No. 129676

IN THE
SUPREME COURT OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellant, v. MATTHEW SLOAN, Defendant-Appellee.	On Appeal from the Appellate of Illinois, Fifth Judicial District, No. 5-20-0225. There on Appeal from the Circuit Court of the Second Judicial Circuit, Jefferson County, Illinois No. 18 CF 295. The Honorable Jerry E. Crisel, Judge Presiding.

REPLY BRIEF OF PLAINTIFF-APPELLANT PEOPLE OF THE STATE OF ILLINOIS

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ORAL ARGUMENT REQUESTED

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ARGUMENT

The People's opening brief demonstrated that the trial court did not abuse its discretion by declining to give Illinois Pattern Instruction, Criminal Fourth (IPI) 24-25.09X. The instruction was irrelevant and unsupported by the evidence, and thus it would have confused the jury. First, an instruction that defendant had no duty to retreat if he did not provoke force against himself would have been irrelevant because there was no suggestion at trial that defendant had a duty to retreat, and it was undisputed that defendant *had* retreated from the fight in the driveway before he intentionally shot his brother David. Second, the instruction would have been inappropriate because there was no evidence that David was the initial aggressor and the evidence instead established that defendant had provoked the fight with David in the driveway. In sum, no evidence supported giving IPI 24-25.09X; at a minimum, the trial court's same conclusion was not arbitrary, fanciful, or unreasonable to the degree that no reasonable person would agree with it, so as to constitute an abuse of discretion. *See People v. Bush*, 2023 IL 128747, ¶ 57.

Alternatively, the alleged error was harmless because the result of defendant's trial would not have been different had the jury received IPI 24-25.09X. The jury was not asked to find, and the prosecution did not argue or present evidence tending to show, that defendant failed in any duty to retreat. Moreover, overwhelming evidence proved defendant guilty of first

degree murder, so the result of the trial would have been the same had the instruction been given. Accordingly, this Court should reverse the appellate court's judgment and remand for the appellate court to consider defendant's remaining claims.

I. The Trial Court Did Not Abuse Its Discretion in Denying the Proffered Instruction.

As the People's opening brief demonstrated, the trial court did not abuse its discretion by declining to give IPI 24-25.09X because the instruction was irrelevant and unsupported by the trial evidence and thus would have confused the jury. *See* Peo. Br. 11-17.[1]

A. IPI 24-25.09X was irrelevant to the questions before the jury.

IPI 24-25.09X states: "A person who has not initially provoked the use of force against himself has no duty to attempt to escape the danger before using force against the aggressor." But whether defendant had a duty to attempt to escape before shooting his brother David was not at issue in this case. Thus, the instruction was irrelevant, and the trial court did not abuse its discretion in declining to give it.

It was undisputed that defendant committed the acts underlying the charged offense — i.e., that he intentionally or knowingly shot and killed

[1] Citations to the report of proceedings, the People's opening brief, and defendant's brief appear as "R__," "Peo. Br.__," and "Def. Br.__," respectively. "Def. App. Ct. Br. __" refers to defendant's opening brief in the appellate court, which has been filed in this Court pursuant to Rule 318(c).

David — so the only questions before the jury were whether his conduct was justified as self-defense or mitigated to second degree murder by imperfect self-defense. Prior to deliberations, the trial court told the jury that it would instruct it on all the applicable law. R675. The jury was then instructed on the elements of self-defense and second degree murder, but not on any duty to attempt to escape. R686-91. Indeed, the jury received no instruction suggesting that defendant had a duty to attempt to escape. R675-96. For example, the jury was not provided IPI 24-25.09, which would have instructed it that an initial aggressor must attempt to escape or withdraw from the initial violence before he may act in self-defense. *See* Peo. Br. 13-14. And it was undisputed that defendant *did* attempt to escape, i.e., that he walked away from David after the fight in the driveway and then went inside to his bedroom where no further avenue of escape remained. R581, 3031-03. Consequently, IPI 24-25.09X was irrelevant to the questions before the jury, and its superfluous inclusion would have impermissibly risked confusing the jurors. *See Herron*, 215 Ill. 2d 188 (instructions that might confuse the jury should be denied).

