No. 130779

IN THE
SUPREME COURT OF ILLINOIS

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

BRIEF OF PLAINTIFF-APPELLEE PEOPLE OF THE STATE OF ILLINOIS

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POINTS AND AUTHORITIES

NATURE OF THE CASE

A Kendall County jury found defendant Isaiah Williams guilty of threatening a public official, and the trial court sentenced him to 18 months' probation. R584-85; C144.[1] On appeal, defendant argued that the trial court plainly erred in instructing the jury with Illinois Pattern Jury Instruction (IPI) 11.49 and IPI 11.50 — which define the offense of threatening a public official and explain the elements necessary to convict an individual of the crime, respectively — because the instructions were inconsistent. A17-18. Defendant appeals from the appellate court's judgment holding that the pattern instructions were not inconsistent. A18. No question is raised on the pleadings.

ISSUES PRESENTED FOR REVIEW

1. Whether defendant affirmatively acquiesced to instructing the jury with IPI 11.49 and IPI 11.50 — defining the offense of threatening a public official and explaining the elements necessary to convict an individual of the crime, respectively — such that appellate review is barred.

2. Alternatively, if defendant's claim were merely forfeited, whether the trial court did not plainly err in instructing the jury with IPI 11.49 and IPI 11.50.

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[1] Citations to the common law record, report of proceedings, defendant's brief, and the appendix to defendant's brief appear as "C__," "R__," "Def. Br.__," and "A__," respectively.

3. Whether defense counsel was not ineffective for declining to object to the pattern instructions.

JURISDICTION

Jurisdiction lies under Supreme Court Rules 315 and 612(b)(2). On September 25, 2024, this Court allowed defendant's petition for leave to appeal.

STATEMENT OF FACTS

I. Trial Proceedings

Defendant was charged with threatening a public official for statements he made about police officer Nicholas Albarran, who had arrested defendant following a report of domestic violence. C7; *see also* R391.[2]

At the pretrial jury instruction conference, the People requested IPI 11.49, defining the offense of threatening a public official. R265; C93. Defense counsel responded, "Judge, no objection. This one is good." R265. The People also requested IPI 11.50, explaining the elements the People must prove to obtain a conviction for that offense. R265; C95. Defense counsel responded, "No objection." R265.

At trial, Officer Albarran testified that he responded to a domestic battery call at the apartment defendant shared with his girlfriend, Teresa Sanchez. R391-92. When Albarran arrived, defendant and the distressed

[2] Defendant was also charged with the aggravated domestic battery of his girlfriend. C6. He was ultimately acquitted of that charge after his girlfriend largely refused to testify about the altercation at trial. *See* R299-378, 584.

Sanchez were standing in the parking area outside the apartment. R395. Sanchez had several injuries and "some blood." *Id.*

Albarran attempted to separate Sanchez from defendant and speak to her inside, but defendant responded "in an aggressive, hostile manner." R396-97. He called Albarran "an alpha male" and asked if the officer wanted "to get[ ] physical right there." R398. Eventually, other officers arrived and Albarran spoke to Sanchez alone. R397.

After his conversation with Sanchez, Albarran arrested defendant for domestic battery and placed him in the squad car. R403. Defendant continued to be hostile and aggressive, telling Albarran to "take off [defendant's] handcuffs to see who the real man was." R404. He told Albarran that he was threatening him because the officer was "weak" and repeatedly called the officer "a bitch." R404-05. Defendant began to bang his head against the squad car's partition and side window and told Albarran he "would fuck [Albarran] up if [Albarran] took [defendant's] handcuffs off." R406.

As Albarran drove defendant to the jail, defendant continued to threaten the officer, call him names, and express his wish that someone would shoot Albarran. R407. Defendant also informed Albarran that he was HIV positive and threatened to spit in the officer's face. R407-08. Once at the jail, jail personnel handled defendant's booking to defuse the situation. R409.

Albarran returned to his squad car and found defendant's wallet in the back seat. *Id.* When he brought the wallet into the jail, defendant said, "If I see you on the street, I'll fuck you up," and again threatened to spit in Albarran's face. R410. The People presented video recordings from Albarran's body worn camera that captured defendant's statements to the officer. R411-12.

