fails to include an essential element that the other does include. Under the statute, in order for Williams to be found guilty, the State was required to prove the “unique threat” element at trial beyond a reasonable doubt. (Op. Br. 8) Further, the court was required to properly instruct the jury about that element

since it was an essential element of the offense. “It is of the essence of a fair trial that ‘the jury not be permitted to deliberate a defendant’s guilt or innocence of the crime charged without being told the essential characteristics of that crime.’” *People v. Ogunsola*, 87 Ill. 2d 216, 222(1981) (quoting *People v. Lewis*, 112 Ill. App. 2d 1, 11 (1st Dist. 1969)). The definition instruction given was not a correct statement of the law in this case, because it defined the offense without including one of the “essential characteristics” of the crime, that the threat had to contain specific facts indicative of a unique threat. Multiple appellate courts considering this statute have found that the language at issue was both an essential element and required to be included in jury instructions, and appellate counsel is unaware of any case disagreeing with these holdings. See, e.g., *People v. Hale*, 2012 IL App (4th) 100949, ¶¶ 23-24; *People v. Warrington*, 2014 IL App (3d) 110772, ¶ 31 (noting that the element was absent from both the definition instruction and the issues instruction).

Because the element at issue was an essential element required to be included in the instructions, previous holdings by this Court necessitate that it reject the State’s argument and find the instructions were in conflict in this case and that second-prong plain error analysis applies. In *Jenkins*, two instructions were given to the jury, one by each party. *People v. Jenkins*, 69 Ill. 2d 61, 64 (1977). The instruction offered by the State was missing an essential element, that the defendant “must not have been justified in using the force employed” even though that was an issue in the case. *Id.* at 65. The defendant’s instruction, however, correctly included that missing element. *Id.* This Court found the instructions contradictory, because “the jury was given two instructions defining the elements requisite for

a finding of guilty. Each instruction was self-contained. Each differed from the other so as to be inconsistent and contradictory.” *Id.* at 66. This Court then reserved and remanded for a new trial even in spite of the fact that the defendant never objected to the State’s erroneous instruction. *Id.* at 66-67. In *Hartfield*, this Court explicitly reaffirmed these holdings despite the evolutions in the Court’s plain-error jurisprudence since *Jenkins* was originally decided. *People v. Hartfield*, 2022 IL 126729, ¶ 59.

This case is similar to *Jenkins*, because two instructions both defining the same offense were given, one that contained an essential element and the other that did not. Just like in *Jenkins*, the fact that one of the instructions correctly stated the law did not cure the error, instead it only created a conflict that made the instructions inconsistent on the matter of whether the offense contains a requirement of specific facts indicative of a unique threat. The State attempts to distinguish *Jenkins* by arguing that, in essence, IPI Criminal No. 11.49 does not define what the State must prove at trial, despite it being a definition instruction. (St. Br. 18) The State’s interpretation treats the definition instruction as nonessential and basically superfluous, because as the State argues, the definition instruction does not “discuss[]” the burdens at trial. (St. Br. 18) *Jenkins*, however, does not limit its holding to issues instructions. Instead, it holds that:

the giving of contradictory instructions on an essential element in the case is prejudicial error, and is not cured by the fact that another instruction is correct. While it is true that an instruction may be inaccurate, and other instructions may remove this error, such cannot be so when the instructions are in direct conflict with one another, one stating the law correctly and the other erroneously. This is particularly true where the instruction defines the issues in the case or is mandatory in character.

Jenkins, 69 Ill. 2d at 66. It should be obvious that a *definition instruction* that

the trial court was required to give defines the issues in the case. It specifically defines what the offense in the case is, that is the entire purpose in giving the instruction. In this case, however, the definition instruction given differed from the issues instruction by failing to include an essential element, meaning that “one stat[ed] the law correctly and the other erroneously.” *Id.*

This point also demonstrates why the State’s request for this Court to reject *People v. Warrington*, 2014 IL App (3d) 110772 fails. (St. Br. 18-19) The court in *Warrington* performed a simple and straightforward analysis that this Court should similarly follow in this case. (Op. Br. 9-10) Both instructions in this case, like in *Warrington*, purport to define the same offense, but just as in *Warrington*, one of the instructions is missing essential language. The only difference between this case and in *Warrington* is that in this case the missing language is the “unique threat” requirement instead of the “reasonable apprehension” language. The ultimate conclusion, though, is the same and the State does not provide an argument why the definition instruction in the case should be permitted to wholly exclude an essential element, particularly when including that element in the issues instruction creates an inconsistency between them. The State cites to *Hartfield* in support of its argument, but in *Hartfield* this Court explicitly rejected the State’s argument:

We note that there may be a cogent argument that the second interpretation (wherein “in the line of fire” is distinct from “in the direction of discharge”) does not directly conflict with the prior instructions nor actually prejudice defendant. *The problem is that we cannot know which interpretation the jury accepted and, given that both interpretations are incorrect statements of law, it is irrelevant.* The jury was given contradictory instructions on an essential element, and we cannot know whether the jury relied on the proper instruction.

