Contemporaneous Objections

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Overview

WHY DO WE HAVE A "CONTEMPORANEOUS OBJECTION RULE," AND WHAT DOES IT MEAN?

Preservation of Error

- An appellate court will not consider an argument that is raised for the first time on appeal, unless fundamental error has occurred.
- The argument must be preserved at the trial level in order to be cognizable on appeal.
  - *Steinhorst v. State*, 412 So. 2d 332, 338 (Fla. 1982) ("[I]n order for an argument to be cognizable on appeal, it must be the specific contention asserted as legal ground for the objection, exception, or motion below.").

Preservation Requirements

(1) Make a timely, contemporaneous objection;

(2) State the specific legal basis for the objection;

(3) Obtain a definitive ruling from the trial court; and

(4) The argument raised on appeal must be the specific contention asserted as the legal ground for the objection below.

(1) Timely, Contemporaneous Objection

- Generally, you must object at the time of the alleged error.
  - *Aills v. Boemi*, 29 So. 3d 1105, 1108 (Fla. 2010).
- However, an objection made in time for the trial court to take corrective action may be sufficient, even if it was not made at the exact time of the alleged error.
  - *Jackson v. State*, 451 So. 2d 458, 461 (Fla. 1984).

(2) Specific Objection

- Must state the specific legal ground for the objection
  - *Aills v. Boemi*, 29 So. 3d 1105, 1108 (Fla. 2010).
- However, no "magic words" are required when making an objection, as long as the articulated concern is sufficiently specific to inform the trial court of the alleged error.
  - *Harden v. State*, 87 So. 3d 1243, 1245 (Fla. 4th DCA 2012) ("Notwithstanding the fact that defense counsel did not use the magic word 'propensity,' it is apparent that defense counsel's articulated concern was sufficiently specific to inform the trial court of the alleged error.").

(3) Obtain Definitive Ruling

- No definitive ruling when:
  - Trial court reserves ruling on the objection or motion
    - *Willingham v. State*, 781 So. 2d 512 (Fla. 5th DCA 2001).
  - Trial counsel withdraws objection before trial court rules
    - *Massey v. State*, 109 So. 3d 324 (Fla. 4th DCA 2013).
  - Trial court merely recognizes a stipulation of the parties
    - *Collins v. State*, 211 So. 3d 214 (Fla. 4th DCA 2017).

- Exception: Trial court refuses to make a ruling
  - *LeRetilley v. Harris*, 354 So. 2d 1213, 1214 (Fla. 4th DCA 1978) ("[F]ailure to secure a ruling on an objection waives it, unless the court deliberately and patently refuses to so rule.").

(4) Same Argument as Raised Below

- "In order for an argument to be cognizable on appeal, it must be the specific contention asserted as legal ground for the objection, exception, or motion below." *Aills v. Boemi*, 29 So. 3d 1105 (Fla. 2010).
- However, the argument below need not be articulated in the same level of detail as presented on appeal in order to be deemed preserved.
  - *Ruddy v. Carelli*, 54 So. 3d 1055 (Fla. 5th DCA 2011).

Policies Behind the Rule

- Fairness to the trial court and practical necessity; gives the trial court the opportunity to correct the error
  - *City of Orlando v. Birmingham*, 539 So. 2d 1133, 1134 (Fla. 1989) ("The requirement of a timely objection is based on practical necessity and basic fairness in the operation of the judicial system. A timely objection puts the trial judge on notice that an error may have occurred and thus provides the opportunity to correct the error at an early stage of the proceedings.").
- Fairness to opposing party
  - Gives opposing party the opportunity to correct the error and avoid its prejudicial effect
- Prevents gamesmanship by opposing party
  - *Nissan Motor Corp. v. Padilla*, 545 So. 2d 274, 276 (Fla. 3d DCA 1989) (preservation rule "preclude[s] an attorney from sandbagging the court and his opponent by postponing his motion in belief that the outcome will be favorable, reserving an option to make the motion for the first time after the trial when the preliminary assessment has proved wrong").
  - *Crumbley v. State*, 876 So. 2d 599, 601 (Fla. 5th DCA 2004) (contemporaneous objection rule "prevent[s] a litigant from allowing an error to go unchallenged so it may be used as a tactical advantage later").

Specific Applications

HOW IS THE CONTEMPORANEOUS OBJECTION RULE APPLIED?

