GROUP 1
JAMES C. ADKINS, JR. INNS OF COURT

VOIR DIRE: GETTING TO THE NUTS AND DOLTS OF JURY SELECTION

RESEARCH PACKET

GENERAL INFORMATION ON JURY SELECTION

PEREMPTORY CHALLENGES

- Number of Challenges
    - Civil: Each party gets **3 peremptory challenges**. If the number of parties is unequal, the opposing parties are entitled to the same aggregate number of peremptory challenges. Fla.R.Civ.P. Rule 1.431.
    - Criminal: Fla.R.Crim.P. Rule 3.350.
        - *Felonies Punishable by Death or Imprisonment for Life:* Ten
        - *All Other Felonies:* Six
        - *Misdemeanors:* Three
        - **Codefendants Tried Jointly.** Each defendant gets the number of peremptory challenges as specified above. In this situation, the State gets the same number of peremptory challenges as all of the defendants.
        - **Multiple Counts and Multiple Charging Documents.** The defendant shall be allowed the number of peremptory challenges that would be permissible in a single case. Judge may grant extra challenges in extenuating circumstances.
        - **Alternate Jurors.** If 1 or 2 alternate jurors are called, each party is entitled to 1 peremptory challenge, in addition to those otherwise allowed by law, for each alternate juror so called. The additional peremptory challenge may only be used on the alternate juror.
        - **Additional Challenges.** The trial judge may exercise discretion to allow additional peremptory challenges when appropriate.
    - Federal: Each party is entitled to three peremptory challenges. Several defendants or several plaintiffs may be considered a single party for purposes of making challenges, or the court may allow additional peremptory challenges for them to be exercised separately or jointly. 28 U.S.C. § 1870 (2006).

- Cannot use peremptory challenges based on discrimination. *Batson v. Kentucky*, 476 U.S. 79 (1986).

CAUSE CHALLENGES

- Number of Challenges
  - Civil: unlimited
  - Criminal: unlimited
  - Federal: number is determined by the court – during trial or deliberation, the court may excuse a juror for good cause. Fed.R.Civ.P. Rule 47. *See also* 28 U.S.C. § 1870 (2006).
- The test that the courts generally use to determine whether a challenge "for cause" should be granted is *"whether the juror can lay aside any bias or prejudice and render a verdict solely upon the evidence presented and the instructions on the law given by the court."* Pacot v. Wheeler, 758 So. 2d 1141 (Fla. 4th DCA 2000)(*quoting* Bryant v. State, 656 So. 2d 426, 428 (Fla. 1995).).

- (Fla. Stat. § 913.03) In Florida, challenges for cause may be made only on the following grounds:

  (1) The juror does not have the qualifications required by law;

  (2) The juror is of unsound mind or has a bodily defect that renders him or her incapable of performing the duties of a juror, except that, in a civil action, deafness or hearing impairment shall not be the sole basis of a challenge for cause of an individual juror;

  (3) The juror has conscientious beliefs that would preclude him or her from finding the defendant guilty;

  (4) The juror served on the grand jury that found the indictment or on a coroner's jury that inquired into the death of a person whose death is the subject of the indictment or information;

  (5) The juror served on a jury formerly sworn to try the defendant for the same offense;

  (6) The juror served on a jury that tried another person for the offense charged in the indictment, information, or affidavit;

(7) The juror served as a juror in a civil action brought against the defendant for the act charged as an offense;

(8) The juror is an adverse party to the defendant in a civil action, or has complained against or been accused by the defendant in a criminal prosecution;

(9) The juror is related by blood or marriage within the third degree to the defendant, the attorneys of either party, the person alleged to be injured by the offense charged, or the person on whose complaint the prosecution was instituted;

(10) The juror has a state of mind regarding the defendant, the case, the person alleged to have been injured by the offense charged, or the person on whose complaint the prosecution was instituted that will prevent the juror from acting with impartiality, but the formation of an opinion or impression regarding the guilt or innocence of the defendant shall not be a sufficient ground for challenge to a juror if he or she declares and the court determines that he or she can render an impartial verdict according to the evidence;

(11) The juror was a witness for the state or the defendant at the preliminary hearing or before the grand jury or is to be a witness for either party at the trial;

(12) The juror is a surety on defendant's bail bond in the case.