Before Albarran left the jail, a booking deputy approached and showed him the footage from the deputy's body worn camera. R410. In that footage,[3] defendant stated that "if he saw [Albarran] on the street, that he would fucking kill" the officer and "slash [his] throat if he caught [the officer] on the street." *Id.*

Defendant testified that he became angry because Albarran was aggressive and would not listen to defendant's "side of the story." R471. He generally admitted making the statements, including the threat to slash the officer's throat. *See* R478.

In closing argument, the prosecutor listed the propositions the People must establish beyond a reasonable doubt to prove defendant guilty of threatening a public official, including "that the threat to a sworn law enforcement [officer] contained specific facts indicative of a unique threat to the sworn law enforcement officer and not a generalized threat of harm."

[3] The deputy's video recording was described by Albarran but not entered into evidence.

R542. The prosecutor later described this element again before explaining that defendant's general threat to "fuck [Albarran] up" was insufficient to find defendant guilty, "[b]ut when [defendant] said '[I]f I ever see him outside of here, I will kill him. I will slash his throat.' Those are specific facts, and that is a unique threat." R553.

Defense counsel argued that defendant only wanted to tell his side of the story, and Albarran refused to listen. R556. Counsel further argued that the People showed multiple videos of defendant's comments that were not threats sufficient to support a finding of threatening a public official, but did not present a video of "the alleged threat that [defendant] makes," *i.e.*, defendant's threat to slash Albaran's throat. R557. Counsel further argued that Albarran did not feel reasonable apprehension of immediate or future bodily harm by defendant and noted that defendant did not spit, headbutt, or "do anything" to the officer. R557-58. Counsel concluded, "The one thing that the State can't show you is that element." R558.[4]

Following closing arguments, the trial court instructed the jury to follow all the court's instructions and "not single out certain instructions and disregard others." R568-69. As relevant here, the court gave IPI 11.49, IPI 11.49A (defining a public official), and IPI 11.50 in succession, stating,

> A person commits the offense of threatening a public official when he knowingly delivers or conveys directly or indirectly to a public official by any means [a] communication containing a threat that

[4] Counsel then proceeded to argue why defendant was not guilty of aggravated domestic battery. R558-61.

would place the public official in reasonable apprehension of immediate or future bodily harm, and the threat was conveyed because of the performance or non-performance of some public duty.

A person holds the position – I'm sorry, a person holding the position of a sworn law enforcement officer is a public official.

To sustain the charge of threatening a public official the State must prove the following propositions:

First proposition, that the defendant knowingly delivered or conveyed directly or indirectly, to a public official by any means a communication containing a threat that would place the public official in reasonable apprehension of immediate or future bodily harm;

And second proposition, that Nicholas Albarran was a public official at the time of the threat;

And third proposition, that the threat was conveyed because of the performance or non-performance of some public duty;

And fourth proposition, that with the threat — that when defendant conveyed the threat, he knew Nicholas Albarran was then a public official;

And fifth proposition, that the threat to be [sic] a sworn law enforcement officer contained specific facts indicative of a unique threat to the sworn law enforcement officer and not a generalized threat of harm.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proven beyond a reasonable doubt, you should find the defendant not guilty.

R575-78.

The jury found defendant guilty, R584-85, and the trial court sentenced him to 18 months' probation, C144. Defendant filed a post-trial motion that raised no claim regarding the jury instructions. C137-38.

II. Appellate Court Decision

On appeal, defendant argued that the trial court committed plain error in instructing the jury with IPI 11.49 and IPI 11.50. *People v. Williams*, 2024 IL App (2d) 230268-U, ¶ 2; *see also* A17-18. Defendant contended that the two instructions conflicted because IPI 11.50 required the People to prove that the alleged threat contained specific facts indicative of a unique threat, while IPI 11.49 contained no such requirement. A17, ¶ 2. He also argued that defense counsel was ineffective for failing to object to the instructions. *Id.*

The appellate court affirmed, holding that defendant forfeited his claim by failing to object to the jury instructions at trial, A22, ¶ 21, and that defendant could not demonstrate plain error under either Illinois Supreme Court Rule 615(a) or the coextensive Rule 451(c) because IPI 11.49 and IPI 11.50 do not conflict, so the trial court did not err by giving both, A23-24, ¶¶ 25-29. The court reasoned that although IPI 11.49 does not contain IPI 11.50's language regarding a specific threat, IPI 11.49 also does not contain any language directing the jury to find defendant guilty in the absence of a specific threat. A24, ¶ 28. Instead, the instructions operate in tandem, with IPI 11.49 providing a general definition of the crime, and IPI 11.50 explaining the specific elements the People must prove. *Id.* And because there was no error, defense counsel was not ineffective for declining to object to the instructions. A27, ¶ 34, n.2.