Pretrial Stipulation

- The pretrial stipulation is strictly enforced, so ensure it is accurate and complete.
  - "Pretrial stipulations prescribing the issues on which a case is to be tried are binding upon the parties and the court, and should be strictly enforced." *Lotspeich Co. v. Neogard Corp.*, 416 So. 2d 1163, 1165 (Fla. 3d DCA 1982).
  - "[T]he trump card upon which all parties to any litigation can virtually always rely is The Pretrial Stipulation." *Palm Beach Polo Holdings, Inc. v. Broward Marine, Inc.*, 174 So. 3d 1037, 1038 (Fla. 4th DCA 2015).
- Failure to include issues in pretrial stipulation constitutes waiver
  - "A stipulation that limits the issues to be tried 'amounts to a binding waiver and elimination of all issues not included.'" *Broche v. Cohn*, 987 So. 2d 124, 127 (Fla. 4th DCA 2008) (quoting *Esch v. Forster*, 168 So. 229, 231 (Fla. 1936)).

Related Issue: Trial by Consent

- Rule 1.190(b): “When issues not raised by the pleadings are tried by express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings.”
- If your opponent presents evidence on unpled claims or defenses at trial, object or you could be deemed to have tried the issue by consent.

- *Scariti v. Sabillon*, 16 So. 3d 144, 145-46 (Fla. 4th DCA 2009) (“‘An issue is tried by consent when there is no objection to the introduction of evidence on that issue.’” (quoting *LRX, Inc. v. Horizon Assocs. Joint Venture ex rel. Horizon-ANF, Inc.*, 842 So. 2d 881, 887 (Fla. 4th DCA 2003))).

Jury Selection: Cause Challenges

- Preserving an Objection to a Cause Challenge.
  - **Step 1:** Initial Objection.
    - The litigant must show he was forced to take that juror, meaning all peremptory challenges must be exhausted, and a request made for additional challenges. *Sebring Associates, Ltd. v. Aumann*, 673 So. 2d 875 (Fla. 2d DCA 1996).
    - The litigant must specify that the request for additional peremptory challenges is due to the court's failure to strike a particular juror for cause. *Hammond v. State*, 727 So. 2d 979, 980 (Fla. 2d DCA 1999)
    - The party must identify the specific juror he or she would have stricken. *Couch v. Dunn Ave. Shell, Inc.*, 803 So. 2d 803, 804 (Fla. 1st DCA 2001) (citing *Trotter v. State*, 576 So. 2d 691, 693 (Fla. 1990)).
  - **Step 2:** Renewed Objection.
    - To preserve for review any alleged errors made by the trial court in the manner used to select a jury, including the use of preemptory challenges, the complaining party must object at trial to the jury as finally composed. *Milstein v. Mut. Sec. Life Ins. Co.*, 705 So. 2d 639, 640 (Fla. 3d DCA 1998).

Jury Selection: Discrimination

- Preserving an Objection to Discrimination in Peremptory Challenges: *State v. Neil,* 457 So. 2d 481 (Fla. 1984).
  - **Step 1:** Request a *Neil* Inquiry by making a timely objection and showing the juror struck is a member of a distinct group.
  - **Step 2:** Obtain a Ruling from the Court.
    - In a *Neil* Inquiry, the burden shifts to the party exercising the challenge to demonstrate that the peremptory challenge was not made based solely upon a protected.
    - If the Court finds the explanation is race-neutral and the reason is not pretextual, the act of striking the juror through a peremptory challenge will be sustained.
  - **Step 3:** Renew the Challenge.
    - If the court overrules the objection, the litigant must object again ***before the jury is sworn*** by (a) renewing the motion, (b) asking the court to seat the challenged juror, (c) accepting the jury subject to the *Neil* objection, or (d) moving to strike the panel.
  - **Note:** Due to the trial court's inherent discretion in ruling on a *Neil* Inquiry, the ruling will be affirmed on appeal unless clearly erroneous, however, if the trial court declines to conduct the inquiry, error will be preserved at Step 1, no further action needed.