Nor did the prosecution suggest that defendant had a duty to attempt to escape. *See* Def. Br. 25-28. At no point did the prosecution argue or imply that defendant had a duty to retreat yet failed to do so. R282-86, 698-717, 738-49. Instead, the prosecution argued that the evidence did not support self-defense or second degree murder because defendant's actions were

inconsistent with a finding that he believed that David presented an imminent danger of death or great bodily harm. To support this argument, the prosecution asked defendant whether he locked the door of the house after he walked away from David and went inside. R636-38. When defendant admitted that he did not, the prosecution argued in closing that defendant's claim that he was afraid of David lacked credibility; the prosecution did not argue that defendant's failure to lock the door showed that he did not comply with a legal duty to attempt to escape. R705. Indeed, defendant's alleged fear was at the heart of the case: both self-defense and imperfect self-defense — on which the jury was instructed — required jurors to find that defendant had a subjective belief that he was in danger. *See* 720 ILCS 5/7-1 (elements of self-defense); 720 ILCS 5/9-2(a)(2) (elements of imperfect self-defense). Thus, the prosecution's examination of defendant and closing argument related solely to this question and did not suggest that defendant had a legal duty to attempt escape.

In sum, there was no evidence or argument that defendant had a duty to retreat, making IPI 24-25.09X irrelevant. The trial court did not abuse its discretion in rejecting it.

B. No evidence supported giving IPI 24-25.09X.

Relevancy aside, there was no evidence that David, rather than defendant, "initially provoked the use of force." IPI 24-25.09X. By its plain language, the instruction applies only where an individual "has not initially

provoked the use of force against himself" and uses force against an "aggressor." *Id.* Because IPI 24-25.09X was unsupported by the trial evidence, the district court did not abuse its discretion in declining to give it.

As the People's opening brief demonstrated, the only evidence at trial that suggested there was an initial aggressor suggested that defendant, not David, provoked the hostilities. *See* Peo. Br. 14-16. Following an argument during which defendant threatened David, R297, defendant challenged David to a fight, R621. And there was no evidence that David became an aggressor after the ensuing fight. Although defendant testified that he was generally afraid of David, defendant never described any word or action by his brother that would qualify as an act of aggression. To the contrary, defendant based his purported fear of David on a single act: David walked into their parents' house in the direction of defendant's bedroom, unarmed, and without saying anything threatening. PE28 11:03, 13:49; R581-86.

Defendant's suggestion that he believed David might have had a gun, Def. Br. 30, is belied by the record. Defendant testified that David had "access to a carload of guns," R586, but he did not testify that he believed David might have had a weapon on him while in the house. On the contrary, defendant told police that he knew David was unarmed, PE28 11:03, and he did not contradict that statement at trial. Thus, there was no evidence that anyone other than defendant provoked the use of force.

Nor did the prosecution concede that there was "some evidence" that David was the initial aggressor by declining to object to jury instructions on self-defense and second degree murder. *See* Def. Br. 30. Whether phrased as asking who was the "initial aggressor," *see* Peo. Br. 14-15, or who "provoked" the use of force, *see* Def. Br. 28, the factual question underlying IPI 24-25.09X remains the same: the instruction asks the jury to determine who instigated the violence. *See* IPI 24-25.09X. But the self-defense instruction required only that the jury determine whether defendant believed David would imminently use unlawful force; the self-defense instruction did not ask the jury to also determine whether that use of force was provoked. R691; *see also* 720 ILCS 5/7-1. Similarly, the second degree murder instruction did not ask the jury to resolve any question about who instigated the hostilities. *See* R688. And, in any event, providing these instructions could not concede that there was evidence that David was the initial aggressor because even an initial aggressor may claim self-defense under certain circumstances. *See* 720 ILCS 5/7-4(c) (describing when an initial aggressor can claim self-defense).

Consequently, there was no evidence that anyone other than defendant was the aggressor or otherwise initially provoked the use of force. Thus, IPI 24-25.09X was not supported by the evidence, and the trial court did not abuse its discretion in declining to give it.

II. Alternatively, Any Error Was Harmless.

Even assuming that the trial court erred in declining to give IPI No. 24-25.09X, the error was harmless because the instruction would not have changed the jury's verdict.

