DISSENTING OPINION BY GINOZA, J.

Given the standard of review with regard to the sufficiency of the evidence, including that the evidence adduced in the trial court must be considered in the strongest light for the prosecution and that the test on appeal is whether there was substantial evidence to support the conclusion of the trier of fact, State v. Richie, 88 Hawaiʻi 19, 33, 960 P.2d 1227, 1241 (1998), in my view there was sufficient evidence to support the jury's conclusion with regard to the parental discipline defense. I therefore respectfully dissent.

Considering the evidence in the light most favorable to the prosecution, there was credible evidence of sufficient quality and probative value to support the jury's determination that the prosecution had disproved the parental discipline defense. One of Minor's brothers, who was also present during the incident, testified that Defendant-Appellant Maria Ramangmou (Ramangmou) hit Minor many times. According to Minor's testimony, the confrontation started in the kitchen and Ramangmou used a thin guava stick to hit Minor until it broke, and Minor then ran to hide in her sister's room under a bed. Minor testified that her brothers came and grabbed her and took her back to the kitchen. At this point Ramangmou grabbed a wire and started to hit Minor. Because Minor was moving around and eventually went underneath a table, Ramangmou told Minor's brothers to grab Minor and hold her down, which they did. Minor was held face down by her arms and legs and she testified that she was then hit "several times." Upon further questioning to determine what Minor meant by "several times," she testified "[a]bout 10 to 20, somewhere around there, probably more." Ramangmou admitted that she asked one of Minor's brothers to hold Minor down so she would not run away.

After the incident, Minor took a shower and testified that there was blood in the water and that there was "a cut on my back or something." Pictures taken after the incident show bruising to Minor's elbow, both shoulders, and upper arms; a scar on her back, which Minor testified was from the stick or wire;

and an injury to Minor's right ankle. Minor testified that Ramangmou caused all of the injuries in the photos. Minor further testified that, at the time of trial, she was four feet eight inches tall, and that Ramangmou is taller and heavier than her.

Although I would not reverse Ramangmou's conviction based on insufficiency of the evidence, I would vacate her conviction and remand for a new trial on the basis of the prosecutor's statement in closing arguments that: "[Ramangmou's] home was not a safe place for [Minor]; but the kids are safe now. As [Ramangmou] testified, the kids were taken away and . . . placed with Child Welfare Services." Ramangmou did not testify, and there is no evidence in the record, that the children were placed with Child Welfare Services. Ramangmou testified the children were removed from her care, but nothing more. The prosecutor's statement that the children were placed with Child Welfare Services suggests that the governmental agency made an assessment of the incident, determined Ramangmou's home was unsafe, and thus all the children were taken away for their safety.

Ramangmou did not object to the prosecutor's statements at trial. However, without evidence in the record of the involvement of Child Welfare Services, I believe the prosecutor's statements constitute plain error that affected Ramangmou's substantial rights. State v. Iuli, 101 Hawaiʻi 196, 208, 65 P.3d 143, 155 (2003) (in reviewing whether alleged misconduct constituted plain error, we consider "the nature of the alleged misconduct, the promptness or lack of a curative instruction, and the strength or weakness of the evidence against the defendant.") (citation omitted). The prosecutor's statements in this case misstated the record in a way that could have significantly impacted the jury's deliberations. Moreover, there was no curative instruction and the evidence in this case was not strong either way. In short, the implicit suggestion that Child Welfare

Services had already made a determination about the incident could very well have been a determinative factor for some jurors.

Based on the above, I dissent from the Memorandum Opinion, but would vacate the conviction and remand for a new trial.