

IN THE
SUPREME COURT OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Appellate Court
	)	of Illinois, Fourth Judicial District,
Plaintiff-Appellant,	)	No. 4-24-0933
	)	
v.	)	There on Appeal from the Circuit
	)	Court for the Eleventh Judicial
	)	Circuit, McLean County, Illinois,
	)	No. 21 CF 374
	)	
BRENT J. BURTON,	)	The Honorable
	)	William A. Yoder,
Defendant-Appellee.	)	Judge Presiding.

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

KWAME RAOUL
Attorney General of Illinois

JANE ELINOR NOTZ
Solicitor General

KATHERINE M. DOERSCH
Criminal Appeals Division Chief

ERIN M. O'CONNELL
Assistant Attorney General
115 South LaSalle Street
Chicago, Illinois 60603
(773) 590-7126
eserve.criminalappeals@ilag.gov

*Counsel for Plaintiff-Appellant
People of the State of Illinois*

ORAL ARGUMENT REQUESTED

E-FILED
9/29/2026 10:46 AM
CYNTHIA A. GRANT
SUPREME COURT CLERK

ARGUMENT

Defendant is not entitled to a new trial due to the trial court's use of *Zehr's* own language to describe *Zehr's* fourth principle, for two reasons.

First, defendant acquiesced to the trial court's use of *Zehr's* language, which it previewed in full before asking for counsel's agreement. *See* Peo. Br. 12-14.¹ Contrary to defendant's claim, *see* Def. Br. 33-35, he cannot avoid the consequences of his acquiescence based on alleged ineffective assistance of counsel because he can show neither deficient performance nor prejudice.

Second, even if mere forfeiture occurred, defendant cannot demonstrate plain error, as he cannot show that an error occurred, *see* Peo. Br. 14-22. or that the evidence was closely balanced, *id.* at 22-26. The trial court substantially complied with Rule 431(b) by using *Zehr's* own language to describe its fourth principle. Defendant argues that the trial court did not substantially comply because it used the word "failure," Def. Br. 26-27, but this is just another way of urging strict, verbatim recitation of the four *Zehr* principles as stated in the current version of the rule. This Court has never required strict compliance, and it should not do so now. The history of the 2012 amendment upon which defendant relies confirms that strict compliance is not required, for the change was intended as a mere stylistic "tweak," DA2, 8, not a substantive change essential to preventing prejudice to defendants.

¹ "Peo. Br.," "Def. Br.," and "DA_" refer, respectively, to the People's opening brief, defendant's appellee's brief, and defendant's appendix.

I. Defendant Acquiesced to the Trial Court’s Phrasing of the Fourth *Zehr* Principle, Precluding Plain Error Review, and He Cannot Demonstrate Ineffective Assistance of Counsel.

Defendant invited any error in the trial court’s phrasing of the fourth *Zehr* principle when the trial court previewed the exact language that it intended to use and defense counsel acquiesced. *See* Peo. Br. 12-14. Counsel did not merely agree to instruct the venire on “the fourth principle in general,” Def. Br. 32, for the trial court did not just refer to the “fourth principle”: it spelled out the principle using the language of *Zehr*, R180. Rather than urge the court to use the amended phrasing of the fourth principle, counsel acquiesced to the court’s formulation. *See id.* Such acquiescence precludes plain error review. *People v. Quezada*, 2024 IL 128805, ¶ 59.

Defendant cannot avoid the consequences of his acquiescence by asserting ineffective assistance of counsel, *see* Def. Br. 33-35; *see also People v. Villareal*, 198 Ill. 2d 209, 227-28 (2001) (considering whether defense counsel provided ineffective assistance where counsel invited error), because he can show neither deficient performance nor prejudice under *Strickland v. Washington*, 466 U.S. 668, 687 (1984), *see People v. Manning*, 241 Ill. 2d 319, 326-27 (2011) (applying *Strickland* to alleged ineffective assistance of counsel during voir dire).

Defendant’s ineffective assistance of counsel claim fails on the performance prong because defendant cannot overcome the “strong presumption” that counsel exercised a reasonable strategy during voir dire.

