

No. 22-6547

ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES

FILED
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OFFICE OF THE CLERK
SUPREME COURT, U.S.

KASHAI JONES — PETITIONER
(Your Name)

vs.

PEOPLE OF THE STATE OF ILLINOIS — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

THE APPELLATE COURT OF ILLINOIS, FIRST DISTRICT
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

KASHAI JONES
(Your Name)

P.O. BOX 1000
(Address)

MENARD, ILLINOIS 62259
(City, State, Zip Code)

1-618-826-5071
(Phone Number)

QUESTION(S) PRESENTED

1) Illinois Supreme Court Rule 431(b) requires the trial court to ask each potential juror whether the juror "understands and accepts" certain constitutional principles that are fundamental to a fair trial. See Ill. S.Ct. R. 431(b) (West 2020) (eff. July 1, 2012). At petitioner trial the trial court committed error when it failed to make sure each juror understood the principles in *People v. Zehr*, 103 Ill. 2d 472 (1984).

2) Plain error doctrine in a closely balance case where petitioner asks this court to grant under the first circumstance in the plain error doctrine.

3) Where the jury's determination of guilt is based entirely on its assessment of the witnesses, credibility the evidence is closely balanced. *People v. Gonzalez*, 2011 IL App (2d) 100380, ¶¶ 26-27.

LIST OF PARTIES

- ☒ All parties appear in the caption of the case on the cover page.
- ☐ All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

TABLE OF AUTHORITIES CITED

CASES

	PAGE NUMBER
People v. Zehr, 103 Ill.2d 472, 477 (1984)	1, 5
People v. Wilmington, 2013 IL 12938, ¶132	2, 4,
People v. Jones, 2021 IL App (1st) 180734-U	2, 3, 4,
People v. Sebby, 2017 IL 119445	2, 4,
People v. Platkowski, 225 Ill.2d 551, 565 (2007)	2,
People v. Gonzales, 2011 IL App (2d) 100380	5,
Kazadi v. State, 467 Md. 1 (2020)	5

STATUTES AND RULES

Illinois Supreme Court Rule 431(b)

OTHER

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IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

☐ For cases from federal courts:

The opinion of the United States court of appeals appears at Appendix _____ to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

The opinion of the United States district court appears at Appendix _____ to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

☒ For cases from state courts:

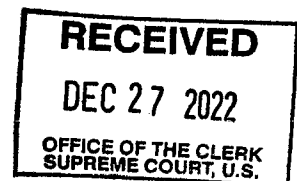
The opinion of the highest state court to review the merits appears at Appendix A to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

The opinion of the Circuit Court of the 1st Judicial District court appears at Appendix B to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

1.



JURISDICTION

☐ For cases from federal courts:

The date on which the United States Court of Appeals decided my case was _____.

☐ No petition for rehearing was timely filed in my case.

☐ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ____ A ____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

☐ For cases from state courts:

The date on which the highest state court decided my case was _____.
A copy of that decision appears at Appendix _____.

☐ A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ____ A ____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Constitution of The United States

Article VI

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defence.

STATEMENT OF THE CASE

Petitioner was charged with first degree murder of Dietrick Stogner. The charges alleged that petitioner was the instigator and the aggressor and that petitioner didn't act in self-defense.

The trial court clearly made sure each juror accepted the relevant principles and was willing to apply those principles, but the trial court did not ask the potential jurors whether they understood the relevant principles.

Illinois Supreme Court has held that the failure to ask jurors if they understood the principles set forth in 431(b) constitutes error. The trial court judge committed error when he failed to ask the jurors if they understood the relevant principles.

The evidence in this case was closely balanced and that error threatened to tip the scales against petitioner, such that petitioner is entitled to relief for plain error.

STATEMENT OF THE CASE

The States trial strategy was that petitioner was the aggressor and that petitioner did not act in self-defense which petitioner self-defense claim is corroborated by video footage as to who shot the first shot at who and witnesses corroborate that the victim shot petitioner first.

At trial the judge failed to ensure that petitioner was tried by a jury of people who understood that petitioner is presumed innocent, that the evidence had to prove petitioner guilty beyond a reasonable doubt, that petitioner had no burden to present evidence, and that petitioner had no obligation to testify. Each of these principles goes to the heart of a particular bias or prejudice which would deprive a defendant of his right to a fair and impartial jury. *People v. Zehr*, 103 Ill.2d 472, 477 (1984)

Petitioner was denied his constitutional right to be tried by a fair and impartial jury by the judge failure to ask the potential jurors whether they understood the relevant principles outlined in Illinois Supreme Court Rule 431(b). The trial judge only asked the potential jurors if each juror accepted the relevant principles and if the jury

STATEMENT OF THE CASE

was willing to apply those principles.