Evidentiary Objections

- Motions in Limine
  - Pretrial motions requesting the exclusion of improper evidence or arguments.
  - Preservation of Error
    - If the court has made a ***definitive ruling*** on the record admitting or excluding evidence, either at or before trial, a party need not renew an objection or offer of proof to preserve a claim of error for appeal. § 90.104, Fla. Stat.
    - However, if the court ***defers*** ruling, it is incumbent on the litigant to object at trial. *See USAA Cas. Ins. Co. v. Allen*, 17 So. 3d 1270, 1271-72 (Fla. 4th DCA 2009).
  - Practice Pointers
    - If the motion is ***denied***, it is good practice to renew the motion when the issue arises and either (a) request a definitive ruling from the court if one has not been clearly made or (b) advise the court of its ruling for purposes of creating a record.
    - If the motion is ***granted***, the party that was attempting to admit the excluded evidence or argument may want to make a proffer at trial to create a clear record of what was to be presented.

Evidentiary Objections Cont.

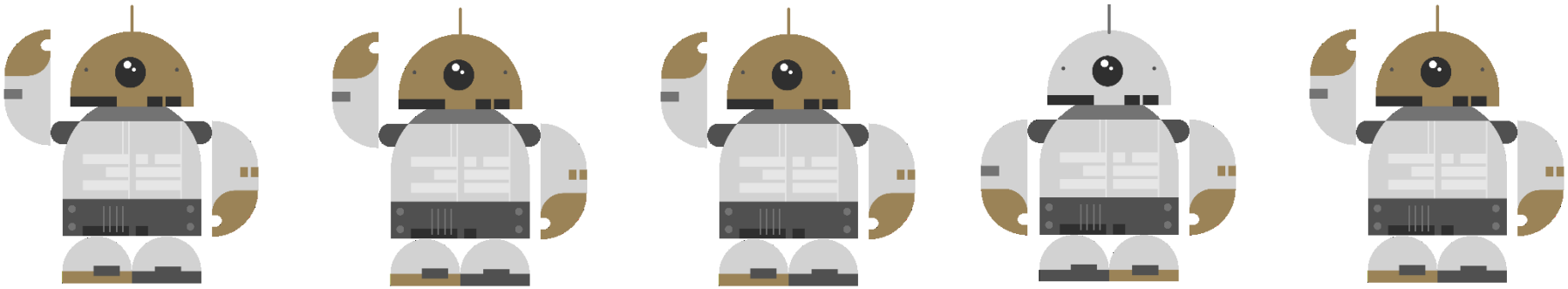
- Contemporaneous Objections
  - Create a record for appeal.
    - Object to disputed evidence **at the time** it is presented
    - State the specific legal basis for the objection
    - Obtain a definitive ruling.
  - Raise the same argument on appeal, as only those grounds raised and ruled by the trial court can be considered.
  - The objecting party is not required to repeatedly object to the same type of testimony from the same witness if the court has overruled the objection previously.

Evidentiary Objections Cont.

- Offers of Proof
  - An appellate court will not reverse a judgment or order a new trial on the basis of excluded evidence unless the substance of the evidence is made known to the court by offer of proof or is apparent from the context of the record.
  - The proffer must be timely to give the judge an opportunity to rule on the evidence at the time it is offered. The absence of a proffer can be excused in some cases if the substance of the evidence is apparent from the context.
  - The trial court's refusal to permit the proffer generally is reversible error. *Thunderbird Drive-In Theatre, Inc. v. Reed,* 571 So. 2d 1341 (Fla. 4th DCA 1990), *rev. denied,* 577 So. 2d 1328 (Fla. 1991).

Closing Argument: Objections

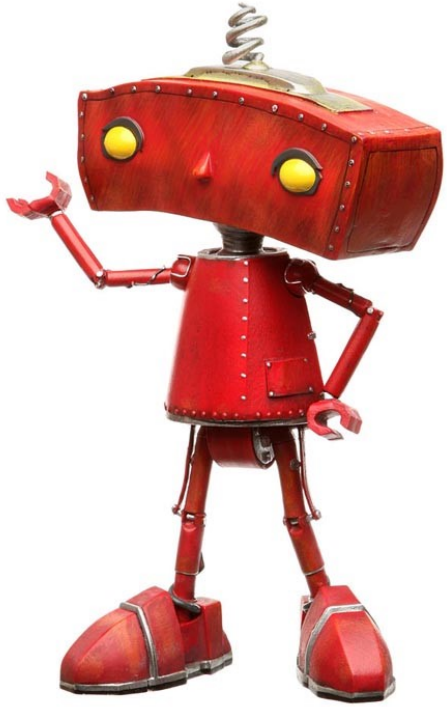
- When improper comment is made during closing argument, make a timely, specific objection.
  - *Companioni v. City of Tampa*, 51 So. 3d 452 (Fla. 2010).
- If the trial court sustains the objection, move for a mistrial.
- If you fail to make a timely motion for mistrial after the trial court sustains the objection, the standard set forth in *Murphy v. Int'l Robotic Systems, Inc.*, 766 So. 2d 1010 (Fla. 2000), applies.
  - *Aarmada Prot. Sys. 2000, Inc. v. Yandell*, 73 So. 3d 893 (Fla. 4th DCA 2011).