STANDARDS OF REVIEW

Whether a party has invited an error is a question of law that is reviewed *de novo*. *See In re Det. of Swope*, 213 Ill. 2d 210, 217 (2004) (invited error is a form of procedural default); *see also People v. Young*, 2018 IL 122598, ¶ 13 ("The determination of whether a claim is procedurally barred presents a question of law subject to *de novo* review.").

Whether pattern jury instructions accurately convey the applicable law is a question of law that is reviewed *de novo*. *Studt v. Sherman Health Sys.*, 2011 IL 108182, ¶ 13.

Whether a defendant received effective assistance of counsel is a question of law that is review *de novo*. *People v. Haynes*, 2024 IL 129795, ¶ 23

ARGUMENT

Defendant affirmatively acquiesced to any error in instructing the jury with IPI 11.49 and IPI 11.50. Therefore he is estopped from arguing that the instructions were error, and even plain error review is unavailable.

Alternatively, defendant at least forfeited his claim and cannot excuse his forfeiture as plain error. He cannot show clear or obvious error because the jury instructions, taken in their entirety, fully and accurately informed the jury of the applicable legal principles. Moreover, to the extent that a discrepancy exists between IPI 11.49 and IPI 11.50, it does not rise to the

level of second prong plain error because the instructions do not directly contradict each other on a disputed element.

Finally, counsel was not ineffective. Counsel was not deficient for failing to make a meritless objection to the instructions. Moreover, defendant cannot have been prejudiced by the absence of a meritless objection, particularly where the evidence of guilt was overwhelming.

I. Plain Error Review Is Unavailable Because Defendant Affirmatively Acquiesced to the Jury Instructions.

Defendant did not merely forfeit his claim that giving both IPI 11.49 and IPI 11.50 was error but affirmatively acquiesced to the giving of both instructions.[5] Therefore, defendant is estopped from challenging the propriety of the instructions, even as plain error.[6]

Under the doctrine of invited error, a defendant is estopped from challenging the propriety of an action on appeal if he acquiesced to that action by requesting or agreeing to it. *People v. Parker*, 223 Ill. 2d 494, 507-08 (2006); *People v. Harvey*, 211 Ill. 2d 368, 385 (2004). Accordingly, where a defendant acquiesces to jury instructions at trial, he cannot challenge the

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[5] The People raised defendant's affirmative acquiescence in their brief before the appellate court, People's Brief, *People v. Williams*, No. 2-23-0268 (Ill. App. Ct.) at 4, but the court did not address the issue, *see* A22, ¶ 21. The People have requested that the Clerk of the Appellate Court, Second District, file certified copies of the appellate court briefs in this Court pursuant to Rule 318(c).

[6] Defendant seeks review under both "Rule 451(c) and second prong plain-error review" under Rule 615(a). *See* Def. Br. 14. Rule 451(c) is "coextensive" with Rule 615(a), and the rules are construed identically. *People v. Hartfield*, 2022 IL 126729, ¶ 49. In the interest of brevity, the People's brief uses "plain error" to refer to relief under both rules.

instructions as plain error on appeal. *See People v. Quezada*, 2024 IL 128805, ¶ 59; *see also Harvey*, 211 Ill. 2d at 385. A defendant affirmatively acquiesces to purported error by affirmatively stating, "No objection." *Quezada*, 2024 IL 128805, ¶ 59; *see also People v. Caffey*, 205 Ill. 2d 52, 113-14 (2001).

Here, defendant affirmatively acquiesced to the use of IPI 11.49 and IPI 11.50 when defense counsel affirmatively told the trial court, "Judge, no objection. This one is good," and "No objection," respectively. R265. Accordingly, he is estopped from raising his jury instruction claim and plain error review is unavailable.

II. Alternatively, the Trial Court Did Not Plainly Err by Giving IPI 11.49 and IPI 11.50.

Alternatively, even if defendant merely forfeited his claim, he cannot establish that the trial court plainly erred in giving IPI 11.49 and IPI 11.50.