- While a trial court is afforded great discretion in ruling on challenges of jurors for cause, close cases involving challenges to the impartiality of potential jurors should be resolved in favor of excusing the juror rather than leaving doubt as to impartiality. Four Wood Consulting, LLC v. Fyne, App. 4 Dist., 981 So.2d 2 (2007).
- If there is reasonable doubt about a juror's ability to be fair and impartial, the juror should be dismissed for cause. Four Wood Consulting, LLC v. Fyne, App. 4 Dist., 981 So.2d 2 (2007).

PRESERVING THE APPELLATE ISSUE

- To preserve for appellate review a claim that trial court improperly denied a cause challenge to a juror, a defendant must exhaust his peremptory challenges, request an additional peremptory challenge from the court, and demonstrate that an objectionable juror was seated. Carratelli v. State, App. 4 Dist., 832 So.2d 850 (2002). *See also LaValley v. State*, 20 So. 3d 513, 517 (Fla. 5th DCA 2009).

- The juror identified as objectionable "must be an individual who actually sat on the jury...." We read this requirement from *Trotter* as meaning that the objectionable juror must have participated in deliberations leading to a verdict, so that it can be said that some harm or prejudice to the objecting party occurred. *Frazier v. Wesch*, 913 So. 2d 1216, 1217 (Fla. 4th DCA 2005).

JUROR BILL OF RIGHTS, Fla. Stat. 40.50 (1999):

(1) In any civil action immediately after the jury is sworn, the court shall instruct the jury concerning its duties, its conduct, the order of proceedings, the procedure for submitting written questions of witnesses, and the legal issues involved in the proceeding.

(2) In any civil action which the court determines is likely to exceed 5 days, the court shall instruct that the jurors may take notes regarding the evidence and keep the notes to refresh their memories and to use during recesses and deliberations. The court may provide materials suitable for this purpose. The court should emphasize the confidentiality of the notes. After the jury has rendered its verdict, any notes shall be collected by the bailiff or clerk who shall promptly destroy them.

(3) The court shall permit jurors to submit to the court written questions directed to witnesses or to the court. The court shall give counsel an opportunity to object to such questions outside the presence of the jury. The court may, as appropriate, limit the submission of questions to witnesses.

(4) The court shall instruct the jury that any questions directed to witnesses or the court must be in writing, unsigned, and given to the bailiff. If the court determines that the juror's question calls for admissible evidence, the question may be asked by court or counsel in the court's discretion. Such question may be answered by stipulation or other appropriate means, including, but not limited to, additional testimony upon such terms and limitations as the court prescribes. If the court determines that the juror's question calls for inadmissible evidence, the question shall not be read or answered. If the court rejects a juror's question, the court should tell the jury that trial rules do not permit some questions and that the jurors should not attach any significance to the failure of having their question asked.

(5) The court may give final instructions to the jury before closing arguments of counsel to enhance jurors' ability to apply the law to the facts. In that event, the court may withhold giving the necessary procedural and housekeeping instructions until after closing arguments.

LAW ENFORCEMENT RELATIVE

Florida courts have held that a law enforcement relative is a valid "gender neutral reason" for a peremptory strike. See Rojas v. State, 790 So.2d 1219, 1221 (Fla. 3d DCA 2001).

However, the striking party must be clear that the connection to law enforcement is being offered as a neutral reason. See Hayes v. State, 45 So. 3d 99, 103 (Fla. 1st DCA 2010) (holding that the trial court did not clearly err in denying a peremptory challenge, where the striking attorney said "I don't have a gender-neutral reason" for the strike, and the record was devoid of connection between the challenged juror and other prior strikes).