Hartfield, 2022 IL 126729, ¶ 61 (emphasis added); (St. Br. 19). Given that the State’s argument is “irrelevant,” this Court should instead find the instructions

in conflict and reverse under second-prong plain error.

Further, the State's argument that the instructions are not in conflict but contain a "mere difference" fails for other reasons. (St. Br. 14) As explained above, one instruction correctly defined the offense using a technical language in a list format and the other defined the same offense using natural language but was missing an essential element. The State argues that if the instructions were "identical" they would be redundant. (St. Br. 14) But it should be obvious that issues instructions and definition instructions are both given despite defining the same offense, because providing the jury with two formats of the same statutory elements aids the jury in deliberations. The definition instruction provides a natural language version of the statute whereas the issues instruction breaks down that same offense into a more technical step-by-step list that the jurors can utilize. Those instructions, however, are not meant to conflict, with one instruction having some elements and the other instruction having a differing set of elements. Definitions of an offense should be uniform across all instructions, regardless of their formatting, and all the cases discussed above agree that there should not be substantive differences in the information conveyed to the jury on the same points of law.

Because there was a conflict in the instructions concerning an essential element here, this Court should reverse under second-prong plain error. In arguing against Williams receiving relief, the State conflates two separate matters: (1) whether the element was "essential" and (2) whether the element was in dispute. (St. Br. 16-20) Answering the first determines whether or not the instructions together are in conflict, meaning they should be modified, while answering the

second determines whether Williams specifically may be entitled to relief under second-prong plain error and thus given a new trial. As discussed in detail above, the “unique threat” requirement was an essential element; it needed to be included in the charging document, included in instructions to the jury at trial, and proven at trial beyond a reasonable doubt. *Hale*, 2012 IL App (4th) 100949, ¶ 24. If this Court finds that the instructions conflict over an essential element, it should hold that giving those instructions together is erroneous and therefore the instructions need to be modified.

Williams is due additional relief, however, including reversal and a new trial, because the element at issue in this case was disputed for two reasons. First, it was disputed because it concerned the offense that Williams was ultimately convicted of and that the State was required to prove beyond a reasonable doubt. By contrast, in *Woods*, this Court found that conflicting instructions concerning accountability were not “disputed” in the case because the defendant was convicted as the principal. *People v. Woods*, 2023 IL 127794, ¶ 63. In *Woods*, any error in the accountability instructions did not matter, because he was not convicted under an accountability theory. *Id.* In this case, however, the conflicting instructions concern an element that the State was required to prove beyond a reasonable doubt and that the jury needed to find to support its verdict. Unlike in *Woods*, the jury was required to use both of the given instructions containing different definitions of the offense, and the verdict cannot be supported by essentially ignoring the effects of those instructions on deliberation. Thus, the element at issue here was disputed because it did not concern a collateral offense or theory of liability that did not matter to the jury’s verdict, but was an issue the jury was required

to find at trial.

Second, the issue was disputed at trial because defense counsel challenged whether the State produced sufficient evidence to convict Williams of making a threat. (Op. Br. 12-14) In response, the State misconstrues trial counsel's arguments by suggesting he only argued against reasonable apprehension. (St. Br. 19-20) In actuality, counsel explicitly argued no threats were made, "You've watched numerous counts of video clips showing all of the things Mr. Williams said. Great. Those aren't threats. That's not threatening a public official, Ladies and Gentlemen." (R. 557) Counsel then went on to point out the lack of evidence supporting the only other threat, allegedly contained in a video not shown to the jury, arguing that the State failed to produce the one piece of evidence that actually supported the State's case. (R. 557-58) Defense counsel's argument questioning the evidence inherently challenged the underlying basis as to whether a threat was made, because the only evidence supporting the threat was the second-hand relaying of the threat from one officer to another. Given that defense counsel led with this argument in the closing, counsel clearly intended to highlight for the jury that there was insufficient evidence to convict Williams of a threat against a public official. The fact that counsel did not say the words "specific fact indicative of a unique threat" is irrelevant, because that statutory requirement creates an additional burden of proof on the State. Consequently, defense counsel's argument did "dispute" whether the State met that additional burden at the end of trial.

