

>> SUPREME COURT OF FLORIDA IS NOW IN SESSION.
PLEASE BE SEATED.
>> WE NOW MOVE TO THE THIRD CASE OF TODAY'S DOCKET.
THE STATE OF FLORIDA VERSUS IVEY.
>> MAY IT PLEASE THE COURT, VIRGINIA HARRIS ON BEHALF OF THE STATE OF FLORIDA.
I PREVIOUSLY RESERVED FIVE MINUTES FOR REBUTTAL.
THE CASE AT BAR INVOLVES A JURY SELECTION ISSUE AND IT SPECIFICALLY ABOUT WHETHER OR NOT A DEFENDANT WHO ABANDONED A CLAIM TO THE STATE REMOVING A JUROR BY PEREMPTORY CHALLENGE, REVIVED THAT THE NEXT DAY WHEN HE REQUESTED A CONTINUING OBJECTION AFTER HE AGREED TO EXCUSE THE JURORS.
BASICALLY WHAT HAPPENED IS AFTER THIS OCCURRED, THE DEFENSE ATTORNEY OBJECTED AND THE JUDGE ALLOWED THE STATE TO REMOVE THIS JUROR.
THE DEFENSE ATTORNEY, THEY WERE ALL AT SIDEBAR, THE RECORD INDICATES THAT THE DEFENDANT HIMSELF WAS AT SIDEBAR AND ACTIVELY INVOLVED IN THIS PROCESS.
THE DEFENSE ATTORNEY THEN ASKED TO CONFER WITH HIS CLIENT AT THE TABLE SO THAT HE COULD POINT OUT THE JURORS TO THE DEFENDANT. HE THEN INFORMS THE COURT THAT THE DEFENDANT HIMSELF AGREES TO AND ACCEPTS THE JURY PANEL.
THE JUDGE THEN ASKS AGAIN IF THEY AGREE TO THE JURY PANEL? THE DEFENSE COUNSEL SAYS YES. AND THE JUDGE ASKS IF THEY AGREE TO THE JURORS THAT WERE NOT SELECTED.
DEFENSE COUNSEL INDICATES HE HAS NO OBJECTION TO EXCUSING THE JURORS.
THE NEXT DAY WHEN THEY COME IN

RIGHT AT THE BEGINNING THE JUDGE SAYS HE INDICATES THAT HE SAYS HE WANTS THE STATE FOR RECORD PURPOSES JUROR 4BE JUROR AT ISSUE WAS REMOVE BY PEREMPTORY STRIKE, TO THE FOR CAUSE CHALLENGE.

THE JUDGE WAS NOT ASKING DEFENSE COUNSEL HOW HE FELT ABOUT IT. HE WANTED TO MAKE THIS CLEAR FOR THE RECORD.

HE THEN SAYS IS THERE ANYTHING ELSE THAT THE PARTIES WOULD LIKE TO RAISE?

DEFENSE COUNSEL SAYS AS FOLLOWS "YOUR HONOR, THE ONLY THING OTHER THAN EVERYTHING YOU SAID IS FINE, WHAT I WOULD LIKE TO DO, I HAVE MADE A FEW OBJECTIONS IN PRELIMINARY PROCEEDINGS AND OBJECTED TO EVIDENCE AND OBJECTED TO DIFFERENT THINGS MUCH I WOULD LIKE TO JUST MAKE THAT AS A CONTINUING OBJECTION, SO THEY DON'T COME BACK AND SAY WE FAILED TO OBJECT IN THE TRIAL."

WHEN THIS CLAIM WAS RAISED IN THE FIRST DISTRICT, THE FIRST DISTRICT INITIALLY, TWO JUDGES IN THE MAJORITY OPINION RULED THAT DEFENSE COUNSEL HAD RENEWED HIS OBJECTION OR REVIVED IT, WHICHEVER WAY YOU WANT TO LOOK AT IT, WHEN HE REQUESTED THIS CONTINUING OBJECTION.

>> ONE OF THE THINGS THEY OBJECTED TO WAS THE PEREMPTORY CHALLENGE OF THE JUROR?

>> YOU MEAN WHEN HE ASKED THE CONTINUING OBJECTION?

>> NO.

>> NO.

>> HE SAYS I WANT TO OBJECT, RENEW MY OBJECTION I WANT CONTINUING OBJECTION FOR THINGS I DID IN THE PRELIMINARY PROCEEDINGS FOR EVIDENCE AND OTHER THINGS.

WASN'T ONE OF OTHER THINGS HE

OBJECTED TO--

>> NO SORRY.

>> WASN'T ONE OF THE THINGS HE OBJECTED TO WAS THE JUROR HAD, PEREMPTORY CHALLENGE HAD BEEN GIVEN FOR THAT JUROR?

>> YES.

BUT HE THEN ABANDONED IT MULTIPLE TIMES.

>> I UNDERSTAND THAT BUT WASN'T ONE OF THE THINGS HE OBJECTED TO.

>> RIGHT.

>> ISN'T THE POINT OF CONTEMPORANEOUS OBJECTION RULE TO GIVE THE JUDGE NOTICE?

IN OTHER WORDS THE TRIAL JUDGE NEEDS TO KNOW WHAT HE NEEDS TO RULE ON, RIGHT?

>> RIGHT.

>> THE JUDGE SAID ANY PRIOR RULINGS I MADE THERE IS CONTINUING OBJECTION, I'M NOT EXACTLY QUOTING.

WAS ONE OF THE PRIOR RULINGS INCLUDE THIS RULING TO ALLOW THE PEREMPTORY CHALLENGE TO GO FORWARD?

>> THAT IS TRUE BUT IF YOU INTERPRETED IT THAT LITERALLY IT WOULDN'T MAKE SENSE.

>> HOW ELSE DO YOU INTERPRET LANGUAGE OTHER THAN LITERALLY?

>> BECAUSE THE JUDGE ALSO MADE RULINGS IN THE DEFENDANT'S FAVOR.

THE DEFENDANT DID MOTIONS IN LIMINE, MOTIONS TO SUPPRESS, MOTION TO DISMISS, IF YOU TOOK THE JUDGE LITERALLY TO SAY I RECOGNIZE A CONTINUING OBJECTION TO ANY RULING MADE BY ME, THE JUDGE WOULD BE SAYING HE RECOGNIZED AN OBJECTION TO EVEN THE RULINGS HE MADE IN THE DEFENDANT'S FAVOR.

>> BECAUSE THOSE ARE NOT GOING TO BE APPEALABLE.

WE DON'T HAVE TO WORRY ABOUT THOSE.

>> RIGHT.

ALSO KIND OF A SECONDARY ISSUE
IN THIS CASE DEFENSE COUNSEL HAD
AGREED THAT THE JUROR COULD BE
EXCUSED.

>> WE'LL TALK ABOUT THAT IN A
SECOND.

>> RIGHT.

>> WITH REGARD TO THAT, BECAUSE
I UNDERSTAND THE SEQUENCE OF
EVENTS, I JUST ASKED YOU THOSE
QUESTIONS.

ONE OF THE PRIOR RULINGS,
DIFFERENT THINGS AND RULINGS
THAT HAVE BEEN MADE WAS THIS,
THE JUDGE SAID THAT YOU HAVE A
CONTINUING OBJECTION REGARDING
THOSE VERY THINGS.

HOW IS THAT DIFFERENT THAN WHAT
WE APPROVED IN JOINER WITH
RENEWING VERSUS CONTINUING OR I
ACCEPT SUBJECT TO?