Closing Argument: *Murphy*

- If you fail to object to improper comments altogether, or if you fail to move for mistrial after the court sustains your objection, you must raise make a motion for new trial showing the comments were:
    1. Improper;
    2. Harmful;
    3. Incurable; and
    4. So damaging to the fairness of the trial that the public's interest in our system of justice requires a new trial

- Must specifically identify the improper comments in motion for new trial in order to preserve error.
    - *USAA Cas. Ins. Co. v. Howell*, 901 So. 2d 876, 879 (Fla. 4th DCA 2005) (appellate court addresses only those comments specifically set forth in motion for new trial).



Murphy Standard
Prong 1: Improper Comments

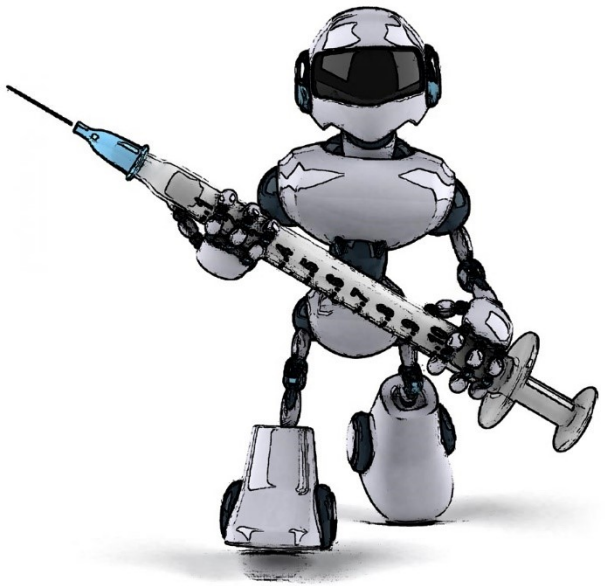
- Examples:
  - References to matters outside the evidence
  - Misstating the evidence
  - Vouching for credibility of a witness
  - Comments invoking the Golden Rule
  - References to wealth or poverty of a party
  - References to counsel's own personal beliefs and experience
  - Comments asking the jury to serve as the conscience of the community

Murphy Standard
Prong 2: Harmful Comments

- Focus is on "how the improper closing argument affected the fairness of the trial proceedings." *Murphy*, 766 So. 2d at 1029.
- "Harmfulness in this context carries a requirement that the comments be so highly prejudicial and of such collective impact as to gravely impair a fair consideration and determination of the cause by a jury." *Id.*
  - Court considers the "extensiveness of the objectionable material"; "passing remarks of little consequence in the scope of a lengthy trial" are generally insufficient to warrant a new trial. *Id.*
- "[T]he improper closing argument comments must be of such a nature that it reaches into the validity of the trial itself to the extent that the verdict reached could not have been obtained but for such comments." *Id.* at 1030.

Murphy Standard
Prong 3: Incurable Comments

- For a comment to be deemed incurable, you must establish that "even if the trial court had sustained a timely objection to the improper argument and instructed the jury to disregard the improper argument, such curative measures could not have eliminated the probability that the unobjected-to argument resulted in an improper verdict." *Murphy*, 766 So. 2d at 1030.
- This is an "extremely difficult" burden to carry. *Id.*



Murphy Standard
Prong 4: Public Interest Factor

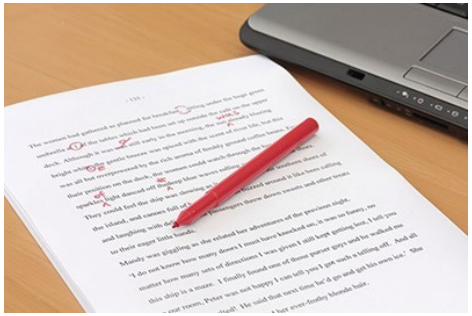
- This factor refers to an argument that "so damaged the fairness of the trial that the public's interest in our system of justice requires a new trial."
- *Murphy* court noted this element is "narrow in scope."
- Includes arguments that appeal to "racial, ethnic, or religious prejudices."