A defendant forfeits a potential jury instruction error if he "does not object to the instruction or offer an alternative instruction at trial and does not raise the instruction issue in a posttrial motion." *People v. Herron*, 215 Ill. 2d 167, 175 (2005). Defendant did neither, so, at the very least, has forfeited his jury instruction claim. R265; C137-38.

Consequently, if defendant did not affirmatively acquiesce, his claim is reviewable only for plain error. *Quezada*, 2024 IL 128805, ¶ 51 ("To overcome forfeiture on appeal, a defendant has the burden of establishing plain error."). To establish plain error, defendant must demonstrate a "clear and obvious error occur[ed]" and either (1) "the evidence is so closely balanced

that the error alone threatened to tip the scales of justice against" him or (2) the "error is so serious that it affected the fairness of [his] trial and challenged the integrity of the judicial process." *People v. Piatkowski*, 225 Ill. 2d 551, 565 (2007).

Defendant does not argue that his claim is reviewable as first prong plain error. *See* Def. Br. 14-16. Consequently, he has forfeited any such argument. *People v. Hillier*, 237 Ill. 2d 539, 545 (2010).

A. No clear and obvious error occurred because IPI 11.49 and IPI 11.50 accurately reflect the applicable law.

As an initial matter, defendant cannot establish a clear and obvious error because IPI 11.49 and IPI 11.50 accurately informed the jury of the applicable law. Indeed, giving the two pattern jury instructions was not error at all.

The first step of a plain error analysis "is to determine whether a clear or obvious error occurred." *People v. Jackson*, 2022 IL 127256, ¶ 21. An error is clear or obvious when it is so obvious that the trial judge and the prosecutor have a duty to correct it, even absent the defendant's timely assistance in detecting it. *See People v. Cross*, 2019 IL App (1st) 162108, ¶ 95 (finding no plain error in admitting testimony absent "a clear and obvious error such that the trial court should have *sua sponte* intervened to halt the testimony"); *People v. Koen*, 2014 IL App (1st) 113082, ¶ 46 (finding no plain error in jury instructions because "for there to have been a 'clear and obvious

error' the court must necessarily have had a duty to *sua sponte* instruct the jury" differently).

Here, giving the two pattern jury instructions defining the offense of threatening a public official and providing the elements of that crime was not error at all because the jury instructions, read as a whole, fully and accurately informed the jury of the relevant legal principles. Jury instructions provide the jury with the legal principles that are relevant to the evidence before them, allowing the jury to reach the correct conclusion according to both the law and the evidence. *People v. Bannister*, 232 Ill. 2d 52, 81 (2008). Instructions should not confuse or mislead the jury, "but their correctness depends upon not whether defense counsel can imagine a problematic meaning, but whether ordinary persons acting as jurors would fail to understand them." *Herron*, 215 Ill. 2d at 187-88. A reviewing court does not consider an individual instruction in isolation; instead, the question is "'whether the instructions, taken as a whole, fairly, fully, and comprehensively apprised the jury of the relevant legal principles.'" *People v. Nere*, 2018 IL 122566, ¶ 67 (quoting *Parker*, 223 Ill. 2d at 501). "If IPI instructions contain an applicable instruction on a subject about which the trial court determines the jury should be instructed, the trial court must use that instruction, unless the court determines that the instruction does not accurately state the law." *Bannister*, 232 Ill. 2d at 81.

Here, the trial court gave the applicable IPI instructions on threatening a public official, as it was required to do because those instructions accurately state the law. Threatening a public official occurs when an individual knowingly conveys a threat to a public official, directly or indirectly, that would place the official in reasonable apprehension of immediate or future bodily harm because of the official's performance or nonperformance of some public duty. *See* 720 ILCS 5/12-9(a). Where the public official in question is a law enforcement officer, "the threat must contain specific facts indicative of a unique threat to the person . . . of the officer and not a generalized threat of harm." 720 ILCS 5/12-9(a-5).

