Prosecutorial Disclosure of Exculpatory Information During Plea Negotiations

DNA testing has provided vivid lessons on wrongful convictions and the consequent exonerations reveal a host of sources of inaccuracy in criminal trials, such as the use of jailhouse informants, eyewitness identification error, inadequate legal representation, coerced confessions, and the psychological phenomenon of escalation of commitment toward the guilt of a particular suspect. The same factors increase the risk of convicting the innocent through guilty pleas. A recent conference at Case Western Reserve University focused on another factor associated with wrongful convictions—prosecutorial failure to reveal exculpatory information in violation of Brady v. Maryland. (This summer, the Case Western Reserve Law Review will publish a symposium on Brady violations and wrongful conviction.)

Is there reason to believe that failure to disclose Brady material contributes to factually inaccurate guilty pleas? Failure to disclose exculpatory information unknown to the defense at trial obviously means the jury will not hear the evidence and be more likely to render an inaccurate verdict. But there is no jury at a guilty plea hearing.

An intuitive response to the question of whether Brady disclosure aids accuracy in guilty pleas is “no.” Two assumptions prompt such a response. First, it is appealing to assume that a defendant entering a guilty plea, unlike a juror at a trial, knows whether or not he or she “did it.” A second assumption is that a defendant is very unlikely to make a false inculpatory statement when entering a guilty plea in open court. After all, the defendant clearly knows that factual statements admitting guilt in a guilty plea hearing are against the defendant’s penal and social interests, having been warned by the judge that an admission of guilt at the hearing will provide the basis for a criminal conviction. In addition, a defendant makes such statements after receiving advice of counsel and often under oath and subject to penalty of perjury.

Undoubtedly most defendants who plead guilty (1) know the facts determining their criminal liability; and (2) are sincere when they confess their guilt in a guilty plea. In the balance of this column, though, we demonstrate that (1) some defendants pleading guilty lack such knowledge and sincerity and (2) we need critically to examine our assumptions about the knowledge and sincerity of defendants pleading guilty. Once we understand the knowledge and sincerity risks posed during guilty pleas, we can see how Brady disclosure in the guilty plea context would help reduce those risks.

Knowledge

The notion that a defendant knows whether or not he or she “did it”—that is, whether or not the defendant engaged in an act that fulfills the conduct element of the charged offense—is undoubtedly true in most cases. But it is not true in all cases. Moreover, even if a defendant knows about the conduct required for a crime, it does not necessarily follow that the defendant has adequate knowledge to establish other elements of the crime or other factors critical in determining criminal liability. The view that a defendant knows if he or she “did it” reflects a restricted, simplistic view of guilt and innocence that ignores many of the factors our substantive criminal law uses to define criminal liability, such as circumstances, results, causation, mental states, and defenses.

Two recent cases exemplify knowledge deficiencies. The defendant in State v. Gardner, 855 P.2d 1144 (Idaho Ct. App. 1994), was charged with vehicular manslaughter after the car he was driving crossed the center line of a highway and ran into an oncoming truck, killing one person and seriously injuring three others. Tests indicated that Gardner was under the influence of marijuana and sleep deprived. Gardner pleaded guilty, stating at the hearing that “he could not remember anything about the accident and believed that he might have fallen asleep while driving because he had not slept the previous night.” (Id. at 1147.) The court imposed a prison sentence of 10 years, with a four-
year minimum. Gardner was apparently wrong about having caused the collision. What he did not know was that his front tire had blown out and that the tire failure, rather than an act on his part, had caused his car to swerve into oncoming traffic.

A witness in a car following Gardner’s car at the time of the accident gave a written statement to the Idaho State Police that “when the blue car [Gardner’s vehicle] was about ten feet in front of the truck I believe the driver’s front tire blew. The whole [sic] jumped into the oncoming lane like it was on rails.” (Id.) In a deposition in a subsequent civil case, “the witness explained that he observed the left front tire blowing out. He saw a puff of dust and rock chunks that appeared to have been caused by the tire blowing, then the car immediately jerked to the left.” (Id.) The Idaho Court of Appeals applied the Brady disclosure duty to guilty pleas, found that the prosecution’s failure to disclose the witness statement violated this duty, and vacated Gardner’s guilty plea.

The Gardner case shows a defendant who mistakenly thought he had done something that caused another person’s death. He did not have adequate knowledge to establish facts that determined his liability. Without disclosure of the witness statement, Gardner would have been wrongly convicted and served a significant sentence of at least four years. Brady disclosure here remedied a wrongful homicide conviction and prevented significant wrongful imprisonment.

Carroll v. State, 474 S.E.2d 737 (Ga. Ct. App. 1996), provides another example of a defendant who pleaded guilty when she did not know facts crucial to determining her criminal liability. As in Gardner, the case involved a homicide charge arising from an automobile wreck. The defendant was the 19-year-old driver of a car in which two adults and a toddler were passengers. During a heavy rainstorm, Carroll lost control of the car, which left the road, turned over, and ejected a passenger, who died. Neither alcohol nor drugs were involved.

The officer who investigated the accident scene had yet to complete a class in accident reconstruction. Despite lack of qualifications, he concluded in a written “information sheet” and in testimony at a preliminary hearing that the defendant’s speed was 70 mph in a 35 mph zone and that the condition of the road and its shoulder “had no impact on the accident.” Without independent knowledge of her exact speed, the road conditions, and what caused her to lose control of the car, Carroll pleaded guilty in reliance on the officer’s “expert” conclusions.