LESSON LEARNED: *When attempting to provide a neutral reason for a peremptory strike, always make a full record!*

It is improper to allow a cause challenge based on lack of impartiality merely because a prospective juror has a connection to law enforcement. See Hernandez v. State, 4 So. 3d 642, 659 (Fla. 2009). The Hernandez court held that:

> The Sixth and Fourteenth Amendments to the United States Constitution guarantee a defendant the right to an impartial jury. *Ross v. Oklahoma,* 487 U.S. 81, 85, 108 S.Ct. 2273, 101 L.Ed.2d 80 (1988) (citing *Wainwright v. Witt,* 469 U.S. 412, 105 S.Ct. 844, 83 L.Ed.2d 841 (1985), and *Irvin v. Dowd,* 366 U.S. 717, 722, 81 S.Ct. 1639, 6 L.Ed.2d 751 (1961)). Under Florida law, "juror impartiality is a firm basis for excusing a prospective juror for cause." *Busby v. State,* 894 So.2d 88, 99 (Fla.2004). "The test for determining juror competency is whether the juror can lay aside any bias or prejudice and render his verdict solely upon the evidence presented and the instructions on the law given to him by the court." *Lusk v. State,* 446 So.2d 1038, 1041 (Fla.1984) (citing *Singer v. State,* 109 So.2d 7 (Fla.1959)). If any reasonable doubt exists as to whether a juror possesses an impartial state of mind, the juror must be excused for cause. *Busby,* 894 So.2d at 95.
> Id.

If a juror indicates that he would favor a law enforcement officer's testimony over a lay witness's testimony, the juror should be excused for cause. See Salgado v. State, 829 So. 2d 342, 344 (Fla. 3d DCA 2002); Martinez v. State, 795 So. 2d 279, 281 (Fla. 3d DCA 2001). Even if a juror ***says*** that he will follow the law, he should be removed for cause if it appears that he cannot do so. See Salgado, 829 So. 2d at 354; Martinez, 795 So. 2d at 283.

However, the mere fact that a juror gives an equivocal response to a question relating to impartiality (ie – "I don't know") does not disqualify a juror from service, without more. See Busby, 894 So. 2d at 96. A juror may be rehabilitated if she provides unequivocal responses about her ability to follow and apply the law. See id. A juror should be excused if there is any reasonable doubt whether he can lay aside his biases and prejudices and render a verdict based on the evidence and the law. See id. at 95.

IMPARTIALITY AND COMPETENCY OF JURORS

The competence and impartiality of jurors are judged the same for both criminal and civil cases.

Fla. Stat. § 913.12 (2011): Qualifications of jurors: "The qualifications of jurors in criminal cases shall be the same as their qualifications in civil cases."

> "The test for determining juror competency is whether the juror can lay aside any bias or prejudice and render his verdict solely upon the evidence presented and the instructions on the law given to him by the court."
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> Lusk v. State, 446 So. 2d 1038, 1041 (Fla. 1984).

> When a party seeks to strike a potential juror for cause, the trial court must allow the strike when "there is basis for any reasonable doubt" that the juror had "that state of mind which w[ould] enable him to render an impartial verdict based solely on the evidence submitted and the law announced at the trial." Singer v. State, 109 So. 2d 7, 23-4 (Fla. 1959); see also Ault v. State, 866 So. 2d 674, 683 (Fla. 2003) (same). Courts have held that ambiguities or uncertainties about a juror's impartiality should be resolved in favor of excusing the juror. See Cottrell v. State, 930 So. 2d 827, 829 (Fla. 4th DCA 2006) (quoting Huber v. State, 669 So. 2d 1079, 1081 (Fla. 4th DCA 1996) ("This court has held that it is error not to grant a challenge for cause when there is a basis for any reasonable doubt as to the juror's ability to render an impartial verdict, and that close cases should be resolved in favor of excusing the juror rather than leaving doubt.")); Smith v. State, 907 So. 2d 582, 585 (Fla. 5th DCA 2005) (same).
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> Carratelli v. State, 961 So. 2d 312, 318 (Fla. 2007).