>> WELL, BECAUSE IN THIS
SITUATION, AS I MENTIONED, THE
DEFENSE ATTORNEY I THINK
EXCLUDING JUROR 46 FOR REQUEST
OF CONTINUING OBJECTION BECAUSE
THE JUDGE-- I ATTACHED --

>> IF YOU DISAGREE WITH ME ONE
THE OTHER PRIOR THINGS WAS
OBJECTION TO JUROR 46 AND ANY
PRIOR RULING INCLUDED JUROR 46
HOW COULD THEN THIS, THOSE SAME
THINGS BE EXCLUDING JUROR 46?

>> BECAUSE, HE SAYS, THIS IS
RIGHT AFTER THE JUDGE MENTIONS
JUROR 46.

YOUR HONOR, THE ONLY THING OTHER
THAN EVERYTHING YOU SAID IS
FINE.

SO--

>> EVERYTHING THE JUDGE SAID WAS
FINE.

SO WHAT HAPPENED, I HAVE DONE
THIS BEFORE TOO ON THE BENCH,
JUDGE CAME UP, I'M SURE THE
JUDGE HAD A THOUGHT OVERNIGHT I
WANT TO MAKE SURE THIS IS CLEAR.
COMES BACK IN THE MORNING.
FIRST THING I JUST WANT TO

CLARIFY THIS IS WHAT HAPPENED.
THE JUDGE WAS COMPLETELY
ACCURATE.

THERE WAS PEREMPTORY CHALLENGE,
THERE WAS MELBOURNE OBJECTION
AND I OVERRULED THAT, EYE SEE
JUROR, I GRANTED PEREMPTORY
CHALLENGE TO GO FORWARD AND NEXT
JUROR WAS SEATED.

THAT IS WHAT HAPPENED.
THAT'S FINE.

BUT THEN HE SAYS I WANT IT FOR
THE RECORD TO PRESERVE ALL OF MY
PRIOR OBJECTIONS, RIGHT?

>> DID HE SAY PRESERVE OR I WANT
CONTINUING OBJECTION?

>> HE WANTED CONTINUING.

>> ISN'T CONTINUING OBJECTION, I
MEAN THE WHOLE POINT OF THAT, I
WANT TO NOT HAVE TO OBJECT AGAIN
WHEN THIS COMES UP?

HOW CAN THAT BE REASONABLY
UNDERSTOOD BY THE TRIAL JUDGE TO
MEAN, TO APPLY TO SOMETHING THAT
WILL NEVER COME UP AGAIN?

>> THAT IS SOMETHING I MENTIONED
IN MY BRIEF, THAT HE SAYS, IT
DOESN'T SAY WE DON'T OBJECT
AGAIN AT TRIAL.

A JURY SELECTION ISSUE IS NOT
GOING TO COME UP AGAIN AT TRIAL.

>> THIS IS THE QUESTION I HAVE
FOR YOU.

THE DIFFERENCE HERE IS YOU HAVE
A SITUATION THE NIGHT BEFORE,
JUDGE SAYS WE'LL IMPANEL THE
JURY.

DOES EVERYONE AGREE TO THE JURY
NOW SEATED IN THE JURY BOX?

STATE SAYS YES.

DEFENSE COUNSEL SAYS, I'VE GONE
OVER THE ENTIRE PANEL AND HE
AGREES AND ACCEPT THIS IS JURY.
WE KNOW TRIAL COUNSEL AS ABILITY
TO SAY WE AGREE WITH THE
CONTINUING OBJECTION TO THE
EXCLUSION OF JUROR 5, 6, 7,
WHATEVER THE JUROR BEEN EXCUSED,
CORRECT?

>> CORRECT.

>> ONCE THAT HAPPENS, THERE ANYMORE CONTINUING OBJECTION THAT NEED TO HAPPEN.

>> NO, I DON'T THINK SO. HE WENT FURTHER. IT WASN'T JUST THAT HE AGREED. HE MAKES IT CLEAR--

>> COUNSEL, HOW MANY PEREMPTORY CHALLENGES TO THE DEFENSE HAVE LEFT?

>> I DON'T, I'M SORRY I DON'T RECALL.

>> ASSUME FOR THE MOMENT THE DEFENSE HAD ONE IN THE POCKET LEFT OVER, IF IN THE MORNING THE TRANSCRIPT DIDN'T READ LIKE THIS, THE JUDGE SAID WHAT HE SAID OR SHE SAID, AND THE, THE DEFENSE COUNSEL SAID, YOUR HONOR, I HAVE ONE MORE PEREMPTORY CHALLENGE AND I'M USING THAT PEREMPTORY CHALLENGE ON JUROR 54 WHICH IS NEW ONE SEATED, THE JUDGE WOULD HAVE TO HONOR THAT, WOULDN'T THE JUDGE, EVEN THOUGH ALL JURORS ARE EXCUSED RIGHT?

>> RIGHT.

>> OUR LAW IS CLEAR SOMEONE CITED ABOUT COUPLE CASES UNTIL THE JURY IS SWORN THIS THING IS NOT LOCKED, RIGHT?

>> IT DOES SAY THAT BUT--

>> EXCUSING JURY AT LEAST UNDER OUR LAW RIGHT NOW, MAYBE THAT SHOULD CHANGE, AT LEAST UNDER OUR LAW RIGHT NOW HAS NO SIGNIFICANCE UNTIL THE JURY IS SWORN, CORRECT?

>> RIGHT.

EXCEPT WE ARE ARGUING THAT IT SHOULD BE DISTINGUISHABLE WHEN A DEFENSE ATTORNEY ACTUALLY AGREES THAT THE JURORS CAN BE EXCUSED, ESPECIALLY SINCE IN THIS CASE, HE HIS COMPLAINT IS THAT SOMEONE THAT HE WANTS TO BE ON THE JURY IS NOT ON THE JURY. SO THE JUDGE CAN'T CURE THAT ERROR ANYMORE.

>> WHEN EXACTLY, I'M SORRY, WHEN EXACTLY WAS THE JURY SWORN? THE NIGHT BEFORE?

>> IN OTHER WORDS, WENT THROUGH THE PROCESS AND THEN THE NEXT DAY, WHEN THEY ARRIVED AFTER THE DISCUSSION, THE JURY WAS SWORN.

>> SO THE DAY BEFORE THEY LEFT, WHEN THE JUDGE ASKED THE QUESTION, HE READ THE NAMES OF ALL THE SELECTED JURORS THAT HE BELIEVE EVERYBODY AGREED ON.

>> SEVERAL TIMES.

>> I ASKED IF THEY WERE AGREEABLE, BOTH SIDES SAID YES, HAD HE SWORN THE JURY AT THAT MOMENT, WE WOULDN'T BE HERE TODAY.

>>> THAT'S CORRECT.

>> CORRECT?

>> THAT IS CORRECT.

>> THE JUDGE WAITED UNTIL NEXT DAY TO SWEAR THE JURY.

I JUST WONDER, IF HE HAD NOT ASKED THE QUESTION, THE JUDGE, IS THERE ANYTHING ELSE WE NEED TO ADDRESS THIS MORNING BEFORE WE BRING IN THE JURY?

IF HE HAD NOT ASKED THAT QUESTION I'M JUST WONDERING IF THERE HAD BEEN NO REASON FOR COUNSEL TO SAY I WANT TO RENEW WHATEVER, THAT WOULD HAVE BEEN THE END OF IT?

>> EXACTLY.

I THINK BASED ON HIS LANGUAGE AT THE CONTEXT, THE DEFENSE ATTORNEY IS INDICATING THAT HIS REQUEST FOR CONTINUING OBJECTION DOESN'T INCLUDE THAT.

I DISAGREE WITH JUSTICE LUCK ABOUT THAT.