Strickland, 466 U.S. at 689; *see Manning*, 241 Ill. 2d at 333 (“counsel’s actions during jury selection are generally considered a matter of trial strategy”). Notably, counsel did not rely solely on the trial court’s recitation of the *Zehr* principles but instead reiterated those principles using the language of the amended rule during counsel’s own voir dire. R237. Counsel may have reasonably believed that by informing the jurors of the principle using the corrected language, any slight misstatement by the court when it used the pre-amended version of Rule 431(b) was corrected. Defendant has therefore failed to overcome the presumption that counsel exercised reasonable strategy during voir dire. *See People v. Brown*, 2023 IL 126852, ¶¶ 10, 26-27 (defendant failed to overcome presumption and demonstrate deficient performance where defense counsel acquiesced to conducting portions of voir dire off the record and outside of defendant’s presence); *Manning*, 241 Ill. 2d at 335-36 (same, where defense counsel could reasonably deem juror unbiased and decline to exercise peremptory strike, despite that juror’s ambivalent statements about sex offenders).

Defendant has also failed to “to ‘affirmatively prove’ that prejudice resulted from counsel’s errors.” *People v. Johnson*, 2021 IL 126291, ¶ 55 (quoting *Strickland*, 466 U.S. at 693). “It is not enough for the defendant to show that the errors had some conceivable effect on the outcome of the proceeding.” *Id.* (quoting *Strickland*, 466 U.S. at 693). “Satisfying the prejudice prong necessitates a showing of actual prejudice, not simply

speculation that defendant may have been prejudiced.” *Id.* (quoting *People v. Patterson*, 2014 IL 115102, ¶ 81).

At the outset, defendant’s claim that the “closely balanced” plain error test “and *Strickland* prejudice are equivalent standards,” Def. Br. 35, is incorrect. Although the standards are similar, they are not the same. *Strickland* requires a showing of “actual prejudice,” but the closely balanced evidence standard substitutes for a showing of actual prejudice where a clear or obvious error has been shown. *See People v. Sebbby*, 2017 IL 119445, ¶¶ 51, 68; *People v. Vesey*, 2011 IL App (3d) 090570, ¶¶ 17-20. Indeed, conflating the two standards would render the invited-error doctrine a nullity. If the two standards were equivalent, then (assuming the performance prong were met) a defendant could overcome any invited error by showing that the evidence was closely balanced. Because a defendant’s acquiescence precludes plain error review, *Quezada*, 2024 IL 128805, ¶ 59, this cannot be correct.

To be sure, where, as here, the trial evidence was *not* closely balanced, Peo. Br. 22-26, the strength of the evidence confirms that there is no reasonable probability the result would have differed had counsel performed differently. The appellate court so reasoned in the case cited by defendant. *See People v. Holt*, 2019 IL App (3d) 160504-B, ¶ 47 (“Because we have determined that [defendant] failed to meet his burden under the first prong of the plain-error inquiry — and thus that the evidence was not closely

balanced — we hold that [defendant] cannot satisfy the prejudice prong of the *Strickland* inquiry.”) (cited at Def. Br. 35).

But defendant should be held to a higher burden where he has acquiesced to a trial court’s voir dire admonishments. The ultimate question in assessing *Strickland* prejudice is whether the result of a trial is “unreliable” due to an unreasonable error by defense counsel. *Manning*, 241 Ill. 2d at 327. “The purpose of *voir dire* is . . . to allow removal of those members of the venire whose minds are so closed by bias and prejudice that they cannot apply the law as instructed in accordance with their oath.” *People v. Encalado*, 2018 IL 122059, ¶ 24 (quoting *People v. Cloutier*, 156 Ill. 2d 483, 495-96 (2000)). And here, the alleged error took place during questioning designed to identify jurors who are unable or unwilling to adhere to the principles of the Fifth Amendment. But “failure to comply with Rule 431(b) does not necessarily result in a biased jury,” and “Rule 431(b) questioning is simply one way of helping to ensure a fair and impartial jury.” *People v. Thompson*, 238 Ill. 2d 598, 610-11 (2010).

Defendant does not argue that the purpose of voir dire was thwarted in this case, such that there is a risk that he was tried by an unqualified juror. That alone precludes a finding of *Strickland* prejudice. Defendant argues, instead, that there is a risk that the trial court’s framing of the fourth *Zehr* principle misled the venire into holding defendant’s decision not to testify against him. But that argument fails on its own terms: the jury was fully

and properly instructed on this principle at the end of the trial, R720, and this Court must presume that the jury followed that instruction, *People v. Glasper*, 234 Ill. 2d 173, 201 (2009). Thus, in this case, where the purpose of voir dire was not thwarted and the jury was properly instructed, the Court should find no prejudice and decline to excuse defendant's invited error based on ineffective assistance of counsel.