The pattern jury instructions the trial court provided to defendant's jury fully and accurately informed the jury of the relevant legal principles. The court noted the charged offense and identified each of the elements necessary to prove that offense, including that the threat must "contain[ ] specific facts indicative of a unique threat to the sworn law enforcement officer and not a generalized threat of harm." *Compare* R575-76 *with* 720 ILCS 5/12-9. It informed the jury that "the State must prove" all the elements and that it should only find defendant guilty if every element "has been proved beyond a reasonable doubt." R575-76. Consequently, the jury was fully and accurately informed of the relevant legal principles, and no error — let alone a clear and obvious error — occurred.

And, contrary to defendant's assertion, *see* Def. Br. 8-9, IPI 11.49 and IPI 11.50 are not inconsistent. It is true that, unlike IPI 11.50, IPI 11.49 contains no reference to a specific, unique threat, but a mere difference in the information conveyed in the two instructions does not amount to a conflict. Indeed, if two instructions conveyed identical information, the second would be redundant. IPI 11.49 contains no language negating IPI 11.50's explicit requirement that the jury find the defendant guilty *only* if the People prove beyond a reasonable doubt that the threat was sufficiently specific; in fact, IPI 11.49 contains no discussion of what elements must be proven or the burden of proof, at all. *See* IPI 11.49.

The harmonious interplay of IPI 11.49 and IPI 11.50 becomes clearer when the instructions are read together, as they were for defendant's jury, rather than in isolation, as presented by defendant. *See Herron*, 215 Ill. 2d at 187-88 (instructions should be viewed from the perspective of an ordinary juror). The trial court instructed the jury with the general definition of the offense (IPI 11.49) and then detailed the elements the People must establish to prove that defendant was guilty of that offense (IPI 11.50). R575-76. The instructions were not presented as two discrete commands to be weighed against each other. Instead, they were given together, with IPI 11.49 serving as a topic sentence before IPI 11.50 provided further detail. When viewed together, as they were given, there is no reason to believe the jury would have perceived any conflict between the instructions.

Accordingly, because the instructions fully apprised the jury of the applicable principles and did not conflict, the trial court did not err in giving IPI 11.49 and IPI 11.50. Consequently, defendant cannot establish a clear or obvious error.

B. Any purported inconsistency in the jury instructions did not rise to the level of structural error.

Defendant also cannot establish plain error because even if there were a clear and obvious error in the jury instructions, it was not second prong plain error because IPI 11.49 and IPI 11.50 do not directly contradict each other.

To show second prong plain error, defendant must demonstrate that the alleged error is "so serious that it affected the fairness of [his] trial and challenged the integrity of the judicial process." *People v. Birge*, 2021 IL 125644, ¶ 24. This Court has frequently equated second prong plain error with structural error, explaining that "automatic reversal is only required where an error is deemed 'structural,' *i.e.*, a systemic error which serves to 'erode the integrity of the judicial process and undermine the fairness of the defendant's trial.'" *People v. Glasper*, 234 Ill. 2d 173, 197-98 (2007) (quoting *Herron*, 215 Ill. 2d at 186). "An error is typically designated as structural only if it necessarily renders a criminal trial fundamentally unfair or an unreliable means of determining guilt or innocence." *People v. Thompson*, 238 Ill. 2d 598, 609 (2010). If an error is amenable to harmless error

analysis, it is not second prong plain error. *People v. Ratliff*, 2024 IL 129356, ¶ 37; *see also People v. Moon*, 2022 IL 125959, ¶¶ 27-29.

An error in jury instructions, even if of constitutional magnitude, does not typically rise to the level of structural error. *Hartfield*, 2022 IL 126729, ¶ 42; *see also Greer v. United States*, 593 U.S. 503, 513 (2021) ("As the Court's precedents make clear, the omission of a single element from jury instructions is not structural."). However, second prong plain error occurs where the jury is "given contradictory instructions on an essential element." *Hartfield*, 2022 IL 126729, ¶ 61; *see also People v. Jenkins*, 69 Ill. 2d 61, 66 (1977) ("It is well established 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."). Such errors cannot be deemed harmless because where two instructions "directly conflict[ ]" on an "essential element," and one instruction is correct and the other erroneous, the reviewing court "can never know which instruction the jury was following." *Hartfield*, 2022 IL 126729, ¶ 61. But where contradictory instructions concern an element not in dispute, *i.e.*, a non-essential element, the instructional error is subject to harmlessness analysis, and consequently, does not rise to the level of second prong plain error. *See People v. Woods*, 2023 IL 127794, ¶ 54 ("[W]e conclude that directly conflicting instructions may be harmless when they do not concern a disputed essential issue in the case."); *see also People v. Jones*, 81 Ill. 2d 1, 10 (1979) (Contradictory

instructions on intent element were harmless where intent "was blatantly evident from the circumstances" such that "[t]he only question was whether the defendant was the perpetrator.").