Fla. Stat. § 913.03. Grounds for challenge to individual jurors for cause. "A challenge for cause to an individual juror may be made only on the following grounds: [...] (10) The juror has a state of mind regarding the defendant, the case, the person alleged to have been injured by the offense charged, or the person on whose complaint the prosecution was instituted that will prevent the juror from acting with impartiality, but the formation of an opinion or impression regarding the guilt or innocence of the defendant shall not be a sufficient ground for challenge to a juror if he

or she declares and the court determines that he or she can render an impartial verdict according to the evidence[.]"

Joseph v. State, 983 So. 2d 781, 783_784 (Fla. Dist. Ct. App. 4th Dist. 2008)(finding reversible error where trial court denied a strike for cause on a juror who stated defendant went into a trial with a presumption of guilt but also stated that juror could be fair and impartial).

Bell v. Greissman, 902 So. 2d 846 (Fla. 4th DCA 2005): "It is now well-established that if there is a reasonable doubt about the juror's impartiality, the juror should be dismissed for cause. Close cases involving challenges to the impartiality of potential jurors should be resolved in favor of excusing the juror rather than leaving doubt as to impartiality."

Although trial courts generally have discretion in deciding to strike a juror for cause based on bias or prejudice, the rules that apply to resolving this issue do permit the exercise of "broad" discretion. Pacot v. Wheeler, 758 So. 2d 1141 (Fla. 4th DCA 2008).

Qualified promises by a prospective juror to be fair and impartial *may not be enough* to ensure a fair trial in light of his or her prior statements. Montozzi v. State, 633 So. 2d 563, 565 (Fla. 4th DCA 1994); Robinson v. State, 506 So. 2d 1070, 1072 (Fla. 5th DCA 1987). In Club West, Inc. v. Tropigas of Florida, Inc., 514 So. 2d 426 (Fla. 3d DCA 1987), the court held: "Where a juror initially demonstrates a predilection in a case which in the juror's mind would prevent him or her from impartially reaching a verdict, a subsequent change in that opinion, arrived at after further questioning by the parties' attorneys or the judge, is properly viewed with some scepticism." See, e.g., Johnson v. Reynolds, 97 Fla. 591, 599, 121 So. 793, 796 (1929); Singer, 109 So.2d at 24. The test to be applied by the court is "whether the prospective juror is capable of removing the opinion, bias or prejudice from his or her mind and deciding the case based solely on the evidence adduced at trial." Singer, 109 So.2d at 24; State v. Williams, 465 So. 2d 1229, 1231 (Fla. 1985). A juror's assurance that he or she is able to do so *is not* determinative. Singer, 109 So.2d at 24; Smith v. State, 463 So. 2d 542, 544 (Fla. 5th DCA 1985); Leon, 396 So.2d at 205; Club West, Inc. v. Tropigas of Florida, Inc., 514 So.2d 426, 427 (Fla. 3d DCA 1987).

JUROR FINANCIAL HARDSHIP

Striking a Juror with Financial Hardship

Standard: Financial Hardship

The standard for striking a juror for cause is "whether the juror can lay aside any bias or prejudice and render a verdict solely upon the evidence presented and the instructions on the law given by the court." Pacot v. Wheeler, 758 So. 2d 1141 (Fla. 4th DCA 2000)(*quoting* Bryant v. State, 656 So. 2d 426, 428 (Fla. 1995).).

The standard for financial hardship is codified in Fla. Stat. § 40.013, and is entitled "persons disqualified or excused from jury service." Particularly, Fla. Stat. § 40.013(6) provides that "[a] person may be excused from jury service upon a showing of *hardship, extreme inconvenience, or public necessity*."

Additionally, the Juror's Bill of Rights provides that jurors have the right not to lose their job or have their job threatened because they are serving on a jury. See Fla. Stat. § 40.271, which provides in relevant part:

- § 40.271(1) "No person summoned to serve on any grand or petit jury in this state . . . shall be dismissed from employment for any cause because of the nature or length of service upon such jury."
- § 40.271(2) "Threats of dismissal from employment for any cause, by an employer or his or her agent to any person summoned for jury service in this state . . . may be deemed a contempt of the court from which the summons issued."

