

6-25-2014

Illinois Supreme Court Should Consider Reasonable Doubt Issue

Marc D. Falkoff

Follow this and additional works at: <https://huskiecommons.lib.niu.edu/clglaw>



Part of the [Law Commons](#)

Suggested Citation

Marc D. Falkoff, Illinois Supreme Court Should Consider Reasonable Doubt Issue, Chicago Daily L. Bull., June 25, 2014.

This Article is brought to you for free and open access by the College of Law at Huskie Commons. It has been accepted for inclusion in College of Law Faculty Publications by an authorized administrator of Huskie Commons. For more information, please contact jschumacher@niu.edu.

Chicago Daily Law Bulletin®

Volume 160, No. 125

Illinois Supreme Court should consider reasonable doubt issue

Last month, a state appellate court reversed the conviction of Mark Downs — a gang member serving 70 years for the murder of a 6-year-old boy — because the trial court attempted to answer a jury question about the definition of reasonable doubt.

The case marks at least the third time since 2011 that serious convictions have been overturned because a judge tried to explain the meaning of reasonable doubt to a jury. Although there was good reason to reverse the conviction in *Downs*, the legal premise the appellate court relied on was flawed. At this point, the Illinois Supreme Court should step in and set the lower courts straight.

Downs was convicted in 2009 of the first-degree murder of Nico Contreras. The chief evidence against him came from a fellow gang member who described Downs shooting through a wall and window of a home, trying to kill a rival but instead killing the 6-year-old.

As the jurors deliberated, they sent out a note to the court: "What is your definition of reasonable doubt: 80 percent, 70 percent or 60 percent?"

The trial court found itself in a quandary since Illinois law disapproves of providing jury instructions that define reasonable doubt. What, then, would be the appropriate response to a direct query from the jury about the term?

To answer that question, we must first acknowledge that the state's "no definition" rule is not as confounding as it might appear. Practice has shown that it's notoriously difficult to capture the essence of reasonable doubt in different words. As Lemuel Shaw observed in 1850, it's a term "often used, probably pretty well understood, but not easily defined."

The law reports are filled with failed attempts at defining reasonable doubt. At best, trial judges usually end up substituting one opaque phrase for another. Jurors

have been told, for example, that a reasonable doubt is a "fair, actual and logical doubt" while simultaneously being warned that to be reasonable, the doubt must not be "merely speculative or a product of the imagination."

Empirical studies suggest jurors don't find such efforts helpful. Moreover, many attempts to define reasonable doubt inadvertently end up lowering the state's burden of proof or shifting it to the defendant.

Accordingly, Illinois decided long ago that "reasonable doubt" should speak for itself since efforts to define it "usually result merely in an elaboration of language without any corresponding amplification of the idea." *People v. Johnson* (Ill. 1925).

But what then to do with the jury's query in *Downs*? It was proper for the trial court to offer no definition of reasonable doubt in its charge to the jury, but didn't the judge have an obligation to respond once it became clear the jurors had no clear idea what reasonable doubt meant?

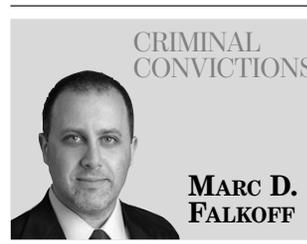
After all, pegging the standard at somewhere between 60 percent and 80 percent certainty of guilt is stunningly misguided. Even if reasonable doubt — a qualitative measure — could be quantified, these numbers are way too low.

The case marks at least the third time since 2011 that serious convictions have been overturned because a judge tried to explain the meaning of reasonable doubt to a jury.

Nonetheless, the trial court concluded it was not allowed to offer any enlightenment to the jury. "We cannot give you a definition; it is your duty to define it." The jury then returned a verdict of guilty.

Was the judge's response reversible error? Yes it was, but not for the reasons offered by the appellate court.

According to the 3rd District Appellate Court panel's reading of precedent, Illinois law forbids judges from offering juries any guidance about the meaning of



Marc D. Falkoff is an associate professor at Northern Illinois University College of Law. He teaches and writes about criminal law and procedure. He can be reached at mfalkoff@niu.edu.

reasonable doubt.

When the *Downs* trial court told the jurors it was up to them to define reasonable doubt for themselves, it was offering guidance. By doing so, according to the appellate panel, the court violated the absolute prohibition on instructions about reasonable doubt and committed plain error.

It is revealing that the appellate court was at a loss as to how the trial judge should have extricated itself from the "real bind" the jury's query created for the court.

The "only acceptable answer that we can think of," the panel offered in a footnote, "would have been to tell the jury that reasonable doubt is not defined as a percentage, but rather is the highest standard of proof known in law, and that the jury had all of its instructions needed to answer its question."

But as the court acknowledged, even this statement "would have strayed into providing a definition of reasonable doubt" and might itself have constituted error.

In sum, the appellate court found reversible error on the part of the trial judge but didn't have a clue what the judge should have done instead.

Luckily, the dilemma identified by the appellate court is illusory. It's based on an over-reading of prior case law which establishes nothing more than the admonition that judges avoid defining reasonable

doubt because doing so is rarely helpful.

In Illinois law, there is no absolute prohibition against reasonable doubt instructions. Nor should there be.

With the exception of two similarly misguided opinions from appellate courts in the 1st and 2nd districts, in none of the cases cited by the *Downs* court was it per se error for the court to provide a reasonable doubt instruction to the jury. Even where a proffered definition was erroneous, reversal was merited only when it was likely that the jury applied the instruction in an unconstitutional manner.

Yes, reversal was merited in *Downs*, but not because the trial court should have remained silent in response to the jury's question.

Instead, reversal was necessary because the trial court did not go far enough in trying to explain reasonable doubt after the jury affirmatively revealed it did not have a defensible understanding of the term.

In most cases, attempting to define reasonable doubt will do more harm than good. But when a judge learns that the jury's understanding is flawed and does nothing to correct it, there is a reasonable likelihood that the jury will apply the instruction in a manner that violates the Sixth Amendment.

In *Downs*, therefore, the problem wasn't that the judge offered an instruction on reasonable doubt to the jury; it was that the judge offered an inadequate instruction that didn't correct their misunderstanding.

Reversing a murder conviction is a weighty matter. If appellate panels are going to order new trials, they should be doing so for the right legal reasons. But at present, appellate courts from the 1st, 2nd and 3rd districts are mechanically applying the "no definition" rule based on a misreading of precedent.

Unless the Illinois Supreme Court steps up to correct the appellate court's faulty legal reasoning in *Downs*, the next reversal of a murder conviction might be for a trial court error that was no error at all.