This Court has held that an instructional error rose to the level of second prong plain error in two cases involving directly contradictory instructions. In *Jenkins*, the trial court gave two separate instructions identifying the elements "the State must prove" to sustain the charge of attempted murder; one instruction included the element that the defendant's actions were not justified, the other did not. 69 Ill. 2d at 64. This Court ruled that giving both instructions was second prong[7] plain error because the instructions were "contradictory." *Id.* at 66-67. Each instruction purported to list the elements the People were required to prove, but the two lists of elements were different. In *Hartfield*, the trial court initially instructed the jury to determine whether an officer "was" in the direction of a firearm's discharge, but during deliberations instructed the jury to determine whether an officer "may have been" in the direction of discharge. 2022 IL 126729, ¶¶ 60-61. This Court held that the instructions were second prong plain error because they directly contradicted on an essential element. *Id.* In each

[7] The *Jenkins* opinion used the phrase "grave error" in its discussion of the defendant's forfeited instruction claim. 69 Ill. 2d at 66. However, as this Court recognized in *Hartfield*, *Jenkins'*s holding amounts to a finding of second prong plain error. *See Hartfield*, 2022 IL 126729, ¶ 59.

case, the instructions purported to identify the elements the People had to prove, but they differed on one of the elements.

Here, unlike the instructions in *Jenkins* and *Hartfield*, IPI 11.49 and IPI 11.50 do not directly contradict each other. Where *Jenkins* and *Hartfield* involved two instructions that inconsistently described the elements the People must prove, IPI 11.49 does not discuss what the People must prove at all. When two instructions describe different elements, the Court cannot determine which instruction the jury followed. *Hartfield*, 2022 IL 126729, ¶¶ 60-61. But here, there is no basis to speculate whether the jury followed IPI 11.50's elements, including the requirement that the People prove a specific threat, because IPI 11.49 contained no language countermanding that requirement, or, indeed, any discussion of the People's burden at all. Consequently, any error in IPI 11.49's omission of the specific threat language does not undermine the integrity of the judicial process or the fundamental fairness of defendant's trial and therefore does not rise to the level of second prong plain error.

Defendant's reliance on *People v. Warrington*, 2014 IL App (3d) 110772, *see* Def. Br. 9-10, is misplaced because that case was wrongly decided. In *Warrington*, a panel of the Third District held that the instructions for threatening a public official were "conflicting" because the issues instruction required the People to prove that the threat placed the public official in reasonable apprehension of immediate or future bodily

harm, but the definition instruction did not contain similar "reasonable apprehension" language. *Id.* ¶¶ 29-30. The appellate court concluded that the error was reversible, despite defendant's forfeiture, because conflicting instructions cannot be deemed harmless. *Id.* ¶ 30. But the *Warrington* court failed to recognize that the instructions did not conflict: a mere difference between instructions does not equate to a direct conflict as to an element of the offense and is, therefore, insufficient to constitute second prong plain error. *See Hartfield*, 2022 IL 126729, ¶¶ 60-61.

Additionally, defendant cannot establish second prong plain error because the specificity of his threat was not disputed at trial. *See Woods*, 2023 IL 127794, ¶ 54; *see also Jones*, 81 Ill. 2d at 10. Defense counsel did not question the specificity of the threat in question (that defendant "would fucking kill [Albarran] and that he would slash [Albarran's] throat if he caught [the officer] on the street," R410); counsel merely asked why the recording of that threat was not presented to the jury. R557. In fact, counsel instead focused his argument on whether Albarran was in reasonable apprehension of immediate or future bodily harm, asserting, "The one thing that the State can't show you is that element." R557-58. Nor could counsel plausibly contest the specific nature of the threat, as defendant admitted he threatened to kill Albarran, specifically by "slash[ing] his throat." R478. Thus, the undisputed element was not "essential," and any instructional error was subject to harmless error review, *see Woods*, 2023 IL 127794, ¶ 54

(undisputed element is not an essential element); *Jones*, 81 Ill. 2d at 10, and consequently any error was not second prong plain error, *Ratliff*, 2024 IL 129356, ¶ 37.