In conclusion, this Court should follow its previous holdings considering conflicting jury instructions and find that the instructions given in this case conflicted over an essential element, those instructions concerned a matter disputed at trial, and thus Williams is entitled to a new trial under second-prong plain

error review and Illinois Supreme Court Rule 451(c).

B. There was no invited error or affirmative acquiescence estopping Williams’s arguments on appeal. Further, trial counsel provided ineffective assistance of counsel.

In its response brief, the State argues that Williams “affirmatively acquiesced” to the instructions when defense counsel stated “no objection” at trial and is thus estopped from challenging the instructions on appeal. (St. Br. 9-10) The State’s argument fails for two reasons: (1) the case it cites in support of the argument does not apply to this case and (2) counsel provided ineffective assistance of counsel. This Court should therefore consider the issue and reverse for a new trial.

First, the State’s argument attempts to conflate an error that should properly be reviewed under plain-error with affirmative acquiescence. In *People v. Herron*, 215 Ill. 2d 167 (2005), one of this Court’s leading cases about plain-error review, the State offered a jury instruction, and defense counsel stated: “Okay. No objection, judge.” *Herron*, 215 Ill. 2d at 172. This Court recognized that “forfeiture is a harsh sanction for a defendant whose attorney failed to raise an error before the trial court.” *Id.* at 175-76. After assessing the caselaw concerning the plain-error doctrine, this Court held that the error could be reviewed and considered as plain error. *Id.* at 188-89.

The State primarily relies on *People v. Parker*, 223 Ill. 2d 494 (2006), but *Parker* is wholly distinguishable because the invited error at issue in *Parker* concerned an instruction that the defendant himself submitted. *Parker*, 223 Ill. 2d at 508. Unlike in *Parker*, Williams is not challenging an issue that exists solely because of an instruction he offered. Instead, as in *Herron*, Williams challenges instructions the State submitted and that he did not object to. This Court should therefore follow *Herron*, *Jenkins*, *Hartfield*, and *Wood*, and evaluate

whether plain error, specifically second-prong plain error, occurred due to the conflicting instructions. *Supra*, pp. 1-8. Further, Illinois Supreme Court Rule 451(c) specifically allows review of jury instructions where “substantial defects are not waived” by the failure to make timely objections. (Op. Br. 14-15)

In his opening brief, Williams also argued that counsel’s failure to object to the conflicting instructions constitutes ineffective assistance of counsel. (Op. Br. 15-16) The State first argues that counsel’s performance was not deficient because the instructions were not erroneous. (St. Br. 21) As argued in the opening brief and above, the conflicting instructions were erroneous. The State’s second contention, that defense counsel “rel[ied]” on the pattern instructions, is of no consequence. (St. Br. 21) Regardless of whether counsel relied on the pattern instructions, counsel still performed deficiently in failing to recognize that one of the pattern instructions defining the offense lacked an essential element and conflicted with another pattern instruction. Counsel is deficient if they fail to object to defective instructions offered by the State. *People v. Getter*, 2015 IL App (1st) 121307, ¶ 73; *People v. Potts*, 2021 IL App (1st) 161219, ¶ 193.

The State finally argues that Williams cannot show that but for trial counsel’s failure, the results at trial would been different. (St. Br. 21-22) But as argued in the opening brief, the evidence supporting specific facts indicative of a unique threat was not overwhelming, particularly in light of the fact that defense counsel’s entire strategy was to challenge the sufficiency of the evidence concerning the threats. (Op. Br. 13-14) Without knowing whether the jury followed the correct instruction, it is entirely possible the jury agreed with defense counsel’s closing arguments, but still found Williams guilty based on a generalized threat.

CONCLUSION

For the foregoing reasons, Isaiah Williams, defendant-appellant, respectfully requests that this Court vacate his conviction and remand for a new trial. Further, Williams requests that this Court issue guidance resolving the conflict between Illinois Pattern Jury Instructions, Criminal, Nos. 11.49 and 11.50.

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 11 pages.

/s/Drew A. Wallenstein
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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 May 8, 2025, 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 Elgin, 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.

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