IF A REASONABLE ATTORNEY, THINK, PRETEND THIS IS YOUR CASE, FOR EXAMPLE, AND YOU HAVE JUST EXPRESSLY ABANDONED AN OBJECTION AN ACCEPTED A JURY AND AGREED THE JURORS HAD BEEN EXCUSED, WOULD YOU ATTEMPT TO REVIVE IT THIS WAY?

WOULDN'T A REASONABLE ATTORNEY
COME IN AND SAY, WOW, LISTEN, I
KNOW WE SAID WE AGREED TO THE
JURY YESTERDAY--

>> COUNSEL UNDER JOINER, IF THE
ATTORNEY SAID, INSTEAD HE OF
CONTINUING OBJECTION WHAT HE
SAID I RENEW ALL MY PRIOR
OBJECTIONS, THAT'S IT, WE
WOULDN'T BE HERE, THAT WOULD BE
SUFFICIENT, RIGHT.

>> I--

>> I GUESS MY QUESTION TO YOU,
THE ANSWER IS YES, THAT WOULD BE
SUFFICIENT.

WHAT I HAVE ISSUE WITH, WHAT I'M
STRUGGLING WITH, I LOVE FOR YOU
TO ADDRESS IT WHY ARE THOSE FOUR
OR FIVE WORDS PERFECTLY FINE TO
PRESERVE THIS BUT MUCH MORE
WORDS AND TRIAL JUDGE'S
ACKNOWLEDGEMENT OF ANY PRIOR
RULING NOT SUFFICIENT?

>> I DON'T AGREE WITH YOU THAT
WHEN YOU JUST SAY I WANT TO
RENEW OBJECTIONS AFTER YOU
ABANDONED SOMETHING THAT THAT IS
SUFFICIENT.

I DO NOT AGREE THAT A TRIAL
JUDGE OR THE PARTIES BELOW STILL
CONSIDER SOMETHING THAT WAS
RESOLVED OR ABANDONED TO BE AN
OUTSTANDING ISSUE.

AND THAT WAS THE POLICY ARGUMENT
THAT I WAS DISCUSSING.

THAT IS IN THIS CASE, WHAT YOU
ALLOW THIS TO HAPPEN, WHAT YOU
ESSENTIALLY ALLOW LAWYERS TO DO,
IS TO INVITE ERROR, TELL A
JUDGE, I AGREE TO THIS, TO THIS
JURY PANEL.

I AGREE THEY CAN BE EXCUSED.
THEN COME IN THE NEXT DAY AND
MAKE SOME VAGUE REQUEST FOR
CONTINUING OBJECTION WHEN I
ARGUE THAT THE LANGUAGE BEFORE
INDICATES HE IS NOT EVEN TALKING
ABOUT JUROR 46 AND THEN, WHICH
REALLY DOESN'T PUT THE TRIAL
COURT ON NOTICE THAT YOU'RE

SPECIFICALLY TALKING ABOUT THAT.
>> THOSE ARE TWO DIFFERENT
ISSUES.

YOU'RE SAYING EVEN IF HE HAD
COME IN NEXT DAY AFTER THE JURY
WAS EXCUSED, HE WAS WAIVED, YOU
THINK THE RULE OUGHT TO BE, EVEN
IF THERE HAD BEEN SPECIFIC
OBJECTION, THAT WOULD NOT BE
SUFFICIENT?

>> RIGHT.

RIGHT, THAT IS A SECONDARY
ARGUMENT THAT--

>> WE DON'T HAVE TO DECIDE THAT
TO DECIDE THIS CASE FROM THE
STATE'S PERSPECTIVE, TRUE?

>> THAT IS CORRECT.

THAT IS CORRECT.

>> WE HAVE RULES BACK IN, I
DON'T THINK CASE WITH ME, BACK
IN 2009 IN MURRAY VERSUS STATE,
THAT OBJECTIONS HAS TO BE
SPECIFIC TO PRESERVE THE RECORD.
I KNOW THIS IS KIND OF A
FRIENDLY QUESTION TO BUT, MAGIC
WORDS ARE NOT REQUIRED BUT YOU
MUST HAVE BEEN SUFFICIENTLY
FAIRLY APPRAISES THE TRIAL COURT
OF THE RELIEF SOUGHT AND GROUNDS
THERE FOR.

SO I HAVE, LET'S SAY, ONE OF
THESE MELBOURNE THINGS.

JUST A REGULAR JUDGE MADE A
RULING ON CHALLENGE FOR CAUSE OR
SOMETHING DOWN THE ROAD.

TO PRESERVE THAT, COUNSEL NEEDS
TO ASK FOR NOR PEREMPTORY
CHALLENGES I BELIEVE ON A
CHALLENGE FOR CAUSE IS DENIED?
MORE CHALLENGES AND THEN HAS TO
OBJECT AT THE TIME THAT THE JURY
IS ABOUT TO SELECT IT.

I BELIEVE RAISE IT AGAIN WHEN
THE JURY IS SWORN.

YOU HAVE TO JUMP THROUGH ALL
THESE STEPS, TAKE ALL THESE
STEPS TO PROPERLY PRESERVE THAT.
AND HERE, I THINK THE ARGUMENT
IS BEING MADE YOU, JUDGE, I WILL
JUST, KIND OF LIKE A DEPOSITION

OBJECTS, WHERE YOU KNOW, OBJECT TO FORM AND THAT COVERS EVERYTHING.

I DON'T KNOW THAT MURRAY ALLOWS THAT.

>> WELL I WOULD POINT OUT THE LANGUAGE I DISCUSSED IN KERATLLI THE REASON FOR HAVING DEFENSE COUNSEL RAISE TWO OBJECTIONS IS TWO-FOLD.

THE DEFENDANT IS SUPPOSED TO BE GIVEN MORE TIME TO RECONSIDER HIS POSITION WHICH IS IMPORTANT BECAUSE OFTEN TIMES WHEN YOU'RE FIGHTING WITH THE PROSECUTOR OVER SOMETHING YOU DON'T HAVE TIME TO TALK TO YOUR CLIENT ABOUT IT TO SEE HOW HE FEELS AND THE DEFENDANT HIMSELF IS OFTEN THE REASON DEFENSE ATTORNEYS CHANGE THEIR MINDS ABOUT OBJECTING TO CERTAIN JURORS. THE OTHER THING, SO THE JUDGE HAS, THE SECOND, YOU KNOW, ATTEMPT TO CURE THE ERROR BUT BECAUSE--

>> HAVE YOU EVER SEEN IN ANY TRANSCRIPT-- YOU'RE AN EXPERIENCED APPELLATE ATTORNEY. HAVE YOU EVER SEEN IN ANY TRANSCRIPT, YOUR HONOR WE ACCEPT THE JURY, JUDGE YOU SAID THAT I WILL GO BACK IN ONE OF MY RULINGS ON ONE OF THOSE THINGS, YOU HAD ONE OF THOSE?

>> I'M RATHER EXPERIENCED TRIAL ATTORNEY AS WELL, THE ONLY TIME I SEE TRIAL ATTORNEYS GO BACK ON THEIR RULINGS, GENERALLY IF THE DEFENSE SHOWS UP WITHIN IS TO SHOW THEM THEY WERE WRONG WHICH THEY COULD HAVE DONE IN THIS CASE.

>> RIGHT.

>> SINCE IT WAS THE NIGHT BEFORE YOU COULD HAVE GOTTEN THE DORSEY CASE.

>> I WANT TO TALK ABOUT THE QUESTION JUSTICE LABARGA ASKS YOU, AT LEAST UNDER MURRAY, WHEN

THIS CAME UP UNDER MELBOURNE,
THERE WAS NO QUESTION IT WAS
PROPERLY RAISED MELBOURNE
CHALLENGE.

>> IN TERMS OF, YES.

>> A CLEAR, CONTEMPORANEOUS
OBJECTION SPELLED OUT AND
ARTICULATED.

