

A defendant was tried in federal court for bank fraud. The defendant had retained private defense counsel.

As part of the prosecution's case, a federal agent testified regarding incriminating statements that the defendant's confederate, who by the time of trial was a fugitive, had made during a prior interview. Though this testimony violated the Confrontation Clause, the defense attorney raised no objection. The jury ultimately convicted the defendant.

The defendant has now hired new counsel for his appeal and argues that the admission of the federal agent's testimony was erroneous.

If the appeals court finds that the trial court should not have admitted the testimony, does it have the authority to reverse a conviction when the trial attorney raised no objection to the challenged testimony?

- A. No, because failure to object waives a defendant's rights.
- B. No, because the sole remedy is a claim for ineffective assistance of counsel.
- C. Yes, because a defendant cannot be penalized for an attorney's failure to object.
- D. Yes, because an appeals court may correct plain error affecting substantial rights.

Correct

Collecting Statistics

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### Explanation:

A party must generally raise a **formal objection at trial** to preserve and challenge an error in a posttrial motion or on appeal. If a party **failed to do so**, the challenged error can only be **reviewed for plain error**. Under the **plain-error doctrine**, a defendant who failed to preserve a claim of error is still entitled to appellate relief when:

the district **court committed error** under the law in effect at the time of the appeal  
the **error was obvious** (ie, plain) under that law *and*  
the error **affected the defendant's substantial rights**.

Here, the federal district court committed an obvious error that violated the defendant's constitutional right to confront adverse witnesses by allowing the federal agent's testimony. And since an appeals court may correct plain error affecting a defendant's substantial rights, the appeals court has the authority to reverse the defendant's conviction even though his trial counsel raised no objection to the challenged testimony.

**(Choice A)** A defendant's failure to object to an error at trial generally waives the defendant's right to challenge that error on appeal. However, the plain-error doctrine allows an appellate court to review obvious errors that affected the defendant's substantial rights (as seen here).

**(Choice B)** The plain-error doctrine allows an appellate court to remedy obvious errors that affected a defendant's substantial rights on appeal. And the defendant is not required to claim or prove [ineffective assistance of counsel](#).

**(Choice C)** A defendant *is* penalized for an attorney's failure to object because the plain-error doctrine imposes stringent requirements for an unpreserved error to be reviewed on appeal.

### Educational objective:

Under the plain-error doctrine, a defendant who failed to preserve a claim of error by objecting at trial is still entitled to appellate relief when (1) the district court committed error under the law in effect at the time of the appeal, (2) the error was obvious under that law, and (3) the error affected the defendant's substantial rights.

### References

Fed. R. Crim. P. 52(b) (defining forth the plain-error doctrine).

United States v. Olano, 507 U.S. 725, 732–35 (1993) (explaining the plain-error doctrine requirements).

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## Appeal based on plain-error doctrine