A. The non-constitutional harmless error standard applies.

Defendant cites the incorrect harmless-error standard. *See* Def. Br. 34. The applicable harmless error standard differs depending on the nature of the error: errors of constitutional magnitude must be shown to be harmless beyond a reasonable doubt, while non-constitutional errors are harmless where there is no reasonable probability that the verdict would have been different absent the error. *In re E.H.*, 224 Ill. 2d 172, 180 (2006). Only "certain instructions, such as the burden of proof and elements of the offense, are essential to a fair trial," *People v. Reddick*, 123 Ill. 2d 184, 198 (1988), and therefore warrant application of the constitutional harmless-error standard.

Because IPI 24-25.09X does not implicate the burden of proof, the elements of the offense, or any constitutional right, defendant's argument that the more stringent constitutional standard applies is incorrect. *See* Def. Br. 34 (arguing that People must prove that any error here is "harmless beyond a reasonable doubt").

B. IPI 24-25.09X would not have changed the verdict under either harmless-error standard.

Regardless, the alleged error was harmless under either harmless-error standard because there is no reasonable doubt that the result of the

trial would not have been different had the jury received IPI 24-25.09X. To determine whether a jury instruction error affected the verdict, this Court considers the other instructions given to the jury and the strength of the evidence against the defendant. *See People v. Tompkins*, 2023 IL 127805, ¶ 56. An instructional error is harmless beyond a reasonable doubt where the evidence of guilt is clear and convincing. *People v. Woods*, 2023 IL 127794, ¶ 56 (citing *People v. Dennis*, 181 Ill. 2d 87, 95 (1998)).

Here, even if the jury had received IPI 24-25.09X, there is no reasonable probability the result of the trial would not have been different. As discussed, *see* Section I, *supra*, informing the jury that defendant had no duty to attempt to escape would have had no effect on the verdict because it was undisputed that defendant left the fight when he and David were in the driveway, and there was thus no evidence or argument that defendant failed in any duty to attempt to escape.

In addition, any error in omitting the instruction was harmless because the evidence overwhelmingly proved defendant guilty of first degree murder. As defendant acknowledges, Def. Br. 35, the only elements in dispute were whether his actions were legally justified because he actually and reasonably believed he needed to defend himself against an imminent threat of death or great bodily harm, s*ee* 720 ILCS 5/7-1, or otherwise mitigated his offense to second degree murder because he unreasonably believed self-defense applied, *see* 720 ILCS 5/9-2(a)(2).

But no reasonable jury could have found that defendant's actions were motivated by an actual belief — reasonable or otherwise — that his conduct was necessary to defend himself because the evidence showed that defendant acted only out of anger and revenge. Defendant told police that he had left his cousin's house because he was irritated that he had "gotten an earful" from David, and, in addition, that David's "talking shit was probably going to turn into something different that day." R613-14; PE28 35:53. Defendant then threatened David while the two men were in the car driving defendant home, challenged and fought with David in the driveway of defendant's home, levelled a shotgun at him, and shot him in the face, unprovoked, from a distance of two feet. R297-304. And shortly after the shooting, defendant admitted to police he had shot David because "maybe I had had enough, maybe I had been bullied my entire goddamn life." PE28 1:10:04.

There was also no evidence that defendant believed that David had a gun or otherwise could have seriously injured defendant. Defendant testified merely that David had "access" to guns, R586; defendant did not testify that David had a gun at the time of the incident or that defendant feared David would shoot him. On the contrary, defendant told police that David was unarmed, PE28 11:03, and he did not contradict this statement at trial. Defendant's suggestion that he only told police that he did not *see* a weapon, *see* Def. Br. 40-41, is inconsistent with the record. During his police interview, defendant was asked, "Did [the victim] have a gun, or something

like that?" PE28 11:03. Defendant answered, "No, but I told him get the fuck out of my house." PE28 11:03-08. Contrary to defendant's argument, Def. Br. 40-41, he did not respond, "I don't know," or "I did not see one." *See id.*

Defendant's suggestion that he told police and the jury that he feared that David would harm him "with a gun," Def. Br. 37, likewise misdescribes the record. In support of this proposition, defendant provides a string of citations to his recorded police interview and the transcript of that interview, but none of these citations support his assertion that he feared David would shoot him (or otherwise harm him with a gun). *See id.* Rather, these materials show that during the police interview, officers asked defendant numerous times why he was afraid of, and why he shot, David, and he at no point responded that he believed David had a gun, much less that David would shoot him. *See*, *e.g.*, PE28 1:00:47. In fact, when pressed, defendant stated that he was afraid of "getting [his] ass whipped." PE 28 1:09:18-25. But defendant had already initiated and ended a fight with David without incurring serious injury. And after the fight, David did nothing more than enter their parents' house and walk in the direction of defendant's bedroom. PE28 11:03, 11:40, 16:38; R585-86. Based on this evidence, a jury could not reasonably find that defendant believed — reasonably or otherwise — that he needed to shoot David to protect himself from serious harm.

