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Overcorrecting jury instruction errors

In November, a state appellate court threw out the first-degree murder conviction of Daniel Belknap, who had been found guilty in the beating death of a young girl in 2006.

The Illinois Supreme Court is now deciding whether to hear a challenge to that decision in order to clarify the law on “plain error” review. It should.

People v. Belknap is important because, as the state argues, some appellate courts are misapplying plain-error doctrine. Beyond that, the case is significant because it highlights the dubious value of recent Supreme Court case law on how trial courts conduct voir dire.

Hidden in this case are lessons for prosecutors, defense attorneys and judges who must live with the new voir dire rules.

Belknap was arrested after the 5-year-old daughter of his girlfriend died of blunt force trauma to the head.

Based on the autopsy and timeline of events, both the prosecution and defense agreed the death was a homicide and that only two people could have committed it — the defendant or the girl’s mother.

The evidence against Belknap was not overwhelming. Most important were the statements of two jailhouse snitches who claimed Belknap told them he had killed the girl in a meth-induced rage after she threatened to reveal his drug use.

Belknap was twice convicted of first-degree murder, but the convictions were tossed each time because the trial court failed during voir dire to comply precisely with Supreme Court Rule 431(b).

The rule requires the court to “ask each potential juror” whether she “understands and accepts” four principles: The defendant is presumed innocent; the state must prove its case beyond a reasonable doubt; the defendant need not offer

evidence on his own behalf; and his failure to testify can’t be held against him.

In addition, jurors must be given an “opportunity to respond to specific questions concerning [these] principles.”

At the first trial, the court explained the four principles thoroughly but offered no opportunity to respond.

On remand, the court failed to ask the venire persons whether they “understood and accepted” the principles, instead asking only if they “agreed with” or “had any quarrel with” them. Defense counsel objected to none of this.

Because defense counsel failed to object during voir dire, reversal was appropriate only if the trial court committed “plain error.”

This is supposed to provide a heightened standard of review, because without an objection, the judge wasn’t given a chance to correct his error at trial.

To merit a new trial for an unpreserved objection, the defendant must prove either 1) “the evidence in a case is so closely balanced that the jury’s guilty verdict may have resulted from the error and not the evidence” or 2) “the error is so serious that the defendant was denied a substantial right, and thus a fair trial.” *People v. Herron* (2005).

Concerning the latter prong, the Supreme Court has already determined that 431(b) errors do not in themselves deny defendants a fair trial.

As for the first prong of the plain-error test, most courts recognize that reversal in “closely balanced” cases is appropriate only where the defendant proves the error may really have caused the guilty verdict. It doesn’t matter if the error was de minimis, so long as it may have caused harm.

Here’s where the *Belknap* court went astray. The panel concluded there was a 431(b) error (indisputable under

CRIMINAL CONVICTIONS



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current case law), and that the evidence in the case was closely balanced (plausible, given the state’s reliance on jailhouse snitches). But the court required no showing by the defendant that the voir dire error itself may have accounted for the verdict.

Indeed, that would be very hard to do where the only error was the trial court’s failure to use a couple of magic words in its rigorous discussion of relevant legal principles.

This wasn’t a case where a link between the error and the verdict was likely — such as where a defendant chooses not to testify and the court fails to tell the venire he has that right.

The *Belknap* court simply misunderstood plain-error doctrine.

Under the panel’s theory, in close cases, a forfeited claim of error could more easily lead to a new trial than a claim that was preserved by counsel. That’s because the defendant, under the panel’s theory, need not show the forfeited claims may have caused the guilty verdict.

If the claim had been preserved, in contrast, there would be a new trial only if the state failed to show the error was harmless. That’s screwy, and the Supreme Court should set them straight.

There’s another issue lurking here concerning whether the kind of voir dire questioning in cases such as *Belknap* is really erroneous at all. In fact, until recently, decisional law was clear that trial courts were permitted to ask in their own words whether prospective jurors had any quarrel with the 431(b) principles. See *People v. Thompson* (2010).

To be sure, there’s some virtue in encouraging uniform language to communicate the 431(b) principles.

But should it really be considered an error for a court to express them in its own language?

Requiring magic words typically creates perverse incentives. As a defense lawyer, if you believe the court’s voir dire was adequate to weed out biased jurors, then under current law there’s no real reason for you to object if the court didn’t use the “understand and accept” formulation from the rule.

By objecting, at best you would force the court to rephrase its questions during voir dire, which would be of limited or no value to your client. But by keeping quiet, you will hand your client a potential “get out of jail free” card, since in a closely balanced case the trial court’s error might buy him a reversal for plain error on appeal.

What are the lessons here? Judges should start using a script that incorporates 431(b)’s precise language during voir dire. Defense counsel should consider standing mute if the court fails to use the rule’s magic words.

And prosecutors should insist, even without prompting from the defense, that the trial court read straight from the rule.

Finally, the Supreme Court should reconsider whether it’s really erroneous for a trial court to convey the sum and substance of Rule 431(b) in its own language.