II. Even If Defendant Merely Forfeited His Challenge, He Cannot Establish Plain Error Because the Trial Court Need Not Recite the Fourth *Zehr* Principle Verbatim, and the Evidence Was Not Closely Balanced.

Defendant concedes that, at the very least, “[d]efense counsel failed to object” to the trial court’s phrasing of the fourth *Zehr* principle, Def. Br. 12, leaving the plain error standard as his only path to relief, *People v. Johnson*, 2025 IL 130447, ¶ 34. But he cannot show the requisite clear or obvious error or that the evidence was closely balanced.

A. No clear or obvious error occurred because the trial court substantially complied with Rule 431(b).

Defendant has failed to show a clear or obvious error because, as the People’s opening brief showed, verbatim recitation of the four *Zehr* principles is not required, Peo. Br. 18-19, and the trial court substantially complied with Rule 431(b) by using the language of *Zehr*, *id.* at 20-22.

Defendant’s arguments in favor of strict compliance fail. First, defendant misconstrues this Court’s precedents to require strict compliance, *see* Def. Br. 13-16, but this Court has found error only where trial courts have omitted essential components of the Rule 431(b) inquiry — *i.e.*, where trial

courts have not substantially complied. Second, contrary to defendant's argument, *id.* at 16, the history of the 2012 amendment confirms that the stylistic change to Rule 431(b) was not intended to overrule appellate precedent endorsing substantial compliance. Third, defendant's argument that allowing substantial compliance denigrates the rule and nullifies the amendment, *id.* at 26-27, ignores that strict compliance is still preferred: it is just not necessary to avoid reversible error.

1. This Court's precedent does not require verbatim recitation of the four principles.

Defendant insists that "this Court has required strict compliance," Def. Br. 13, but quotes no such holding of this Court. Despite addressing trial courts' compliance with Rule 431(b) in both *People v. Wilmington*, 2013 IL 112938, and *People v. Sebbly*, 2017 IL 119445, this Court has never purported to overrule the holdings of the appellate court that substantial compliance when reciting the four *Zehr* principles is sufficient.

To be sure, this Court has found that certain omissions do not amount to substantial compliance, holding that a trial court erred when it failed to ask prospective jurors about all four principles, *People v. Thompson*, 238 Ill. 2d 598, 607 (2010), or failed to ask whether prospective jurors both "understood" and "accepted" the principles, *Wilmington*, 2013 IL 112938, ¶ 32; *see also Sebbly*, 2017 IL 119445, ¶ 49 (as People conceded, trial court failed to substantially comply because it did not ask whether jurors "understood" and "accepted" principles). But no case of this Court has held

that a trial court must recite the four Rule 431(b) principles verbatim. In both *Thompson* and *Wilmington*, this Court rejected the People’s specific arguments that the trial courts in those cases had substantially complied with the rule, *see* Def. Br. 13-15, but it did not reject the principle that substantial compliance is sufficient.

The trial court here included the essential elements that this Court has identified: the trial court asked the jurors whether they both understood and accepted all four principles, A33-37, and thus complied with the holdings of *Thompson*, *Wilmington*, and *Sebby*. To hold that the trial court was required to *also* recite each *Zehr* principle verbatim, this Court would need to extend its prior cases well beyond their holdings.

2. Rule 431(b)’s 2012 amendment confirms that strict compliance is not required.

The appellate court expressly held in numerous cases prior to the 2012 amendment that substantial compliance with the phrasing of the four *Zehr* principles was sufficient, Peo. Br. 16-17 (collecting cases), and the Rules Committee acquiesced to this construction when it amended the rule in 2012 to rephrase the fourth *Zehr* principle but not require strict compliance, *id.* at 19.

Defendant’s claim that this Court “was not required to add in the words ‘strict compliance’” because it has required strict compliance with rules that lack such language, Def. Br. 20, misses the point of the committee’s acquiescence in judicial precedent. Prior to 2012, the appellate court had

held that substantial compliance with the phrasing of the *Zehr* principles was sufficient. By amending the rule in 2012 to alter the phrasing of the fourth *Zehr* principle — but *not* to disavow the appellate court’s prior construction — the committee acquiesced in the appellate court’s construction of the rule to permit substantial compliance. *See Bd. of Ed. of City of Chi. v. Moore*, 2021 IL 125785, ¶ 31 (explaining, in related context of legislative acquiescence, “[w]hen we consider several amendments to the act without a disagreement with this court’s construction, inaction by the legislature strongly suggests agreement”); *see also People v. Marker*, 233 Ill. 2d 158, 177-78 (2009) (principle of acquiescence applies to court rules as well as statutes).