Ultimately, as the People's opening brief demonstrated, *see* Peo. Br. 20-22, the jury found defendant guilty of first degree murder not because of an

erroneous belief that he failed in any duty to retreat, but because his version of events was inconsistent and incredible. *See People v. Hart*, 214 Ill. 2d 490, 520 (2005) ("If a defendant chooses to give an explanation for his incriminating situation, he should provide a reasonable story or be judged by its improbabilities."). Defendant's theory required jurors to believe that he was so drunk that he did not recognize his own brother — even though defendant had argued with David at their cousin's house, continued to argue with him during the car ride home, fought and wrestled with him in the driveway, and looked into his face before shooting him. R579. Defendant's theory also required the jurors to believe that despite his purportedly extreme level of intoxication, defendant still was able to speak, walk, fight, and ready a shotgun to fire with little difficulty. Moreover, defendant had no explanation for why he told police that he would not murder his brother before anyone had informed him that David was the victim. R596-97; PE 28 16:12. Given these and other inconsistencies in defendant's story, *see* Peo. Br. 20-21, no reasonable jury could credit his account.

In short, under either harmless-error standard, any error in failing to give IPI 24-25.09X was harmless. The appellate court's judgment may be reversed on this alternate ground.

III. The Court Should Remand to the Appellate Court to Consider Only Defendant's Unresolved Claims.

Should the Court conclude that the trial court abused its discretion in declining to give IPI 24-25.09X, it should also determine that any error was

harmless, *see* Section II, *supra*, and should not remand for the appellate court to conduct the harmless-error analysis. To be sure, this Court generally declines to address *claims* that were not ruled upon by the appellate court. *See People v. Prante*, 2023 IL 127241, ¶ 88. But the appellate court here ruled on defendant's jury instruction claim in its entirety. Moreover, the question whether the claimed instructional error was harmless was raised in the People's petition for leave to appeal and is "inextricably intertwined with the determination of whether the error that occurred requires reversal." *In re Rolandis G.*, 232 Ill. 2d 13, 37-38 (2008); *accord People v. Becker*, 239 Ill. 2d 215, 239-40 (2010).

Defendant is incorrect that a remand is necessary to allow the appellate court to determine whether, when all his alleged errors are weighed together, he was deprived of a fair trial. *See* Def. Br. 51-53. This argument presents a claim of cumulative error, which is a separate claim grounded in the due process clause. *See Taylor v. Kentucky*, 436 U.S. 478, 487 n.15 (1978); *People v. Jackson*, 205 Ill. 2d 247, 283 (2001). But defendant made no such claim in the appellate court, *see* Def. App. Ct. Br, so it is forfeited, *see* Ill. S. Ct. R. 341(h)(7); *People v. Dorsey*, 2021 IL 123010, ¶ 70. Thus, this Court need not remand for the appellate court to consider a cumulative-error claim that defendant never raised in that court.

Finally, should the Court reverse the appellate court's judgment, the Court should remand to the appellate court for consideration of the

remaining claims that defendant raised in the appellate court but that the court did not resolve. *See People v. Lowery*, 178 Ill. 2d 462, 473 (1997) ("where trial errors were raised but not ruled upon in the appellate court, it is appropriate for this [C]ourt to remand the cause to the appellate court for resolution of those remaining issues"); *see* Def. Br. 52 (agreeing that appellate court did not reach defendant's remaining claims).

CONCLUSION

This Court should reverse the appellate court's judgment and remand to the appellate court to consider defendant's remaining claims.

July 29, 2024

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages containing 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(a), is 13 pages.

/s/ Nicholas Moeller
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CERTIFICATE OF FILING AND SERVICE

Under penalties as provided by law pursuant to 735 ILCS 5/1-109, the undersigned certifies that the statements set forth in this instrument are true and correct. On July 29, 2024 the foregoing Reply Brief of Plaintiff-Appellant People of the State of Illinois was filed with the Clerk of the Supreme Court of Illinois, using the court's electronic filing system, which provided notice to the following registered e-mail addresses:

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