>> THAT IS THE NOT ISSUE.

>> THAT IS NOT THE ISSUE.

SIMPLY DID THEY RERAISE IT, TO
RENEW OUR OBJECTION WE MADE
EARLIER WHICH WOULD HAVE BEEN
PERFECTLY FINE OR, IS THE
CONTINUING OBJECTION LANGUAGE
SUFFICIENT, THAT IS THE
QUESTION, RIGHT?

>> YEAH.

AND I DON'T I DON'T THINK IT IS.
ESPECIALLY I DON'T THINK IT IS
CLEAR AT ALL.

IF I WAS A JUDGE, AND A, I
MENTIONED JUROR 46 AND A LAWYER
SAID, I WANT TO RAISE SOMETHING
OTHER THAN WHAT YOU SAID IS FINE
IS REQUESTED A CONTINUING
OBJECTION, I WOULD NOT THINK
THAT DEFINITELY WOULD NOT PUT ME
ON NOTICE, THAT HE WAS RERAISING
JUROR 46, ESPECIALLY AFTER
ABANDONING IT SO MANY TIMES.

>> ISN'T THAT, ISN'T THAT THE
IMPORTANT POINT?

I MEAN WE'RE FOCUSING, IF THERE
IS THREE THINGS THAT HAPPENED,
SEEMS LIKE SOME OF THE QUESTIONS
ARE FOCUSING ON THE FIRST THING,
I.E., THE OBJECTION TO THE JUROR
AND THE THIRD THING WHICH IS
THIS ARGUABLY, YOU KNOW, VAGUE
STATEMENT ABOUT, YOU KNOW, MY
CONTINUING OBJECTION, BUT YOUR
POINT IS, THERE WAS THIS CLEAR
BREAK WHERE IT WAS ABANDONED AND
SO, WE DON'T REALLY NEED TO GET
INTO SORT OF, FROM YOUR
PERSPECTIVE, WE DON'T NEED TO
GET INTO THE QUESTION OF, AS A
GENERAL MATTER, IS IT ENOUGH TO
SAY, I RENEW MY OBJECTIONS THAT

I MADE BEFORE IF I HAVE TO LIST THEM OUT SPECIFICALLY OR WHATEVER?

>> YOU WOULDN'T HAVE TO. YOU COULD RESOLVE IT. THE REASON, AND I GOT STOP, I'M GETTING INTO MY REBUTTAL TIME, I HAVE CONCERNS ABOUT ATTORNEYS RISING AN ISSUE. THEN TAKING IT BACK OR RESOLVING IT.

AND THEN ALL OF A SUDDEN AT THE END OF THE TRIAL BEING ABLE TO SAY, OH, BY THE WAY I RENEW ALL OF MY OBJECTIONS, BEING ABLE TO CLAIM ON APPEAL THEY'RE TALK ABOUT THAT ISSUE THEY ABANDONED BECAUSE THE PARTIES AND TRIAL COURT NO LONGER CONSIDER THE ISSUE YOU SETTLED OR AGREED TO BE OUTSTANDING OBJECTION.

>> ISN'T THIS EASILY RESOLVED, JUSTICE LABARGA, ASKED THE QUESTION, IF JURY WAS SWORN SWORN.

YOU RAISE YOUR RIGHT HAND, YOU SWEAR TO BE GOOD JURORS, WE WOULDN'T BE HERE?

>> THAT IS TRUE.

>> THE FIX IS NOT TO CONTINUE REFIGURE CONTINUING OBJECTION, ADVISE TRIAL JUDGES TO SWEAR THEM IN AFTER THE JURY SELECTION IS DONE?

>> NO.

I DON'T THINK WHAT TOOK PLACE HERE IS FAIR.

JUDGES INDICATED TO ME IN THE PAST, THE REASON THEY DO THAT BECAUSE THEY WANT TO AVOID DECLARING A MISTRIAL HAPPENS IN INTERIM.

THAT IS WHAT I TOLD.

>> I THINK THE STATE WANTS TO AVOID JEOPARDY BEING ATTACHED. THAT IS THE REASON.

THINGS HAPPEN OVERNIGHT.

>> THANK YOU.

WOULD IT BE OKAY RESERVE REMAINDER OF MY TIME FOR

REBUTTAL OR DO YOU WANT ME TO,
OKAY, THANK YOU.

>> MORNING.

TO OUR NEW JUSTICES WELCOME
TALLAHASSEE.

>> THANK YOU.

>> I HAVE A QUESTION FOR YOU,
ONE OF MY CONCERNS IS, I WANT TO
MAKE SURE THAT PRESERVATION
ISSUES ARE NOT ERODED.

TO ME THIS IS AN IMPORTANT
CONCERN, BECAUSE, NORMALLY
TRADITIONALLY ONCE A JURY IS
SELECTED IT IS NOT SWORN IN, BUT
YOU HAVE THE OBLIGATION, IF YOU
WANT TO, TO RERAISE ANY
OBJECTION YOU HAVE TO ANYTHING
THAT HAPPENED PRIOR TO, WITH
REGARDS TO VOIR DIRE.

IN THIS CASE DEFENSE COUNSEL DID
NOT DO THAT.

MY CONCERN WHAT HAPPENS NOW.
REALLY YOU'RE SUPPOSED TO DO A
SPECIFIC OBJECTION.

YOU'RE SUPPOSED TO TELL THE
TRIAL COURT, THIS IS THE
PROBLEM, SO WHEN IT GOES UP ON
APPEAL, THE APPELLATE COURT
UNDERSTANDS WHAT THE ACTUAL
OBJECTION IS.

THE CONTINUING OBJECTION I
UNDERSTAND, BUT NORMALLY THAT
HAPPENS IN A CASE, SAY WE'RE
HAVING A DISCUSSION ABOUT
HEARSAY OR RELEVANCE AND INSTEAD
OF SAYING, JUDGE, I DON'T WANT
TO GET UP 10 TIMES, CAN I JUST
HAVE A CONTINUING OBJECTION ON
HEARSAY OR RELEVANCE?

YES, ABSOLUTELY, IT STANDS.

SO THAT IS NORMALLY
TRADITIONALLY WHAT IT MEANS
UNDER THE LAW, CONTINUING
OBJECTION.

SO HERE HOW CAN WE IF THIS IS
ALLOWED TO STAND, THIS OPINION.
HOW DO WE GO ABOUT PRESERVING
THE ISSUE OF PRESERVATION,
MAKING SURE IT IS NOT ERODE?

>> YOUR HONOR, IN THIS CASE THIS

COURT CAN RULE ON THE VERY NARROW, VERY SPECIFIC FACTS OF THIS CASE THAT, THAT THE OBJECTION WAS RENEWED AND THAT WON'T THROW OPEN THE DOORS FURTHER ERODING THE PRESERVATION OF ERROR DOCTRINE.

>> HOW CAN YOU SAY THAT, THERE WASN'T ANYTHING, WHEN YOU READ THE TRANSCRIPT, IT IS VERY MINIMAL, VERY BARE, HOW IS THERE A POSSIBLE RENEWAL, I MEAN IF YOU'RE GOING TO DO RENEWAL LIKE THAT THEN YOU HAVE TO SAY, YOU'RE CORRECT ON THAT, JUDGE, AND I MADE A MISTAKE AND I AM RENEWING MY OBJECTION.

I'M TAKING THE JURY AS IS WITH MINUS EXCEPTION OF THE EXCLUSION OF JUROR 46?

>> IT CERTAINLY WOULD HAVE BEEN BETTER FOR THE DEFENDANT IF THAT WOULD HAVE HAPPENED.