III. Defense Counsel Was Not Ineffective.

For similar reasons, defense counsel was not ineffective for declining to object to IPI 11.49 and IPI 11.50.

To prevail on his claim of ineffective assistance, defendant must show that (1) counsel's performance was objectively unreasonable; and (2) there is a reasonable probability that, "but for counsel's unprofessional errors, the result of the proceeding would have been different." *People v. Brown*, 2024 IL 129585, ¶ 28; *see also Strickland v. Washington*, 466 U.S. 668 (1984). Clearing *Strickland*'s "high bar" is a difficult task, and defendant's failure to prove either prong is fatal to a claim of ineffective assistance. *People v. Johnson*, 2021 IL 126291, ¶ 53.

A. Counsel did not perform deficiently.

Defendant's claim fails because counsel cannot have performed deficiently by declining to make a meritless objection. To show counsel performed unreasonably, defendant must establish that "counsel's performance was so inadequate 'that counsel was not functioning as the counsel guaranteed by the sixth amendment.'" *People v. Dupree*, 2018 IL 122307, ¶ 44 (quoting *People v. Evans*, 186 Ill. 2d 83, 93 (1999)). The reasonableness of counsel's performance is measured against the state of the law at the time of his challenged action or inaction; counsel is not required to

predict changes in the law. *See People v. English*, 2013 IL 112890, ¶ 34; s*ee also Strickland*, 466 U.S. at 689 ("A fair assessment of attorney performance requires that every effort be made to eliminate the distorting effects of hindsight, to reconstruct the circumstances of counsel's challenged conduct, and to evaluate the conduct from counsel's perspective at the time.").

Counsel was not deficient for declining to object to IPI 11.49 and IPI 11.50 because, as explained above, *see supra* Part II.A, such an objection would have been meritless. *See People v. Bush*, 2023 IL 128747, ¶¶ 79-80 (counsel does not perform deficiently by failing to raise meritless objection). Moreover, counsel was not objectively unreasonable for relying on the pattern instructions, promulgated by this Court and generally required to be given under Rule 451(a), nor can it be said that counsel was unreasonable for not predicting that the instructions might subsequently be found erroneous. Accordingly, defendant cannot establish deficient performance.

B. Defendant cannot show prejudice.

Nor can defendant establish that, but for counsel's inaction, the result of the proceeding would have been different. When weighing prejudice, the question is not whether counsel's performance had any effect on the trial or whether "it is possible a reasonable doubt might have been established if counsel acted differently." *Harrington v. Richter*, 562 U.S. 86, 111 (2011). Instead, the question is "whether it is reasonably likely the result would have been different." *Id.*

As noted above, *see supra* Part II.A, any objection to the challenged jury instructions would have been meritless. Consequently, the trial court would have denied such an objection leaving the jury's verdict unaffected.

Even if defense counsel had requested and received a modified version of IPI 11.49 that included language regarding a specific threat, there is no reasonable probability that the jury's verdict would have been different. The jury was aware that the People were required to prove a specific threat beyond a reasonable doubt, as IPI 11.50 directed the jury that the People had to prove beyond a reasonable doubt that the threat was sufficiently specific. R575-78. The prosecutor repeatedly directed the jury to that proposition and even highlighted to the jury that only one of defendant's many threats was sufficiently specific to establish that element. R542, 553. And the evidence was overwhelming that such a specific threat was made. Defendant admitted that he not only threatened to kill Albarran, but specifically that he would "slash his throat" if he caught the officer in public. R478. It cannot reasonably be said that such a threat is "a generalized threat of harm." *See* 720 ILCS 5/12-9(a-5). Consequently, even if counsel had objected and the jury had been instructed with a modified version of IPI 11.49, there is no reasonable probability that the jury would have acquitted defendant. Accordingly, defendant cannot show prejudice, and he fails to show that counsel was ineffective.

CONCLUSION

This Court should affirm the appellate court's judgment.

April 7, 2025

Respectfully submitted,

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People of the State of Illinois

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 23 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 April 7, 2025, the foregoing **Brief of Plaintiff-Appellee 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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