Jury Instructions: General Rule

- Parties must submit any proposed jury instructions they want to be given.
  - The instruction must be reduced to writing and brought to the court's attention.
    - Fla. R. Civ. P. 1.470(b) (requiring parties to file "written requests that the court instruct the jury on the law set forth in such requests" and that such written requests be filed "not later than at the close of the evidence").
    - *Luthi v. Owens-Corning Fiberglass Corp.,* 672 So. 2d 650, 651 (Fla. 4th DCA 1996) ("[T]o preserve the matter for appeal, Rule 1.470(b) contemplates not simply the filing of the requested charge, but that the requested charge be brought to the court's attention.").
    - *But see Middelveen v. Sibson Realty, Inc.*, 417 So. 2d 275, 277 (Fla. 5th DCA 1982) ("[I]f a party submits a written request for a jury instruction, and it is rejected by the trial court, the issue is preserved for appellate review without more.").
- Failure to submit a proposed jury instruction will generally waive a challenge to the instructions given.
  - *City of Sunrise v. Bradshaw*, 470 So. 2d 804 (Fla. 4th DCA 1985).

Jury Instructions: Exceptions to Writing Requirement

- Best practice is to make the request in writing, but the writing requirement *may* be excused when:
  - A standard jury instruction is requested.
    - *Marley v. Saunders*, 249 So. 2d 30, 34-35 (Fla. 1971) (finding the issue was preserved when counsel objected to trial court's failure to give the standard jury instruction for contributory negligence).
  - Circumstances make submitting a written request difficult.
    - *Morowitz v. Vistaview Apartments, Ltd.*, 613 So. 2d 493, 495 (Fla. 3d DCA 1993) (finding the exigencies of an ongoing trial, as well as counsel's inability to predict which instructions would be rejected, excused the requirement that counsel submit a written alternative negligence instruction where her initial request for an instruction involving negligence per se was in proper form)
  - Submitting a written request would be futile.
    - *State Farm Mut. Auto. Ins. Co. v. Monacelli*, 486 So. 2d 630, 631 n.1 (Fla. 3d DCA 1986) ("Counsel is not required to engage in the totally useless and therefore unnecessary act of submitting a formal affirmative request for an instruction which the trial court has already stated it would not give.").



Objections to Jury Instructions

- Timing of Objection
  - Objections to proposed instructions must be made at the charge conference.
    - Fla. R. Civ. P. 1.470(b).
  - If you fail to object to the instruction at that time, any alleged error is waived, unless fundamental error is shown.
  - If you raise an objection only *after* the jurors have retired to deliberate, the objection is untimely and cannot be considered on appeal.
    - *Page v. Cory Corp.*, 347 So. 2d 817, 818 (Fla. 3d DCA 1977).
- Substance of Objection
  - Objections to instructions must be specific.
    - *Feliciano v. Sch. Bd. of Palm Bch Cnty.*, 776 So. 2d 306, 308 (Fla. 4th DCA 2000) ("A general objection is not sufficient.").
  - If you think an instruction proposed by your opponent should be phrased differently, merely objecting to the instruction is not sufficient. You must offer a written proposed instruction of your own in order to preserve error.
    - *Feliciano v. Sch. Bd. of Palm Bch Cnty.,* 776 So. 2d 306 , 308 (Fla. 4th DCA 2000).

Jury Instructions: Delivery of the Charge

- Where, during the actual charge, the trial court varies from the wording of written instructions, you must make a timely objection to enable the trial court to cure any error.
  - *Metro. Dade Cnty. v. Walsh Constr. Co. of Illinois*, 570 So. 2d 368 (Fla. 3d DCA 1990).