But this Court need not rely on acquiescence because the materials related to the 2012 amendment included in defendant’s appendix, DA1-15, confirm beyond any doubt that this Court did not intend through this amendment to require strict, verbatim compliance. The amendment was offered by a single proponent, who recommended rephrasing the fourth principle to align with the jury instruction addressing a defendant’s decision not to testify. DA2-4. The proponent characterized his proposal as “a minor tweak,” DA2, reiterating that “[t]his is a proposal to tweak what I think is just an unfortunate word,” DA8, and assured that the proposal “is more a matter of form than substance,” DA9. The committee’s limited questions suggest that it ultimately agreed that the *Zehr* principle should conform to

the jury instruction. DA10-11 (committee member asks, “What does the IPI say, 101 or 102?”).

Nowhere in the proposal, the testimony, or the questioning was it ever suggested that a trial court would commit *reversible error* by using the language of *Zehr* itself and the prior version of the rule when questioning prospective jurors. That is defendant’s position here. *See* Def. Br. 1 (claiming that new language is strictly required because it is “designed to not prejudice a defendant”). Instead, the history confirms that a trial court using the language of *Zehr* without the “minor tweak” in wording adopted in 2012, DA2, has substantially complied with Rule 431(b) and avoided reversible error.

3. Finding substantial compliance would not undermine the rule, as strict compliance is preferred.

Finally, contrary to defendant’s suggestion that allowing substantial compliance would render the amendment a nullity and “leav[e] lower courts rudderless in determining how to implement Supreme Court Rules,” Def. Br. 27, it is well-established that trial courts *should*, as a matter of best practice, use the language of the amended rule.

“The rules of this court are not mere suggestions. They have the force of law, and they should be followed.” *People v. Glasper*, 234 Ill. 2d 173, 189 (2009). As this Court has stressed, strict compliance is encouraged even if substantial compliance avoids reversible error. In *People v. Hietschold*, the

trial court omitted several admonishments but nevertheless substantially complied with the trial-in-absentia statute, and this Court “emphasize[d] that we expect trial courts to provide defendants with the full section 113-4(e) admonishment, which can be accomplished quickly and easily by following the statutory language.” 2025 IL 130716, ¶ 34. The same is true with respect to the Rule 431(b) admonishments: the amended language is prescribed by this Court and should be used.

Allowing substantial compliance merely recognizes that a failure to strictly comply does not prejudice a defendant, such that it requires a new trial. Recognizing that a violation of Rule 431(b) is not second-prong plain error, this Court explained that such an error “does not involve a fundamental right, or even a constitutional protection,” but instead “a right made available only by rule of this court.” *Glasper*, 234 Ill. 2d at 193. “While the rule is designed to help ensure that defendants are tried before a fair jury, we cannot say that Rule 431(b)(4) questioning is indispensable to a fair trial.” *Id.* at 196. This means that although Rule 431(b) questioning should be done in the form this Court has specified, using the pre-amended rule’s phrasing of the fourth principle does not require that the result of the proceeding be invalidated. Instead, such substantial compliance suffices.

B. The evidence was not closely balanced.

Finally, even if strict compliance were required, defendant is not entitled to reversal because the evidence was not closely balanced.

The objective evidence overwhelmingly confirmed C.B.’s testimony that defendant entered her home without permission. Although defendant attempts to portray his relationship with C.B. as a continuous series of arguments and reconciliations, Def. Br. 4-6 (detailing on-again, off-again relationship between October 2020 and February 19, 2021); *id.* at 29 (claiming that C.B. sent “mixed messages,” and that “[a]ngry texts would be followed by flirtatious texts”), their text communications corroborate C.B.’s testimony that she conclusively broke things off with defendant on February 19, 2021, R344-47, and never again reciprocated his advances.