WE WOULDN'T BE HERE OBVIOUSLY BUT IT IS NOT REQUIRED BECAUSE--

>> HOW CAN, HOW CAN A JUDGE IN IN CONTEXT UNDERSTAND THAT THERE IS A RESURRECTS OF THIS ABANDONED OBJECTION, CONCERNING THE PEREMPTORY CHALLENGE, WHEN THE JUDGE HAS JUST LAID OUT WHAT HAPPENED, ON THE PEREMPTORY CHALLENGE, AND DEFENSE COUNSEL SAYS, EVERYTHING YOU SAID IS FINE?

HOW COULD A JUDGE POSSIBLY THINK THAT, THAT OBJECTION WITH RESPECT TO THE PEREMPTORY CHALLENGE IS BEING RESURRECTED IF THAT IS FINE?

>> YOUR HONOR, THE WAY JUSTICE LUCK WAS LOOKING AT THAT LANGUAGE WAS THAT--

>> I THINK I MAY BE ONLY ONE LOOKING AT IT THIS WAY.

>> THE JUDGE CAME IN THE MORNING SAID HE WANTED TO PUT ON THE RECORD TO MAKE SURE IT WAS CLEAR THAT 46 WAS PEREMPTORY

CHALLENGE, NOT FOR CAUSE
CHALLENGE, HE RECOGNIZED THAT AS
A APPELLATE ISSUE THAT COULD BE
RAISED.

FACT, MR. GREEN, THE DEFENSE
COUNSEL SAID, EVERYTHING YOU
SAID IS FINE, MEANS, YES, YOUR
HONOR, THAT IS WHAT HAPPENED.
HE WAS AFFIRMING WHAT HAPPENED.

>> IT WOULD BE ONE THING, IF HE
SAID THAT IS CORRECT.

FINE IS DIFFERENT FROM CORRECT.
I THINK FINE MEANS, WE'RE GOOD
WITH THAT.

I AM, FURTHERMORE, HOW DO YOU
ADDRESS THIS DISTINCTION BETWEEN
A CONTINUING OBJECTION, WHICH
HAS TO DO WITH MATTERS THAT MAY
CONTINUE TO BE RISING, AS
OPPOSED TO AN OBJECTION WITH
RESPECT TO A JUROR, WHICH IS,
THAT ONCE THE JUROR IS ABOUT TO
BE SWORN THAT'S OVER, THAT WILL
NOT BE COMING UP IN TRIAL?

THAT IS THE CONTEXT HERE OF WHAT
THIS VAGUE RENEWAL OF
OBJECTIONS, THE CONTEXT IS, A
CONTINUING OBJECTION.
RIGHT?

>> THE COURT IS REALLY FOCUSING
ON PICKING AT THE SPECIFIC WORDS
THAT WERE USED BY THE DEFENSE
COUNSEL.

>> ISN'T, ISN'T THE MATTER OF
PRESERVATION A MATTER FOR OF
FORMALITIES?

IS IT MIGHT NOT BE MAGIC WORDS
BUT IT'S A MATTER OF SOME WORD
AND THERE IS ELEMENT OF
FORMALISM INHERENT IN THE IDEA
OF PRESERVING AN OBJECTION,
ISN'T THAT CORRECT?

>> CERTAINLY, YOUR HONOR, SOME
WORDS HAVE TO BE USED AND THIS
COURT HAS SAID THE RIGHT TO AN
IMPARTIAL JURY SHOULD NOT BE
SUBJECT TO ARCANE MAZE OF
REVERSIBLE ERROR TRAPS.
THAT IS LOOK WHAT THIS COURT IS
HEADING TOWARDS REQUIRING---

>> THIS IS TO ME NOT A MAGIC WORD TEST, THIS IS MATTER OF PLAIN ENGLISH. WHEN YOU HAVE THE JURY, JUROR ISSUE RAISED BY THE TRIAL JUDGE WITH A VERY SPECIFIC IDENTIFICATION OF WHAT'S ON THAT TRIAL JUDGE'S MIND AS A POSSIBLE ISSUE.

AND THEN THE DEFENSE COUNSEL SAYS, EVERYTHING YOU SAID IS FINE, BUT THEN GOES ON TO SAY, THE ONLY OBJECTION THE TRIAL COUNSEL MENTIONS HAS TO DO WITH SOME OTHER OBJECTIONS IN PRELIMINARY PROCEEDINGS AND OBJECTIONS TO EVIDENCE AND MAKE THAT AS CONTINUING OBJECTION. WHEN I READ THAT, I THINK, OKAY, THERE MUST HAVE BEEN SOME MOTION IN LIMINE MADE.

WAS THERE A MOTION IN LIMINE MADE?

>> YES.

>> YOU HAVE A RULING IN THAT, THIS JUDGE DOESN'T HAVE TO DEAL, THE TRIAL DEFENSE COUNSEL DOESN'T WANT TO HAVE TO CONTINUALLY MAKE OBJECTIONS WHEN THAT EVIDENCE COMES IN REGARDING THE MOTION IN LIMINE DURING THE COURSE OF THE TRIAL.

IN THAT CONTEXT IT WOULD BE INAPPROPRIATE CONTINUING OBJECTION SEEMS TO ME.

THAT HAS NOTHING TO DO WITH THE JURY, JUROR ISSUE.

>> YOUR HONOR, THE, THE DEFENSE COUNSEL OBJECTED NOT ONLY TO, HE SAID, I'VE MADE OBJECTIONS TO EVIDENCE AND DIFFERENT THINGS. SO CLEARLY HE WAS REFERRING TO SOMETHING OTHER THAN JUST HIS EVIDENTIARY OBJECTIONS.

AND FURTHERMORE THE TRIAL COURT, THE JUDGE IN RESPONSE TO THAT SAID, I WILL STATE FOR RECORD PURPOSES ANY RULING THAT HAS ALREADY BEEN MADE BY ME.

I RECOGNIZE MR. GREEN'S --

>> IN RESPONSE TO THE REQUEST BY
THE DEFENSE COUNSEL FOR SOME
KIND OF CONTINUING--

>> IF YOU LOOK AT THIS IN
CONTEXT, IT STARTS OFF, IT SAYS,
YOUR HONOR, THE ONLY THING OTHER
THAN, WHICH IT SEEMS TO ME THE
JUDGE'S-- AND THAT COMES RIGHT
AFTER THE JUDGE HAS TALKED ABOUT
THE HISTORY ON THE PREEMPTORY
CHALLENGE.

AND THEN HE SAYS IT,
EVERYTHING'S FINE.

SO WITH THAT OTHER THAN, IT
SEEMS LIKE HE'S PIVOTING, THIS
IS GOING TO BE SOMETHING
DIFFERENT THAN WHAT YOU JUST
TALKED ABOUT.

I DON'T KNOW HOW A PERSON COULD
LOOK AT THAT AND HAVE A
CONCLUSION OTHER THAN THAT.

>> YOUR HONOR--

>> IT'S OTHER THAN.

THE ONLY OTHER.

THE ONLY THING OTHER THAN.

OTHER THAN WHAT?

IT HAS TO BE OTHER THAN WHAT YOU
JUST TALKED ABOUT.

>> YOUR HONOR, HE NEVER
COMPLETED THE THOUGHT, AND THE
QUESTION--

>> WELL, HE DID.

>>-- IS VERY VALID.

THE ONLY THING OTHER THAN--

>> HE'S NOT THE MOST ARTICULATE,
I WILL GRANT THAT.

BUT THIS IS IN TRIAL, THOSE
THINGS HAPPEN.

BUT IT SEEMS TO ME WHEN YOU LOOK
AT THAT ALL IN CONTEXT, I JUST,
I'M STRUGGLING TO UNDERSTAND HOW
THE JUDGE WOULD HAVE EVER HAD
ANY IDEA THAT THEY WERE TRYING
TO RENEW, RESURRECT THIS
ABANDONED OBJECTION WITH RESPECT
TO THE PREEMPTORY CHALLENGE.

