IN THE

Indiana Supreme Court

Supreme Court Case No. 23S-CR-25

Kyle N. Doroszko,
Appellant (Defendant below),

–v–

State of Indiana,
Appellee (Plaintiff below).

Argued: September 15, 2022 | Decided: February 1, 2023

Appeal from the St. Joseph Superior Court
No. 71D03-1905-MR-4
The Honorable Jeffrey L. Sanford, Judge

On Petition to Transfer from the Indiana Court of Appeals
No. 21A-CR-1645

Opinion by Justice Molter

Chief Justice Rush and Justices Massa, Slaughter, and Goff concur.

Molter, Justice.

A jury convicted Kyle Doroszko of involuntary manslaughter, but the State concedes the trial court violated Indiana Trial Rule 47(D) by denying his counsel the opportunity to voir dire prospective jurors directly. Because that error was not harmless, we must reverse Doroszko's conviction and remand to the trial court for a new trial.

Facts and Procedural History

This case arises from Jeremiah Williams' ill-conceived plan to lure Doroszko into a drug deal as a ruse to rob him. While Williams coordinated with Doroszko to buy two ounces of marijuana from him in a parking lot, Williams also plotted with his friend Traychon Taylor to instead steal the drugs from Doroszko. When the time came for the drug deal, Doroszko's friend Bilal Dedic drove him to the parking lot, and Williams arrived with Taylor and Atlantis Branch in a car driven by Joe Nelson. Almost everyone was armed.

Shortly after arriving, Williams and Taylor entered Dedic's car and sampled the drugs. But when Williams left the car, Branch and Nelson rushed toward it, with Branch brandishing a rifle. At that point, the details become disputed, but all seem to agree that as Dedic started to drive away, Taylor's attempt to steal the drugs led to a struggle with Doroszko. Bullets came through the back windshield while Taylor and Doroszko wrestled, and Doroszko then shot Taylor three times in rapid succession. As Dedic continued to drive away, Taylor fell out of the car.

When law enforcement arrived, they found Taylor lying in the street with multiple gunshot wounds, which he soon died from. A short time later, they interviewed Doroszko. Although his story evolved, he admitted he shot Taylor but claimed it was self-defense.

The State then charged Doroszko with murder and a firearm enhancement. In preparation for trial, the court held a pre-trial hearing, during which it explained its voir dire procedure. The trial judge

informed the parties he "ask[s] the voir dire," but he welcomed them to submit questions for the court's consideration. Tr. Vol. 3 at 82.

Afterwards, and in advance of trial, Doroszko filed a motion with the court to question the prospective jurors "personally, directly[,] and verbally." App. Vol. 2 at 67–69. Counsel for Doroszko argued the trial court's procedure for voir dire was "contrary to Indiana Trial Rule 47(D) and the right to a fair and impartial jury guaranteed by Article I, § 13 of the Indiana Constitution." *Id.* at 67. He contended "[t]he most effective way to conduct voir dire is to ask open-ended questions as this promotes the free expression of thoughts and opinions, which, ultimately, will uncover prejudices or biases." *Id.* at 68. He also argued "[v]oir dire is fluid and often an answer demands follow up questions." *Id.* After the court denied Doroszko's motion, he submitted sixty juror questions for its consideration, including sixteen questions regarding self-defense.

During jury selection, the court questioned the prospective jurors, which included a few "yes" or "no" questions confirming the jurors were willing to follow whatever instructions the trial court gave regarding self-defense. As the court prepared to empanel the selected jurors, defense counsel renewed his objection to the court's procedure as violating our Trial Rules, citing our Court's decision in *Logan v. State*, 729 N.E.2d 125, 133 (Ind. 2000), which concluded Trial Rule 47(D) requires trial courts to permit the parties or their counsel to question jurors directly. Counsel reminded the court that Doroszko had submitted proposed questions and again complained he was deprived of the opportunity to ask open-ended questions with follow-up on the jurors' responses, which he argued is a more effective process for detecting bias. The court responded "there [was] plenty of case law" to support its procedure but suggested counsel could appeal the issue. Tr. Vol. 4 at 30.

