McDONALD, J., concurring. I agree with the majority that the implied waiver rule set forth in *State* v. *Kitchens*, 299 Conn. 447, 482–83, 10 A.3d 942 (2011), should not extend to the facts of the present case, where the trial court failed to provide the defendant, Raquann Tyrone Davis, with a written copy of the jury charge and simply stated that the charge would be "in essence" the one provided on the Judicial Branch website. Nonetheless, I write separately to acknowledge the concerns that Justice Palmer has renewed regarding the underpinnings of the per se, irrefutable presumption set forth in *Kitchens* and the question of whether an implied waiver would arise even if defense counsel expressly disavowed any knowledge of legitimate claims that counsel could advance. I also note that recent decisions questioning whether the implied waiver rule in *Kitchens* applies to claims of plain error; see *State* v. *Sanchez*, 308 Conn. 64, 74–75 n.5, 60 A.3d 271 (2013); *State* v. *Webster*, 308 Conn. 43, 64, 60 A.3d 259 (2013) (*Rogers*, *C. J.*, concurring); *State* v. *Darryl W.*, 303 Conn. 353, 371–72 n.17, 33 A.3d 239 (2012); lend some support to Justice Palmer's contention that the rule in *Kitchens* is, in effect, a rule of forfeiture, not waiver.[1] Irrespective of the merits of such concerns, I note that the defendant has not asked us to consider modifying or overruling *Kitchens* in the present case. Not having previously weighed in on the merits of the question presented in *Kitchens*, I believe I am obliged to apply that precedent. Therefore, I reserve judgment on whether, faced with such a request, we should reconsider that precedent.

I respectfully concur.

[1] Relying on federal case law, which deems claims forfeited under certain circumstances, the Appellate Court has noted: "[The] Plain Error Rule may only be invoked in instances of forfeited-but-reversible error, *United States* v. *Olano*, 507 U.S. 725, 731–33, [113 S. Ct. 1770], 123 L. Ed. 2d 508 (1993), and cannot be used for the purpose of revoking an otherwise valid waiver. This is so because if there has been a valid waiver, there is no error for us to correct. See [id., 732–33]. . . . The distinction between a forfeiture of a right (to which the Plain Error Rule may be applied) and a waiver of that right (to which the Plain Error Rule cannot be applied) is that [w]hereas forfeiture is the failure to make the timely assertion of a right, waiver is the intentional relinquishment or abandonment of a known right. [Id., 733] . . . . *United States* v. *Lakich*, 23 F.3d 1203, 1207 (7th Cir. 1994)." (Internal quotation marks omitted.) *State* v. *Wilson*, 52 Conn. App. 802, 809–10, 729 A.2d 778 (1999).