>> I RAISED THAT, I'M CONCERNED.
I HAVE THE SAME CONCERN THAT THE
CHIEF JUSTICE MENTIONED EARLIER.
HAVING SAT AS A TRIAL COURT

JUDGE FOR 13 YEARS, 5 IN
CRIMINAL, I NOTICED THAT THIS
WHOLE FORMALITY THAT I BELIEVE
THE LAW REQUIRES FOR PRESERVING
ISSUES DURING A TRIAL FOR
APPELLATE REVIEW EARLIER IS JUST
GOING DOWN THE DRAIN.

AND, I MEAN, WHERE I SAT AS-- I
COUNTED 21 CASES WHERE THE STATE
DID NOT EVEN PROVE VENUE.

THAT'S A ONE-SENTENCE QUESTION.
AND THEN WHEN YOU SAY THEY
DIDN'T PROVE IT, THEN WE HAVE TO
DO WHAT WE'RE DOING NOW.

WE HAVE TO RECONSTRUCT WHAT
EVERYBODY MEANT.

ALL THEY HAVE TO DO IS JUST DO
IT.

THE QUESTION HERE, LISTEN TO HIS
PRESERVATION.

I MADE A FEW OBJECTIONS IN
PRELIMINARY PROCEEDINGS AND
OBJECTED TO EVIDENCE AND
OBJECTED TO DIFFERENT THINGS.

NOW, THAT'S LIKENED TO A
COMPOUND QUESTION.

IF YOU ANSWER HOW'S A JUDGE
SUPPOSED TO KNOW WHICH ONE HE'S
TALKING ABOUT?

IF A JUDGE SAYS YES TO ONE, HE
MEANT YES TO ALL.

WHY CAN'T HE JUST HAVE COME OUT
AND SAID, YOUR HONOR, I OBJECTED
YESTERDAY TO THIS JUROR'S
PREEMPTORY CHALLENGE.

THIS IS THE REASON WHY I
OBJECTED, AND I WANT TO MAKE
SURE THE RECORD'S CLEAR ON THAT.
OBJECTION DENIED.

OKAY.

WE WOULDN'T BE HERE.

THAT SEEMS TO BE LACKING IN THE
LAW.

>> THAT MAY BE THE WAY GOING
FORWARD, BUT CERTAINLY--

[LAUGHTER]

TRIAL LAWYER--

[LAUGHTER]

>> YOU'RE WELL PRESERVED.

[LAUGHTER]

YES.

THE TRIAL LAWYER IN THIS CASE WAS ENTITLED TO RELY ON THE COURT'S, WHAT'S THE WORLD, THE COURT'S ASSURANCE--

>> BUT YOU AGREE THAT IF ONCE A TRIAL COURT SAID I JUST WANT TO MAKE IT CLEAR, IF AT THAT MOMENT IN TIME THE DEFENSE COUNSEL HAD SAID, YES, YOUR HONOR, AND MY-- I MADE A MISTAKE AND I SHOULD HAVE OBJECTED TO THE STRIKING OF JUROR NUMBER 46, YOU AGREE THAT WOULD HAVE BEEN CLEAR, CLEAR OBJECTION?

>> YES.

>> AND WE PROBABLY WOULD NOT BE HERE.

>> WE WOULD NOT BE HERE.

>> COUNSEL, I WANT TO ASK YOU ABOUT THE JOYNER RULE A LITTLE BIT.

>> YES, YOUR HONOR.

>> YOU DO THIS FOR A LIVING, YOU UNDERSTAND HOW THESE RULES WORK. IF IT WAS AN EVIDENTIARY OBJECTION, DO YOU HAVE TO GIVE A SPECIFIC AND CONTEMPORANEOUS OBJECTION TO THE EVIDENCE-- JUST THE SINGLE OBJECTION IS SUFFICIENT IN EVIDENCE--

>> MY UNDERSTANDING, YOUR HONOR, BASED ON THE CASES THAT HAVE BEEN CITED IN THE MURRAY CASE, FOR EXAMPLE, IF THERE HAS BEEN A SPECIFIC CONTEMPORANEOUS OBJECTION, THEN IT CAN BE A CONTINUING OBJECTION THROUGHOUT THE TRIAL--

>> IN OTHER WORDS, YOU CAN RAISE IT ONCE.

>> YES, YOUR HONOR.

>> SO IF YOU MOVE FOR SUPPRESSION, YOU HAVE A SUPPRESSION HEARING, A JUDGE MAKES A RULING ON IT, SUPPRESSES CERTAIN EVIDENCE, THAT'S PRESERVED.

>> YES, YOUR HONOR.

>> OKAY.

WE HAVE A SPECIAL RULE FOR JURY SELECTION WHERE YOU GET TO MAKE A SPECIFIC AND CONTEMPORANEOUS OBJECTION, ALL THREE STEPS WHICH SOMEWHAT HAPPENED HERE.

THEN THERE'S SOME ACTIVITY THAT HAPPENS, AND THEN AT THE END OF IT ALL YOU HAVE TO SAY I RENEW MY OBJECTIONS DURING JURY SELECTION, AND ONLY THEN DO YOU GET TO PASS THROUGH AND COME TO THIS COURT AND ARGUE, RIGHT?

THAT'S THE WAY THE RULE WORKS?

>> THAT SHOULDN'T BE THE WAY THE RULE WORKS.

>> RIGHT.

WHAT'S THE LOGIC OF JOYNER?

FORGET THE ABANDONMENT HERE, BECAUSE THAT'S A PROBLEM FOR YOU HERE.

WHAT'S THE POINT WE RENEW OUR OBJECTIONS, WE ACCEPT SUBJECT TO, WHICH IS WHAT I HEARD IT AS, AND I'M SURE YOU'VE SEEN IT A MILLION TIMES, AND THE JUDGE SAYS, OKAY, FINE, GOES ON WITH THEIR BUSINESS.

WHAT'S THE POINT OF THIS?

>> WHAT THE COURT HAS SAID IS THE PURPOSE OF THAT ADDITIONAL REQUIREMENT IS THAT SOMETHING MAY HAVE CHANGED, AND THIS IS WHAT THE STATE ARGUED AS WELL, THAT SOMETHING MAY HAVE CHANGED--

>> WHY IS THAT NOT TRUE OF SUPPRESSION WHERE A CLIENT MAY SAY, YOU KNOW, I REALLY WANT THAT EVIDENCE IN, YOU KNOW? YOU OBJECTED, BUT I REALLY WANT THAT IF BECAUSE IT SEEMS HELPFUL TO ME OR--

>> THAT ACTUALLY HAPPENED IN THIS CASE, THERE WAS A MOTION TO SUPPRESS AND LATER THE DEFENDANT--

>> WELL, YOU CAN DO A MOTION TO SUPPRESS.

YOU CAN SAY I'M GOING TO TAKE A PLEA SUBJECT TO THE APPELLATE

REVIEW OF THE DENIAL OF MY
MOTION TO SUPPRESS, CORRECT?

>> YES, YOUR HONOR.

>> YOU DON'T HAVE TO OBJECT
AGAIN.

>> RIGHT.

>> I'M JUST HAVING TROUBLE
UNDERSTANDING WHY, WHY WE'RE
EVEN TALKING ABOUT THE SECOND
HURDLE WHERE WE'RE DEBATING THE
INTRICACIES OF THE WORLD
CONTINUING VERSUS THE WORD
RENEWED WHEN THIS WAS A
PERFECTLY GOOD OBJECTION ON THE
RECORD HERE.