Doroszko's claim of self-defense was the focus of the trial. For its part, the State argued Doroszko shot Taylor to thwart the drug theft, not in self-defense. And even if Doroszko defended himself rather than his drugs, the State argued the law foreclosed self-defense because there was a causal connection between the dangerous act of drug dealing and Taylor's death. *See Gammons v. State*, 148 N.E.3d 301, 304 (Ind. 2020) (explaining

self-defense is foreclosed if there is "an immediate causal connection between the crime and the confrontation" (emphasis removed)). Doroszko argued self-defense applied because he only shot Taylor in response to Taylor threatening his life by pointing a gun at his head, and there was no immediate causal connection between the crime of drug dealing and his confrontation with Taylor.

In the end, the jury convicted Doroszko of the lesser-included offense of involuntary manslaughter, and he appealed. After acknowledging a split in its authority, the Court of Appeals found the trial court erred by not allowing Doroszko's counsel to question prospective jurors directly, but held the error was harmless. *Doroszko v. State*, 185 N.E.3d 879, 884–85 (Ind. Ct. App. 2022). Doroszko petitioned our Court for transfer of his appeal, which we now grant, vacating the Court of Appeals' opinion. Ind. Appellate Rule 58(A).

Standard of Review

Trial courts enjoy broad discretion in regulating the form and substance of voir dire. *Logan*, 729 N.E.2d at 133. But in exercising this discretion, they must adhere to our Trial Rules, *Cliver v. State*, 666 N.E.2d 59, 65 (Ind. 1996), which we interpret de novo, *Miller v. Danz*, 36 N.E.3d 455, 457 (Ind. 2015).

Discussion and Decision

Doroszko appeals his conviction on the ground that the trial court violated Trial Rule 47(D) by prohibiting his attorney from questioning the prospective jurors directly. We agree, and because the error was not harmless, we reverse and remand for a new trial.

I. The trial court erred by not permitting Doroszko's counsel to examine the prospective jurors directly.

As the State acknowledged at oral argument, the parties now agree the trial court ran afoul of Trial Rule 47(D) during voir dire when it prohibited Doroszko's counsel from questioning prospective jurors directly. That provision states:

> The court **shall permit the parties or their attorneys to conduct the examination of prospective jurors**, and may conduct examination itself. The court's examination may include questions, if any, submitted in writing by any party or attorney. If the court conducts the examination, it shall permit the parties or their attorneys to supplement the examination by further inquiry . . . .

Ind. Trial Rule 47(D) (emphasis added).[1] By directing that the court "shall" permit the parties or their counsel to examine prospective jurors, the rule forecloses any trial court discretion to supplant the parties' examination with its own. *Indiana C.R. Comm'n v. Indianapolis Newspapers, Inc.*, 716 N.E.2d 943, 947 (Ind. 1999) (discussing "Indiana case law that presumptively treats 'shall' as mandatory").

The rule's history confirms this interpretation. It previously tracked its federal analogue, directing that the court "may" permit the parties or their attorneys to examine the prospective jurors, or the court could conduct the examination itself. *See* T.R. 47(D) (1983). But in 1987, we amended the rule to direct instead that trial courts "shall" permit the parties and their attorneys to examine the potential jurors directly. *See* T.R. 47(D) (1987). We explained the current rule in *Logan*, emphasizing the word "shall" before explaining that the trial court erred by not permitting the

[1] Doroszko's trial took place in 2021. Trial Rule 47(D) remains unchanged since then, and citations to the rule are to its current version, unless otherwise indicated.

defendant or his attorney "to *directly* question prospective jurors concerning their views." *Logan*, 729 N.E.2d at 133 (emphasis added).

