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SCOTUS interprets federal statute, causality
'Results from' imposes a requirement of actual causality
Defendant cannot be liable for penalty enhancement for causing death unless the drug he sold the dead guy is a 'but-for' cause of death

Burrage v. United States, Scalia, 1/27/14. Because the death results enhancement increased the maximum and minimum sentence (for dealing dope) it must be submitted to the jury and proven BRD. "Results from" language in the statute imposes a requirement of actual causality. The harm would not have occurred in the absence of or "but for" the defendant's conduct. Uncertainty cannot be squared with the BRD standard applicable in criminal trials or with the need to express criminal laws in terms ordinary persons can comprehend. *United States v. L. Cohen Grocery Co.* , 255 U.S. 81, 89-90 (1921). "We hold that, at least where use of the drug distributed by the defendant is not an independently sufficient cause of the victim's death or serious bodily injury, a defendant cannot be liable . . .unless such use is a but-for cause of the death or injury. . . there is no evidence [the victim] would have lived but for his heroin use. Janet's thoughts: if one is to get relief for the state proving that your client is a bad guy generally instead of he committed an actual criminal offense alleged in an indictment and proven BRD to a jury it will be from SCOTUS not TCCA. And advise your clients to only sell heroin to individuals that are abusing other drugs as well or in poor health generally.

TRIAL PROCEDURE VENUE
APPELLATE STUFF HARM ANALYSIS APPLIED TRAP 44.2 b for failure to prove venue as alleged in the indictment

WTH prove it happened wherever you like—hypothetically correct venue allegation

Schmutz v. State, No. PD-0530-13, Alcala, Meyers dissent, 1/29/14, publish. Defendant supposed to sell some farm equipment for CW on consignment he did so but spent the money on other stuff instead of giving it to CW due to financial problems. Civil lawsuit as well as criminal charges.[1] Prosecution brought where CW was instead of the county where the equipment was sold. Indictment was wrong, said that defendant was selling secured property where CW was rather than where his store was. That was the county where the property was removed not the county where it was sold and the indictment did not say that. The defendant repeatedly challenged venue: pretrial motion to quash, requested directed verdict and jury instruction. Over-ruled is *Black v. State*, 645 S. W. 2d 789, 791 (TCCA 1983) which held failure to prove venue is reversible error without proving harm. Venue is not an element of the offense therefore acquittal not required if it is not proven. Failure to prove venue is neither structural nor constitutional error. The "vicinage" or "venue" clause of the Sixth Amendment of the Federal Constitution does not apply to the States. See US Const. Amend. VI- "In all criminal prosecutions, the accused shall enjoy the right to a . . . trial, by an impartial jury of the State and district *wherein the crime shall have been committed,* which district shall have been previously ascertained by law. . ." . This is non-constitutional error and must be disregarded unless it affects the

[1] *TEX. PENAL CODE section 32.33(e) (e) (5)-hindering a secured creditor by misappropriating the proceeds of secured property to the tune of 20k-100k.*

defendant's substantial rights. [2] A substantial right is affected when the error had a substantial and injurious effect or influence in determining the jury's verdict. *The appellate court no longer considers whether finding the error harmless would encourage the State to repeat the error but does look at how guilty the defendant is.* Defendant not harmed despite fact he had to travel 200 miles from where the alleged crime happened to his trial, the jury pool was possibly biased because the trial was located where the CW was the major local employer and the only connection to the offense of the county where the case was tried was that it was the corporate hdqtrs of the CW. Notably if this had been a civil case[3] instead of a criminal case reversal would be required for venue error. Meyers dissent accurately points out that demonstrating harm is a heavy burden and cites SCOTUS authority, "The provision for trial in the vicinity of the crime is a safeguard against the unfairness and hardship involved when an accused is prosecuted in a remote place" and although a defendant is not entitled to choose the venue, he should not be subjected to one to which is not proper. *United States v. Cores*, 356 U. S. 405, 407 (1958). Janet's thoughts: I believe that venue has gone the way of the date in the indictment. Who cares what the indictment says. There is a brilliant voice article on this hypothetically correct stuff, Jonathan Ball "Sufficiency Review in Texas Criminal Cases: Abandon All Hope, Ye who Enter Here" *Voice for the Defense*, April 2012 that I would encourage everyone to read dealing with due process implications of the hypothetically correct jury charge. To prove harm, I think that, one would have to prove that venue could not have occurred there because there is no connection to that county and/or the state was deliberately forum shopping.

THE GREAT WRIT
FALSE TESTIMONY MATERIALITY MUST BE PROVEN
If the guy is really guilty who cares if the State's strongest witness lied

Ex parte Steven Mark Weinstein, No. WR-78,989-01, Cochran, Keller concurrence, Publish, 1/29/14. The jail house snitch denied having auditory hallucinations. The post conviction lawyer found his medical records in which it is documented that mr snitch was having auditory hallucinations at the time he was hearing applicant fess up to the crime. Applicant loses on the materiality prong of this admittedly false testimony as no reasonable likelihood the false testimony affected the judgment of the jury. The defense had other good stuff to use to impeach this witness, the facts this witness testified to where corroborated by other witnesses –"It is unlikely that any jury would believe that Adams [jailhouse snitch witness]received this accurate and corroborated information from some auditory hallucination." , snitch witness was having the wrong type of auditory hallucinations, and applicant was really guilty. (decomposing body found in his garage where he just kept spraying air freshener to cover up the smell). In a scary concurrence authored by PJ Keller and joined by J Price-- would have a different harm standard for knowing vs. unknowing use of false testimony to get a conviction. Janet's thoughts—doesn't someone have a due process right to have witnesses who testify truthfully? But then what do I know, I would think one also has a right to be prosecuted where the offense actually allegedly happened as well. Apparently only when you are being sued—not when you are being sent to prison.

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[2] *Tex. R. App. P. 44.2 (b).*

[3] *Which it arguably really was.*