Between February 26 and February 28, defendant sent 22 unanswered text messages, R357-60; E60-62; over the next two weeks, defendant sent 56 more, R360-65; E55-60, receiving responses from C.B. asking defendant to “leave [her] the fuck alone” and insisting “WE ARE DONE AND OVER,” E55; R365-66. Undeterred, defendant sent nine messages to C.B. on March 16, R366; E54-55, leading her to threaten to “get an order of protection,” a threat she reiterated when defendant sent three more text messages the following day, E54. Defendant continued to pester her on March 21, 23, 24, and 25, R368-69; E53-54, and even sent messages referencing his stepfather’s funeral, which C.B. ignored, R369; E53. It is simply implausible that on March 27, 2021 — after six weeks of largely unreciprocated communications, except for C.B.’s repeated, emphatic pleas to leave her alone and threats to

obtain an order of protection — C.B. abruptly reversed course and did what Tjarks testified: approached defendant at the bar and told him to come over.

Even beyond the text messages, the evidence clearly shows defendant's lack of respect for C.B.'s boundaries and his sense of entitlement, as defendant was inside of C.B.'s house "for an unaccounted for hour," Def. Br. 28, before surprising C.B. in her sleep, and he stayed in the house *even after* C.B. barricaded her bedroom door and called police, using a knife to try to reenter her bedroom. Police arrived to find C.B. "screaming and crying" in her room and an intoxicated defendant in her kitchen. Because the objective evidence corroborates C.B.'s testimony that defendant invaded her home without permission and sexually abused her, the evidence was not closely balanced.

Finally, the fact that the jury carefully deliberated before rendering its verdict does not demonstrate that the jurors were evenly split between two equally plausible accounts, as defendant maintains, Def. Br. 31, and the appellate court believed, A23-24, ¶ 64. The appellate court correctly "acknowledge[d] that the length of jury deliberations 'is not always an accurate indicator of whether the evidence was closely balanced.'" *Id.* (quoting *People v. Walker*, 211 Ill. 2d 317, 342 (2004)); see *People v. Nugen*, 399 Ill. App. 3d 575, 584 (1st Dist. 2010) ("We reject the general premise a lengthy deliberation necessarily means the evidence is closely balanced."). The jury never indicated that it was deadlocked, as occurred in both of

defendant's cited cases: *People v. Ehlert*, 274 Ill. App. 3d 1026, 1035 (1st Dist. 1995) (evidence was closely balanced where "[t]he jurors deliberated for three days, and sent a note telling the court they could not agree, before they reached the verdict"), and *People v. Palmer*, 125 Ill. App. 3d 703, 708, 712 (4th Dist. 1984) (deeming evidence closely balanced where jury note reflected deadlock after six votes). Here, in contrast, "there is no indication in the record that the jury at any time had reached an impasse," and "[c]areful consideration of the evidence adduced and exhibits admitted is what we expect of jurors in any trial." *Wilmington*, 2013 IL 122938, ¶ 35. Defendant offers "no reason to believe that deliberations here were in any way extraordinary," *id.*, and the jury's fulfillment of its role serves as no indication that the evidence was closely balanced.

Defendant thus has failed to meet his burden to show first-prong plain error, and this Court should accordingly reverse the appellate court's judgment granting relief on his forfeited claim.

CONCLUSION

This Court should reverse the appellate court's judgment and affirm the trial court's judgment.

September 29, 2026

Respectfully submitted,

KWAME RAOUL
Attorney General of Illinois

JANE ELINOR NOTZ
Solicitor General

KATHERINE M. DOERSCH
Criminal Appeals Division Chief

ERIN M. O'CONNELL
Assistant Attorney General
115 South LaSalle Street
Chicago, Illinois 60603
(773) 590-7126
eserve.criminalappeals@ilag.gov

*Counsel for Plaintiff-Appellant
People of the State of Illinois*

RULE 341(c) CERTIFICATE OF COMPLIANCE

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. 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(c) certificate of compliance, and the certificate of service, is 15 pages.

/s/ Erin M. O'Connell

ERIN M. O'CONNELL

Assistant Attorney General

CERTIFICATE OF FILING AND SERVICE

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, 2026, the **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 service of such filing to the email address of the person named below:

Maria A. Harrigan
Office of the State Appellate Defender
400 West Monroe Street, Suite 303
Springfield, Illinois 62704
4thdistrict.eserve@osad.state.il.us

Counsel for Defendant-Appellee

/s/ Erin M. O'Connell

ERIN M. O'CONNELL

Assistant Attorney General