Given the rule's history, the fact that we squarely addressed this same issue in *Logan*, and the reality that it is just as important to prosecutors as defense counsel to question prospective jurors directly, it is unsurprising the State now concedes error. But we also understand why the trial court made this error and why the State previously defended it. After directing the trial court to allow parties or their counsel to examine prospective jurors, Trial Rule 47(D) goes on to say a trial court "may conduct examination itself," so long as it "permit[s] the parties or their attorneys to supplement the examination by further inquiry." T.R. 47(D). The rule refers to this sort of court-led inquiry as "*the* examination," which could be misunderstood to suggest it is instead of, rather than in addition to, a party- or counsel-led inquiry. *Id.* (emphasis added). That language caused another Court of Appeals panel to mistakenly find no error in the voir dire procedure at issue here in another trial presided over by the same judge in this case. *Peppers v. State*, 152 N.E.3d 678, 686–87 (Ind. Ct. App. 2020), *trans. not sought*. We are also aware of a "benchbook" available to our trial court judges which, until recently, mistakenly advised that the procedure used here is proper.

It is therefore worth reiterating the voir dire framework Trial Rule 47(D) establishes. Trial courts must permit parties or their counsel to question prospective jurors directly. *Logan*, 729 N.E.2d at 133. The trial court may also examine the jurors. T.R. 47(D). As part of its own examination, the court may, but does not have to, include questions the parties submit to the court in writing. If the court elects to examine the prospective jurors, it is within its discretion to decide whether its examination or the parties' examination will occur first, but whenever the trial court examines the prospective jurors, it must allow the parties an opportunity to supplement the court's inquiry by posing their own additional questions directly to the prospective jurors.

Importantly, while we reiterate the Trial Rule 47(D) framework we recognized in *Logan*, we do not recede from any of our precedents. Trial courts retain "broad discretionary power in regulating the form and

substance of voir dire." *Logan*, 729 N.E.2d at 133. That includes that they "may impose an advance time limitation" on the examination (liberally granting additional time for good cause). T.R. 47(D). And they "may prohibit the parties and their attorneys from examination which is repetitive, argumentative, or otherwise improper." *Id.* "Questions which seek to shape a favorable jury by deliberate exposure to the substantive issues in the case," effectively asking prospective jurors "how they would vote," remain improper. *Davis v. State*, 598 N.E.2d 1041, 1047 (Ind. 1992).

Here, the trial court went beyond setting reasonable limits on voir dire. It completely deprived Doroszko of his right to question prospective jurors directly, which the parties appropriately acknowledge ran afoul of Trial Rule 47(D). But not every error leads to a new trial. We only reverse if the error may have made a difference, which we consider next.

II. We reverse the conviction and remand for a new trial because the trial court's error was not harmless.

Even if there is an error in a trial, we do not reverse when the "probable impact, in light of all the evidence in the case, is sufficiently minor so as not to affect the substantial rights of the parties," App. R. 66(A), which is to say the error was harmless, *Logan*, 729 N.E.2d at 134. The error here is not sufficiently minor for us to affirm the conviction.[2]

The State rightly frames the question as whether Doroszko can show the trial court's voir dire procedure adversely impacted his ability to

[2] It was Doroszko's burden to develop a record adequate for a harmless error review. In *Logan*, we held the trial court's violation of Trial Rule 47(D) was harmless because, for example, Logan did not indicate what questions he would have asked, did not explain why the trial court's procedure was inadequate for purposes of empaneling a fair and impartial jury, and did not show how the trial court's procedure impacted his ability to employ his peremptory and for-cause challenges. *Logan*, 729 N.E.2d at 133–34. In contrast, Doroszko's counsel did all those things.

employ his for-cause and peremptory challenges. After all, that is the point of voir dire. Both the accused and the State are entitled to an impartial jury, which "is the cornerstone of a fair trial, guaranteed by the Sixth Amendment and Article 1, Section 13 of our Indiana Constitution." *Ramirez v. State*, 7 N.E.3d 933, 936 (Ind. 2014). And voir dire protects this right by giving the parties an opportunity to question prospective jurors to assess whether they "can render an impartial verdict based upon the law and evidence, and 'weed out' those who cannot be fair to either side." *Gibson v. State*, 43 N.E.3d 231, 238 (Ind. 2015) (internal citations omitted).

We have recognized it is particularly important to allow for adequate voir dire regarding self-defense.