>> I AM 100% WITH YOU, YOUR
HONOR--

>> I'M ONLY ASKING.

>> IF I RAN THE ZOO AND I MADE
THE RULES, I WOULD SAY ONCE YOU
HAVE MADE THAT OBJECTION, THAT
SHOULD BE ALL THAT'S REQUIRED.
YOU SHOULD NOT HAVE TO GO
THROUGH THE MAGIC WORDS, FOLLOW
THIS ARCAINE MAZE OF REVERSIBLE
ERROR TRAPS TO PRESERVE THAT
ERROR, AND I'LL TELL YOU WHY.
BECAUSE THE RIGHTS THAT ARE
INVOLVED HERE ARE SO IMPORTANT
THAT WE'RE TALKING ABOUT NOT
JUST THE DEFENDANT'S RIGHT TO A
JURY TRIAL THAT IS NOT TAINTED
WITH RACIAL DISCRIMINATION, BUT
ALSO THE RIGHT OF THIS
INDIVIDUAL JUROR TO SIT ON A
JURY AND BE PART OF THE JUDICIAL
PROCESS WITHOUT IT BEING
DISMISSED BASED ON RACE,
ETHNICITY OR GENDER.

>> BUT FROM THE DEFENDANT'S
PERSPECTIVE, ISN'T IT THE CASE
THAT WE COULD GO NEW A PROCESS
LIKE THIS IN SELECT A JURY, MAY
HAVE AN OBJECTION, IT MAY BE A
GOOD OBJECTION, BUT WHEN YOU GET
TO THE END OF THE PROCESS,
YOU'RE LOOKING AT THAT JURY, AND
YOU'RE SAYING THAT'S A PRETTY
GOOD JURY.

I THINK I LIKE THAT JURY.

AND I DON'T, YOU KNOW, I DON'T WANT TO GET BACK INTO UPSETTING THIS, BECAUSE I THINK, I THINK THIS MAY BE THE BEST JURY I'M EVER GOING TO GET.

AND, THEREFORE, YOU DON'T RENEW THE OBJECTION.

AND THAT SORT OF THING CAN HAPPEN WHERE YOU'RE HAPPY WITH THE JURY.

AS A PRACTICAL MATTER.

DOESN'T THAT HAPPEN THAT WAY SOMETIMES?

>> YES, YOUR HONOR, THAT COULD HAPPEN--

>> IF THAT DOES HAPPEN THAT WAY WHERE THE DEFENSE IS HAPPY WITH THE JURY, WHY SHOULD WE HAVE THIS PROCESS THAT JUST BECAUSE THEY WERE UNHAPPY EARLIER, THEY'VE GOT BUILT-IN REVERSAL ON APPEAL?

IF THEY END UP BEING HAPPY BEFORE THE, RIGHT BEFORE THE JURY'S SWORN?

>> IN MOST CASES, IT SHOULDN'T. THAT SHOULD NOT LEAD TO REVERSAL.

HOWEVER, IN THIS CASE THE TIMING IS REALLY IMPORTANT, BECAUSE THIS WASN'T A CASE WHERE THIS WAS ONE OF THE EARLIEST JURORS AND THEN ALL KINDS OF DIFFERENT JURORS PARADED THROUGH THE COURTROOM AND THE DEFENSE WAS THEN HAPPY.

WHAT HAPPENED WAS JUROR NUMBER 46 WAS THE VERY LAST JUROR WHO WAS EXCUSED.

THE DEFENSE ATTORNEY KNEW THEN WHO THE NEXT JUROR WAS, AND NOTHING CHANGED.

THAT WAS THE END OF THE DAY, AND THEN THEY CAME BACK THE NEXT MORNING, AND THE VERY FIRST THING THAT THE TRIAL JUDGE SAID WAS I WANT TO TALK ABOUT JUROR NUMBER 46.

I WANT TO MAKE SURE THAT WAS A FOR CAUSE, NOT A FOR CAUSE, A

PREEMPTORY CHALLENGE, AND I FOUND A RACE-NEUTRAL REASON. SO THERE WAS NO REASON HERE FOR THE, FOR THE DEFENSE TO HAVE CHANGED ITS MIND.

AND SO THIS WOULD BE, AS I SAID EARLIER, A VERY NARROW CASE WHERE ON THESE FACTS THE COURT SHOULD APPROVE THE DECISION OF THE FIRST DISTRICT COURT OF APPEAL.

>> TO ME, THIS RECORD READS AS IF THE DEFENSE DID CHANGE ITS MIND, BECAUSE THE DEFENSE SAID THAT I'VE REVIEWED THIS WITH MY CLIENT, AND WE FIND THIS JURY ACCEPTABLE.

MY CLIENT AND I BOTH LIKE-- THE JUDGE READS OUT ALL THE NAMES OF THE JURORS AND SAYS I'M AGREEABLE TO THE JURY.

I'VE REVIEWED IT WITH MY CLIENT, AND MY CLIENT AND I ACCEPT THE JURY.

SO IT SOUNDS LIKE HE CHANGED HIS MIND WITH RESPECT TO ANY OBJECTIONS THAT REMAIN, AND THAT'S ACTUALLY, TO ME-- I DON'T UNDERSTAND WHY THAT'S NOT PART OF THE CONTEXT AS WELL, IN ADDITION TO EVERYTHING JUSTICE CANADY HAS SAID.

WHEN THIS JUDGE IS HEARING THAT, WHY WOULD HE EVER THINK THAT YOU WERE TRYING TO RAISE AN OBJECTION TO SOMETHING THAT YOU HAD ABANDONED OR CHANGED YOUR MIND ABOUT?

>> YOUR HONOR, AGAIN TIMING IS IMPORTANT--

>> YEAH.

>>-- BECAUSE THAT WAS THE LAST JUROR THAT WAS CHALLENGED.

AND SO THEN THE COURT READ OUT HERE ARE THE JURORS THAT WE HAVE.

IT REALLY IS JUST A MATTER OF IT'S A PRO FORMA.

YES, WE AGREE, WE ACCEPT.

AT THAT POINT REALLY WHAT COULD

THE TRIAL LAWYER HAVE DONE?
HE COULD HAVE SAID, NO, I WANT
TO SAY AGAIN I OBJECT--
>> BUT THAT HAPPENS, THAT'S YOUR
OBLIGATION UNDER THE CURRENT
STATE OF THE LAW, WHICH IS TO
OBJECT.

SO IF YOU'RE GOING TO IMPANEL
THE JURY AND ASSUMING THE JURY'S
SWORN, THERE'S NOTHING IN THE
RECORD TO INDICATE HE WASN'T
GOING TO SWEAR IN THE JURY.
SO THE JURY'S ABOUT TO BE SWORN
IN, YOU HAVE TO OBJECT UNDER THE
LAW RIGHT NOW.

IF THERE IS AN OBJECTION THAT
YOU HAVE, THAT'S YOUR OBLIGATION
AS EITHER THE STATE OR DEFENSE
COUNSEL.

>> YOUR HONOR, AS HAS BEEN
INDICATED, THE GENERAL PRACTICE
IS NOT TO SWEAR THE JURY IN.
IF THE JUDGE HAD SWORN THE JURY
IN, AS HE DID--

>> WELL, MY VIEW AS A TRIAL
LAWYER WAS THAT YOU HAD THE JURY
SWORN IN.

IT WAS VERY UNLIKELY THAT THE
JURY WAS NOT SWORN IN ONCE THE
JURY WAS SELECTED.
I CALL THAT A ROOKIE MISTAKE BY
A TRIAL COURT JUDGE.

[LAUGHTER]

>> YES, YOUR HONOR.