Verdict Forms

- Types of Verdict Forms.
  - General Verdict Form: A verdict form that asks the jury to determine whether it believes the defendant is liable, and if so, the damages owed to the plaintiff.
  - Special Interrogatory Verdict Form: A verdict form that requires the jury to answer several questions that form the basis of how they reach their liability and damages determinations.
- The trial court has discretion in determining which type of form should be submitted to the jury. *Walsh v. Diaz*, 409 So.2d 1186 (Fla. 4th DCA 1982).
- It is not fundamental error for the trial court to use a general verdict form. Thus, as with jury instructions, an appellate court will not review an error in the form of verdict in the absence of a timely objection. *Hurley v. Government Employees Ins. Co.*, 619 So. 2d 477 (Fla. 2d DCA 1993).

Verdict Forms Cont.

- Objections to General Verdict Forms.
  - A special verdict form requires specific jury instructions on each finding the jury must make. *Whitman v. Castlewood Int'l Corp.*, 383 So. 2d 618, 620 (Fla. 1980).
  - As a result, to properly object to a general verdict form, counsel must submit a special verdict form together with the necessary explanatory instructions in accordance with Rule 1.470(b) – meaning *before* the close of evidence and the charge conference. *Id.*
- A party must make a contemporaneous objection to preserve for appeal the trial court's refusal to use an itemized verdict form. *Hurley v. Gov't Employees Ins. Co*., 619 So. 2d 477 (Fla. 2d DCA 1993).

Verdict Forms Cont.

- The Two Issue Rule:
  - Applies when two or more issues are presented to the jury, any one of which could be determinative of the case, and the jury returns a general verdict.
  - Holding:

> Where there is no proper objection to the use of the general verdict, reversal is improper where no error is found as to one of two issues submitted to the jury on the basis that the appellant is unable to establish that he has been prejudiced.

Whitman v. Castlewood Int'l Corp., 383 So. 2d 618, 619 (Fla. 1980) (citing *Colonial Stores, Inc. v. Scarbrough*, 355 So. 2d 1181, 1186 (Fla. 1977)).

Jury Verdicts

- General Rule:
  - A verdict is presumed correct and should be construed to give effect to the jury's intent. *Skidmore, Owings & Merrill v. Volpe Constr. Co.*, 511 So. 2d 642, 643 (Fla. 3d DCA 1987).
- Inconsistent Verdicts: Civil Cases.
  - A legally inconsistent verdict is one which contains two or more findings which, as a matter of law, cannot co-exist. *Francis-Harbin v. Sensormatic Elecs, LLC*, 254 So. 3d 523, 525 (Fla. 3d DCA 2018).
  - Generally, only the empaneled jury can correct an inconsistent verdict. This means, that the party that disagrees with the judgment ***must object*** to raise the issue before the jury is discharged or the issue is waived as grounds for appeal. *Coba v. Tricam Indus.*, 164 So. 3d 637, 639 (Fla. 2015).
  - If the trial court is faced with a proper objection but refuses to reinstruct the jury and send it back for re-deliberation, the error is reversable.

Jury Verdicts Cont.

- Inconsistent Verdict: Criminal Cases.
  - Factually or Logically Inconsistent Verdicts.
    - Factually or logically inconsistent verdicts are permitted as a function of the jury's inherent authority to acquit, even if the facts support a conviction. In other words, verdicts can be the result of lenity and therefore do not always speak to the guilt or innocence of the defendant.
  - Legally Inconsistent Verdict.
    - The exception is a legally inconsistent, or "true inconsistent" verdict, where an acquittal on one count negates a necessary element for conviction on another count.
    - True inconsistent verdicts are prohibited because the possibility of wrongful conviction in such cases outweighs the rational for allowing the verdicts to stand.
  - Inconsistent verdicts may be raised on appeal regardless of a contemporaneous objection if the error is fundamental, meaning it "goes to the foundation of the case or goes to the merits of the cause of action." *Proctor v. State*, 205 So. 3d 784, 789 (Fla. 2d DCA 2016).

Jury Verdicts Cont.