> Like the death penalty, the State's burden of proof, and the insanity defense, the law of self-defense is not without its controversial features, e. g., the "no retreat" rule, the right under certain circumstances, to use deadly force to protect oneself, the State's burden to disprove a claim of self-defense, once evidence tending to show such has been introduced. Consequently, each party must be afforded a reasonable opportunity to conduct "pertinent inquiry" to ascertain whether the prospective jurors possess, or are likely to possess, conscientious scruples or other mental obstacles likely to interfere with a proper application of the law of self-defense.

Everly v. State, 395 N.E.2d 254, 256 (Ind. 1979).

When a trial court completely forecloses voir dire examination related to a defendant's claim of self-defense, reversal is generally required. *Id.* at 255, 257 (reversing a conviction where the trial court prohibited "any voir dire interrogation of prospective jurors with respect to the right to self-defense"). So too when voir dire is inadequate to allow the parties to intelligently exercise their for-cause and peremptory challenges based on prospective jurors' responses to questions about self-defense, which is the case here.

The trial court not only denied Doroszko the opportunity to conduct his own examination, it also inadequately examined the prospective jurors on controversial legal principles relevant to his claim of self-defense. The trial court asked six questions related to self-defense, which all sought only "yes" or "no" responses, such as "Do all of you believe in the right to self-defense?" Tr. Vol. 3 at 212. The record reflects the trial court was met with silence and a few head nods in response to its questions, with only one exception. A lone juror responded "yes" to the court's question whether a person is obligated to retreat before defending themselves, and then the juror simply confirmed he would follow the court's instruction on the defense. *Id.* at 212–13. We agree with Doroszko that the cursory nature of the court's questions deprived him of the opportunity to intelligently exercise his peremptory and for-cause challenges.

The State urges us not to worry about any of this because there is a presumption that a jury selected from a cross-section of the community is fair and impartial. *Logan*, 729 N.E.2d at 133. But that has things backwards. It is the vetting through an adequate voir dire process that warrants a presumption that an empaneled jury is fair and impartial. The presumption of juror fairness and impartiality cannot obviate the need for a new trial where there was an inadequate voir dire procedure in the first place.

The State also argues there is no reason to think the trial court's voir dire procedure harmed Doroszko's defense because he cannot identify any particular juror who was not fair and impartial. But that is the whole point: without an adequate opportunity for voir dire, Doroszko cannot possibly make that assessment. In short, we have previously held that it is reversible error for the trial court to prohibit any inquiry of prospective jurors regarding self-defense. *Everly*, 395 N.E.2d at 255, 257. It follows that an inadequate opportunity requires the same remedy. Because the trial court's voir dire procedure here was inadequate to ensure a fair and impartial jury with respect to self-defense, we must reverse for a new trial.

We note the limited nature of our holding. We reverse because the trial court's voir dire procedure violated Trial Rule 47(D), and an error under Trial Rule 47(D) is not harmless if it deprives a party of an adequate

opportunity to exercise peremptory or for-cause challenges to prospective jurors based on a key, disputed aspect of the case. The harmless error analysis may yield a different result in a case where an error is something other than a Trial Rule 47(D) violation; where notwithstanding a Trial Rule 47(D) violation, the trial court's examination or other procedures ensure an adequate ability for the parties to exercise their peremptory and for-cause challenges; or where the error does not relate to a central, hotly contested aspect of the case, like Doroszko's self-defense claim here.

Conclusion

The trial court erred by denying Doroszko's counsel the opportunity to directly examine the prospective jurors contrary to Indiana Trial Rule 47(D). That error was not harmless, so we reverse his conviction and remand for a new trial.[3]

Rush, C.J., and Massa, Slaughter, and Goff, JJ., concur.

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[3] Doroszko also argues the trial court erred by admitting into evidence his statement to police that he shot Taylor, claiming his statement was involuntary. For that issue, we summarily affirm the portion of the Court of Appeals' decision concluding the trial court did not abuse its discretion by admitting the statement. App. R. 58(A)(2).

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