Illinois Supreme Court has held that the failure to ask jurors if they understand the principles set forth in Rule 431(b) constitutes error.

People v. Wilmington, 2013 IL 112938, ¶ 32. The Appellate Court of Illinois First Judicial District found that the trial judge committed error in petitioner's case by failing to ask the jurors if they understood the relevant principles *People v. Jones*, 2021 IL App(1st) 180734-U, ¶¶ 38-39, *People v. Sebbby*, 2017 IL 119445, ¶ 49. The State concedes on appeal that the trial court did not properly question jurors during voir dire.

Petitioner failed to preserve the 431(b) violation by not objecting to the trial court's method of questioning the venire and by not putting the claim in a post-trial motion that the trial court violated Rule 431(b). Petitioner concedes that this error was not properly preserved for appeal and thus can warrant relief under the plain error doctrine. The first step in showing plain error is to show that a "clear or obvious error existed." *People v. Piatkowski*, 225 Ill. 2d 551, 565 (2007). The State on appeal and JUSTICE HOWSE in delivering the order concedes

STATEMENT OF THE CASE

that the trial court committed error. Petitioner has shown an error was committed. The case is closely balanced due to the victim shooting first which is corroborated by the State's witnesses.

JUSTICE HOWSE delivered the judgment of the court affirming petitioner conviction on the Illinois Supreme Court Rule 431(b) violation on March 31, 2022 JUSTICE HOWSE concurred in the judgment on a Illinois Supreme Court Rule 431(b) violation in People v. Jones, 2021 IL App(1st) 180734-0 where the 431(b) violation was heard under the plain error doctrine where the trial court failed to comply with Supreme Court Rule 431(b) by asking the prospective jurors whether they understood the principles in the rule and where the evidence was closely balanced. Honorable Vincent M. Gaughan Judge Presiding, was petitioner trial judge is the same judge in People v. Jones, 2021 IL App(1st) 180734-0 whom committed the same error in the Illinois Supreme Court Rule 431(b) violation when Honorable Vincent M. Gaughan Judge Presiding did not ask the prospective jurors if they understood the constitutional principles outlined by the rule. The Illinois Supreme Court has repeatedly emphasized that trial courts violate Rule 431(b) if they fail to ask the potential jurors if they understood and accepted at least

STATEMENT OF THE CASE

one of the four Zehr principles, to which the State has already conceded. *People v. Wilmington*, 2013 IL 112938.

The trial court failed to ask the prospective jurors whether they "understood" the principles instead asking the jurors only whether they accepted them and whether they had any "qualms" or "problems" with applying them. The Illinois Supreme Court and the Illinois Appellate Court First District erred in not granting petitioner a new trial for the Ill. S. Ct. R. 431(b) violation when it is clear that the exact same error occurred in *People v. Jones*, 2021 IL App(1st) 180734-U by Honorable, Vincent M. Gaughan Judge Presiding which JUSTICE HOWSE concurred in the judgment of the Rule 431(b) violation but JUSTICE HOWSE delivered the judgment of the court in petitioner appeal and affirmed petitioner conviction. The error is clear and obvious and the evidence is closely balanced.

Petitioner trial testimony †pg. K-132 line 21-24-†pg. 141 is corroborated by the bystander witnesses, Robinson and Jamison that petitioner acted in self-defense.

People v. Sebbby, 2017 IL 119445. The State's witness Randold testified that he didn't see petitioner shoot †pg. K-25 line 8-9 but the State's witness testified that he saw who shot petitioner †pg. K-25 line 10-12.

REASONS TO GRANT PETITION

Where the jury's determination of guilt is based entirely on its assessment of the witnesses, credibility, the evidence is closely balanced. *People v. Gonzales*, 2011 IL App (2d) 100380, ¶¶ 26-27.

Petitioner was denied a fair and impartial trial because the trial court failed to comply with Zehr and Illinois Supreme Court Rule 431(b) the questions required by Rule 431(b) are vital to the selection of a fair and impartial jury and the trial court's failure to ask them in petitioner case amounts to petitioner not receiving a fair trial by an impartial jury - a jury that understands and accepts four important constitutional principles outlined in *People v. Zehr*, 103 Ill. 2d 472, 477, 469 N.E. 2d 1062, 83 Ill. Dec. 128 (1984), Illinois Supreme Court Rule 431(b).

Because the evidence is closely balanced in petitioner case, the trial court's clear instructional error violated Rule 431(b). *Kazadi v. State*, 467 Md. 1 (2020)

REASONS FOR GRANTING THE PETITION

Illinois Supreme Court Rule 43(b) violation failing to ask the jurors if they understood the relevant principles.

The evidence in the case was closely balanced and that the error threatened to tip the scales against him, such that he is entitled to relief under the first prong of the plain error doctrine.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Kashai James

Date: November 2, 2022