- Inadequate Verdicts or Verdicts Contrary to the Manifest Weight of Evidence.
  - A verdict is "contrary to the manifest weight of the evidence" if it is not supported by the clear import of the evidence presented. *Brown v. Estate of Stuckey*, 749 So. 2d 490, 495 (Fla. 1999).
  - An "inadequate verdict" arises where damages awarded are less than the amount proven. *Calloway v. Dania Jai Alai Palace, Inc.*, 560 So. 2d 808, 809 (Fla. 4th DCA 1990).
  - The proper method to challenge an inadequate verdict is to file a motion for new trial. *Cowen v. Thornton*, 621 So. 2d 684, 687 (Fla. 2d DCA 1993). While the trial court has discretion to grant such motions, its role is not to substitute the court's verdict for that of the jury. *Wackenhut Corp. v. Canty,* 359 So. 2d 430, 437 (Fla. 1978)

Juror Misconduct: Sleeping or Inattentive Jurors

- If juror is sleeping or inattentive during trial, state this fact on the record.
- Move for mistrial or new trial; must show prejudice.
  - *Int'l Ins. Co. v. Ballon*, 403 So. 2d 1071 (Fla. 4th DCA 1981) (noting that it is incumbent upon movant to show prejudice resulting from juror inattentiveness).

Juror Misconduct: Deliberations

- Juror's conduct during deliberations cannot be used to challenge verdict if that conduct "inheres in the verdict and relates to the jury's deliberations." *Johnson v. State*, 593 So. 2d 206, 210 (Fla. 1992).

- "In considering claims of juror misconduct, the court must initially determine whether the facts alleged are matters that inhere in the verdict and are subjective in nature or are extrinsic to the verdict and objective." *Marshall v. State*, 854 So. 2d 1235, 1240 (Fla. 2003).

Juror Misconduct: Conduct that Inheres in the Verdict

- Jurors' emotions, mental processes, or mistaken beliefs
- Jurors' misunderstanding of jury instructions
  - *Simpson v. State*, 3 So. 3d 1135 (Fla. 2009).
- Juror was unduly influenced by statements of other jurors
  - *Simpson v. State*, 3 So. 3d 1135 (Fla. 2009).
- Jurors' sympathy for a party
  - *Carcasses v. Julien*, 616 So. 2d 486 (Fla. 3d DCA 1993).
  - *Baptist Hosp. v. Maler*, 579 So. 2d 97 (Fla. 1991).

Juror Misconduct: Extrinsic Matters

- Review of non-record information.
  - *Devoney v. State*, 717 So. 2d 501 (Fla. 1998).
  - Must be prejudicial to warrant new trial. *State v. Newman*, 104 So. 3d 1180 (Fla. 4th DCA 2013).
- Statements indicating racial bias made during deliberations.
  - *Powell v. Allstate Ins. Co.*, 652 So. 2d 354 (Fla. 1995).

Juror Misconduct: Juror Interviews

- Motion for juror interview must be filed within 15 days after rendition of verdict, unless good cause is shown for failure to file motion within that time. Fla R. Civ. P. 1.431(h).
- Juror interview will be granted only if there are sufficient allegations of misconduct relating to matters extrinsic to verdict.
  - *Orange Cnty. v. Fuller*, 502 So. 2d 1364 (Fla. 5th DCA 1987).
- Often need to conduct juror interviews to show juror misconduct and/or prejudice resulting from such misconduct
  - *Gould v. State*, 745 So. 2d 354 (Fla. 4th DCA 1999).

Directed Verdict

- Rule 1.480(a):
  - Make motion at the close of evidence offered by the adverse party.
  - "A motion for a directed verdict shall state the specific grounds therefor."
- Rule 1.480(b) treats the denial of a directed verdict motion at the close of the evidence as a reservation of ruling; thus, you must renew the motion after judgment.
  - Within 15 days after the return of a verdict, a party who has timely moved for a directed verdict may serve a motion to set aside the verdict and any judgment entered thereon and to enter judgment in accordance with the motion for a directed verdict.
  - If a verdict was not returned, a party who has timely moved for a directed verdict may serve a motion for judgment in accordance with the motion for a directed verdict within 15 days after discharge of the jury.

Directed Verdict Cont.

- A party cannot raise new arguments in post-trial motion for judgment in accordance with prior DV motion if that argument was not raised in DV motion made at conclusion of the evidence.
  - *Houghton v. Bond*, 680 So. 2d 514, 522 (Fla. 1st DCA 1996) ("[A] party cannot seek judgment in accordance with a previously-made motion for directed verdict unless that party has actually asserted the grounds raised in the motion for directed verdict made at the conclusion of the evidence in the case.").
  - *TLO S. Farms, Inc. v. Heartland Farms, Inc.*, 282 So. 3d 145, 148 (Fla. 2d DCA 2019), *review denied*, No. SC19-1981, 2020 WL 6280819 (Fla. Oct. 27, 2020) (same).
- Exception for civil bench trials: party may raise insufficiency of the evidence for the first time on appeal.
  - Fla. R. Civ. P. 1.530(e).