The investigating officer’s conclusions about Carroll’s speed and the role of road conditions turned out not to be supported by the evidence at the scene of the wreck. An experienced accident reconstruction expert—the instructor teaching the accident reconstruction course in which the investigating officer was enrolled—reviewed the investigating officer’s work. Days before the defendant pleaded guilty, the experienced examiner concluded that it was not possible to calculate the speed of Carroll’s car based on the data the investigating officer had collected and that, in his view, the condition of the road had played a role in what he viewed as an accident. In Carroll as in Gardner, a defendant erroneously pleaded guilty because she did not know facts critical to determining her criminal liability. The Georgia Court of Appeals reversed Carroll’s conviction and allowed her to withdraw her guilty plea.

Both Gardner and Carroll illustrate that there are situations in which disclosure of Brady material in the guilty plea context may be just as crucial to an accurate determination of criminal liability as in the trial context.

Sincerity
Lack of sincerity on a defendant’s part in pleading guilty is likely a more pervasive source of inaccuracy in guilty pleas than lack of knowledge. Rather than pleading guilty because they wrongly but sincerely think they are guilty, as in Gardner and Carroll, defendants may falsely condemn themselves even though they know they are not guilty. Several Innocence Project cases have revealed such false condemnation in guilty pleas. In one case, Christopher Ochoa not only falsely condemned himself of rape and murder, but also testified falsely against an innocent alleged accomplice.

Concern about sincerity in cases involving disclosure of exculpatory evidence arises from the incentives influencing both prosecutors and defendants in plea negotiations. Cases in which Brady material exists are particularly prone to creating incentives that encourage false self-condemnation.

The most likely response by a prosecutor who discovers Brady material is to dismiss the case for legal, ethical, and strategic reasons. If the prosecutor does not dismiss, the next most likely response is to attempt to resolve the case through a guilty plea, especially if no obligation to disclose exculpatory information applies in the guilty plea context. If the prosecutor chooses to negotiate a guilty
plea in a case in which Brady material exists, the prosecutor has an incentive to offer a high sentence differential, which in turn creates a powerful incentive for an innocent defendant to plead guilty.

Consider the following scenario. The government indicts a defendant on an armed robbery charge arising from a violent mugging. The prosecution’s case is based entirely on the testimony of the victim, who identified the defendant from police photographs of persons with a record of similar violent crime. With only the victim’s testimony to rely on, the prosecutor is unsure about obtaining a conviction at trial. The prosecutor offers the defendant a guilty plea limiting sentencing exposure to five years, a significant concession in light of the defendant’s substantial prior record and the fact that the charged offense carries a maximum penalty of 15 years’ incarceration. As trial nears, the victim’s confidence in the identification wanes, and the victim confides to the prosecutor fear that the victim made a mistake in the photo identification. On the eve of trial, the defendant indicates willingness to plead guilty if the prosecutor limits the sentence to one year. Is the prosecutor free to accept a guilty plea without disclosing the victim’s statement of uncertainty about the identification?

In this scenario, exculpatory information weakening the prosecutor’s case creates an incentive for the prosecutor to accept a very large discount on the potential sentence, from 15 years to one year. This sentence differential in turn creates a powerful incentive for false self-condemnation by the defendant. In sum, we should expect prosecutors to divert cases with Brady information from the trial to the guilty plea arena if they do not dismiss and to offer the sort of sentence differentials that undermine confidence in a defendant’s admission of guilt.

State v. Johnson, 544 So. 2d 767 (La. Ct. App. 1989), strongly suggests that the defendant in the case pleaded guilty to a crime he did not commit and that failure to disclose exculpatory information contributed to that wrongful guilty plea. Johnson was charged with selling illegal drugs on two different days. The undercover officer testified that there was no doubt in her mind that the same person sold her drugs on both days and that Johnson was that individual. (Id. at 771.) During the trial, the defendant pleaded guilty to one of the drug offenses in return for dismissal of the other charge and an agreement not to bring perjury charges against him, his mother, or his fiancé. He received a sentence of six years at hard labor.

But state records revealed that Johnson was in state custody at the time of one of the offenses and thus could not have committed it. And the undercover officer’s certainty that the same man committed both crimes indicated that Johnson had not committed the other offense. The Louisiana court set aside the guilty plea, conviction, and sentence.

The facts in Johnson suggest that powerful incentives induced the defendant to falsely condemn himself. Not only did he avoid conviction on one of the charges, he also avoided perjury charges against himself and others.

Brady disclosure as a remedy

Prosecutorial disclosure of exculpatory information in the guilty plea context would help remedy both lack of knowledge and lack of sincerity undermining the accuracy of guilty pleas. It would in some cases reveal that a defendant lacks knowledge about a critical element and in other cases provide a check on high sentence differentials driven by the existence of exculpatory information undermining the sincerity of a defendant pleading guilty.

Such a prosecutorial disclosure duty might be imposed by extending the constitutional duty created by Brady v. Maryland to the guilty plea context, by legislative action through a statute or criminal procedure rule, or by interpreting the ethical obligation in ABA Model Rule 3.8 that requires “timely disclosure” to attach prior to the acceptance of a guilty plea. In our next column we will address the current state of the law on whether prosecutors must disclose exculpatory information in the guilty plea context. ■

REPRINT PERMISSION

All Criminal Justice content is copyrighted and may not be reproduced in print or electronically without the express permission of the American Bar Association. Please contact ABA Publishing Contracts and Copyrights:
• by email at copyright@abanet.org
• by mail at 321 N. Clark St., Chicago, IL 60610
• by fax at (312) 988-6030

Or go directly to the request form online at www.abanet.org/store and scroll to the bottom of the page and click on “Permissions.”