>> I KNOW THIS ISSUE WASN'T
RAISED, BUT DO YOU SEE A PROBLEM
AT ALL IN THE FACT THAT A TRIAL
LAWYER CAN GIVE AN EXTENSIVE
PROFFER ON THE RECORD IN SUPPORT
OF ITS RACE-NEUTRAL REASON AND
THAT SOMEHOW AN OBJECTION THAT
THERE'S NOTHING IN THE RECORD IS
SUFFICIENT TO RAISE ANY ISSUE
WHEN THERE'S BEEN A PROFFER ON
THE RECORD?

>> I'M NOT CERTAIN THAT I FOLLOW
THE QUESTION, BUT MY
UNDERSTANDING--

>> IT WAS A BAD QUESTION.

[LAUGHTER]

>> THAT THE RULINGS OF THIS COURT IS THAT THE RACE-NEUTRAL REASON HAS TO BE IN THE RECORD, BECAUSE OTHERWISE THE JUDGE HAS NO WAY OF RULING.

>> I KNOW, BUT IN EVERY OTHER CONTEXT, WE WOULD ACCEPT A PROFFER AS A BASIS ON THE RECORD AS LONG AS A PROFFER WAS MADE ON THE-- AND IF IT'S THE PARTY OBJECTING TO USE OF THE PREEMPTORY CHALLENGE AND THE ISSUE IS GENUINENESS, SO IN A NORMAL WORLD IF THE PARTY SAID, WELL, YOU KNOW, I HAVE-- I THINK NOTWITHSTANDING THE PROFFER WHICH IS NOT GENUINE, THEY WOULD HAVE A DUTY TO DO SOMETHING TO MEET THEIR BURDEN OF PERSUASION.

ISN'T IT PROBLEMATIC THAT THEY DON'T HAVE TO ACTUALLY MEET THEIR BURDEN OF PERSUASION IN RESPONSE TO A PROFFER, AN EXTENSIVE PROFFER OF WHAT HAPPENED ON THE RECORD? ISN'T THAT PROBLEMATIC?

>> NOT UNDER THE FACTS OF THIS CASE, BECAUSE THE WAY THIS COURT HAS HELD IN DORSEY, IT HAS TO BE ON THE RECORD.

SO THE PROSECUTOR'S ASSERTION THAT THE, AS THE JUDGE PUT IT, A JUROR HAD GIVEN HER THE STINK EYE, THAT ISN'T SUFFICIENT BECAUSE THERE'S NOTHING IN THE RECORD.

NOW, A PROFFER WOULD STILL HAVE TO BE PROVEN.

THERE WOULD HAVE TO BE SOME--

>> UNDER DORSEY, THAT'S CORRECT. THAT IS A 4-3 DECISION.

>> YES, YOUR HONOR.

SO IF THE COURT HAS NO FURTHER QUESTIONS, WE ASK THIS COURT TO APPROVE THE DECISION OF THE FIRST DISTRICT COURT OF APPEAL.

>> I WOULD, FIRST, LIKE TO ADDRESS SOME OF THE CONCERNS, AND I WANT TO TALK ABOUT WHEN I

WAS IN THE TRIAL COURT, I WAS ACTUALLY A DEFENSE ATTORNEY. AND ONE OF THE ISSUES WITH YOU SAYING THAT THEY SHOULD JUST HAVE TO OBJECT ONCE IS HOW IT WORKS IS OFTEN TIMES YOU GET TO TALK TO YOUR CLIENT A LITTLE BIT ABOUT WHO YOU WANT AND DON'T WANT, BUT YOU DON'T KNOW WHAT THE PROSECUTOR IS GOING TO DO. AND A LOT OF TIMES, LIKE THESE PARTIES WERE ALL AT SIDEBAR WITH THE DEFENDANT.

WHEN THE PROSECUTOR DOES SOMETHING, LIKE TRIES TO REMOVE SOMETHING, THE LAWYER'S INITIAL RESPONSE IS TO SAY, NO, YOU CAN'T DO THAT, THIS IS IMPROPER. YOU DON'T USUALLY STOP AND TALK ABOUT, OH, BY THE WAY, ARE YOU OKAY WITH ME DOING THIS?

SO WHAT HAPPENS IS YOU DO THIS, AND SOMETIMES YOU GO BACK TO YOUR CLIENT, AND HE SAYS, HEY, GUESS WHAT?

I DIDN'T LIKE THAT JUROR EITHER. OR WHAT I HEARD MORE COMMONLY, I LIKE THE JUROR WE'RE GETTING BETTER THAN THE ONE THEY'RE REMOVING.

AND THE CHANGE HAPPENS BECAUSE OF YOU CONFERRING WITH YOUR CLIENT.

YOUR CLIENT ISN'T ALWAYS AS INTO YOUR LEGAL OBJECTION AS YOU ARE.

>> THAT'S A GREAT ARGUMENT FOR ABANDONMENT, AND THAT MAY BE THE RIGHT WAY TO GO HERE.

IT'S HARD FOR ME TO UNDERSTAND A SECOND OBJECTION FOR DOING THE SAME EXACT--

[INAUDIBLE]

BUT I UNDERSTAND WHAT YOU'RE STAYING.

>> YEAH.

AND THEN ALSO, I WOULD ALSO LIKE TO THE RAISE THAT YOU WERE SAYING YOU INTERPRETED THE DEFENDANT'S STATEMENTS DIFFERENTLY THAN MYSELF AND

PERHAPS SOME OF THE OTHER JUSTICES.

>> [INAUDIBLE]

>> BUT DO YOU THINK THAT A TRIAL JUDGE SHOULD HAVE TO TRY TO FIGURE OUT WHAT A LAWYER MEANS? SHOULDN'T A LAWYER HAVE TO BE SPECIFIC ENOUGH, PRECISE ENOUGH THAT WE DON'T HAVE TO GUESS WHAT THEY MEAN?

THAT'S KIND OF THE WHOLE PURPOSE OF PRESERVATION.

AND IN THIS CASE-- AND I'LL ADMIT THIS IS SOMETHING THAT I'M VERY CONCERNED ABOUT IN GENERAL BECAUSE I'VE BEEN SEEING NOT IN JURY SELECTION, BUT THIS COMING UP A LOT WHERE, YOU KNOW, DEFENSE COUNSEL SAYS I OBJECT, THIS IS IMPROPER.

AND STATE SAYS, NO, IT'S NOT, AND GIVES AN ARGUMENT.

THEY SAY, OKAY, I AGREE.

THEY INDICATE ABANDONMENT, OR IT GETS SETTLED.

SAY DEFENSE COUNSEL SAYS, WELL, I CAN AGREE BUT ONLY IF SHE ARGUES THIS.

THEN ALL OF A SUDDEN AT THE END OF TRIAL, DEFENSE COUNSEL SAYS I RENEW ALL MY PREVIOUS OBJECTIONS OR WHATEVER, AND THEN IT'S ATTEMPTED TO ARGUE THAT THIS UNDOES WHAT THEY'VE DONE IN THE TRIAL.

AND IT'S OUR POSITION THAT WHEN YOU ABANDON SOMETHING OR RESOLVE IT, THAT YOU DON'T GET TO REVIVE THAT BY MAKING SOME GENERIC REQUEST AT THE END, ESPECIALLY SINCE I JUST DON'T THINK THAT IT'S REASONABLE TO THINK THAT A TRIAL JUDGE WOULD THINK YOU WERE STILL TALKING ABOUT THE ISSUE THAT YOU ABANDONED.

BUT I SEE THAT MY TIME IS UP.

WE ASK THAT YOU QUASH THE DECISION OF THE FIRST DISTRICT. THANK YOU.

>> THANK YOU.

>> WE THANK YOU BOTH FOR YOUR
ARGUMENTS.