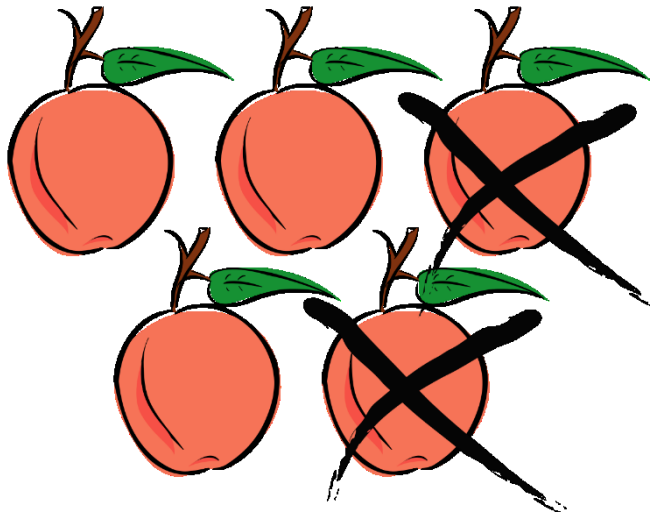
Motions for New Trial or Rehearing

- Rule 1.530:
  - May be granted to all or any parts on all or part of the issues, and on motion for rehearing of matters heard without a jury, the court may open the judgment if one has been entered, take additional testimony, and enter a new judgment.
- Broad Grounds, Narrow Time.
  - The potential grounds for a motion for new trial or rehearing are broad, and the trial court must specify the specific grounds upon which it relied in the order
    - Examples of grounds for a Motion for New Trial include inadequate verdict and juror misconduct that is prejudicial. *See Cowen v. Thornton*, 621 So. 2d 684, 687 (Fla. 2d DCA 1993) (inadequate verdict); *Int'l Ins. Co. v. Ballon*, 403 So. 2d 1071 (Fla. 4th DCA 1981) (misconduct).
  - If error appears for the first time in the judgment itself, a motion for rehearing is necessary to raise the issue before the trial court to preserve the error for further review. *Williams v. Williams*, 152 So. 3d 702, 704 (Fla. 1st DCA 2014).
  - The motion must be filed and served within 15 days after return of the verdict in a jury action or the date of filing of the judgment in a non-jury action, but the motion may be amended at the discretion of the trial court to state new grounds at any time before a decision is made.

Motions for Additur or Remittitur

- Rule 1.535:
  - Any party may serve a motion for remittitur or additur. The motion shall state the applicable Florida law under which it is being made, the amount the movant contends the verdict should be, and the specific evidence that supports the amount stated or a statement of the improper elements of damages included in the damages award.
  - The trial court must specify the specific statutory criteria relied upon.

- Timing.
  - The motion must be filed within the time for a motion for rehearing or new trial: 15 days after return of the verdict in a jury action or the date of filing of the judgment in a non-jury action.
  - Any party adversely affected by the order granting remittitur or additur may reject the award and elect a new trial on the issue of damages only by filing a written election within 15 days after the order granting remittitur or additur is filed.



Motions for Additur Cont.

- The legislature has authorized trial courts to review jury verdicts upon a proper motion to determine, in their discretion, if the amount is excessive or inadequate as part of their ongoing duty to scrutinize damage awards. § 768.74, Fla. Stat.
- Criteria to Consider in determining whether an award is excessive or inadequate:
  - Whether the amount awarded is indicative of prejudice, passion, or corruption on the part of the trier of fact;
  - Whether it appears that the trier of fact ignored the evidence in reaching a verdict or misconceived the merits of the case relating to the amounts of damages recoverable;
  - Whether the trier of fact took improper elements of damages into account or arrived at the amount of damages by speculation and conjecture;
  - Whether the amount awarded bears a reasonable relation to the amount of damages proved and the injury suffered; and
  - Whether the amount awarded is supported by the evidence and is such that it could be adduced in a logical manner by reasonable persons

Questions?

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