Standard: Compensation

The Juror's Bill of Rights provides that *Jurors have a right to get paid while serving as a juror*. However, there is no provision or other Florida law that requires *employers* to pay jurors while they are serving on jury duty. But, some ordinances require some employers to pay some employees for their service. See fn. I (Broward County). Also, many larger employers, such as Florida Power and Light, BellSouth, the Postal Service, and Publix, do *voluntarily* pay their employees, even though not required to do so. Employers compensating employees for jury service varies from employer to employer, but potential jurors should be instructed to check with their employers (during recesses in voir dire) to determine what their employer's policy is for compensation of jury service.

The standard for compensation for jury service is codified in Fla. Stat. § 40.24, and is entitled, "compensation and reimbursement policy."

In relevant part, Fla. Stat. § 40.24 provides that:

- § 40.24(1) *"[t]he compensation policy of this chapter shall be to prevent financial hardship being imposed upon any juror because of performance of juror service."*

JUROR FINANCIAL HARDSHIP (CONT.)

- § 40.24(3)(a) "*[j]urors who are regularly employed and who continue to receive regular wages while serving as a juror are not entitled to receive compensation from the clerk of the circuit court for the first 3 days of juror service.*"
- § 40.24(3)(b) *"[j]urors who are not regularly employed or who do not continue to receive regular wages while serving as a juror are entitled to receive $15 per day for the first 3 days of juror service."*
- § 40.24(4) *"[e]ach juror who serves more than 3 days is entitled to be paid by the clerk of the circuit court for the fourth day of service and each day thereafter at the rate of $30 per day of service."*
- § 40.24(5) *"[j]urors are not entitled to additional reimbursement by the clerk of the circuit court for travel or other out-of-pocket expenses."*
- § 40.24(7) *"[a]ny juror who is excused from jury service at his or her own request is not entitled to receive any compensation under subsection (3)."*

Disqualification of Potential Jurors:

There are three types of "statutory" disqualifications set forth in the Florida Statutes and Rules of Procedure:

1) Mandatory Disqualification,

2) Excusal Upon the Juror's Request, and

3) Excusal At the Judge's Discretion.

The referenced scenario of the self-employed potential juror falls under the judge's discretion to determine whether the potential juror may be excused upon showing of "hardship, extreme inconvenience, or public necessity." See Fla. Stat. § 40.013.

However, "biased jurors" are to be mandatorily disqualified. Examples of biased jurors that should be mandatorily disqualified are as follows:

- The potential juror's financial hardship causes the potential juror to "ha[ve] a state of mind regarding the defendant, case or the person alleged to have been injured . . . that will prevent the juror from acting with impartiality." (913.03)
- Any person who "has formed or expressed any opinion or is sensible of any bias or prejudice concerning it." Fla. R. Civ. P. 1.431.

NON-DISCRIMINATORY BASIS FOR JUROR CHALLENGE

Preemptory challenges are presumed to be nondiscriminatory. *State v. Neil*, 457 So. 2d 481, 486 (1984). If an opposing party believes the challenge is discriminatory, such party must make a timely objection, show that the challenged jurors are part of a racial group, and indicate that there is a strong likelihood that the jurors were challenged due to their race. *Id*. In *Neil*, a black male defendant had a prospective jury pool consisting of four blacks and thirty-one whites. *Id*. at 482. Three of the black jurors were removed due to the State's preemptory challenges. *Id*. The court ordered a new trial for Neil because the defendant's counsel objected and the court was unsure if these preemptive challenges were based solely on the jurors' race. *Id*. at 487.

To determine whether there was a strong likelihood of discriminatory intent in a preemptory challenge, courts should give "broad leeway" to those demonstrating that a likelihood exists and err on the side of caution to prevent discriminatory challenges. *State v. Slappy*, 522 So. 2d 18, 22 (1988). Rebuttals to discriminatory claims should include a "'clear and reasonably specific' racially neutral explanation of 'legitimate reasons'" for the challenge to be considered proper. *Id*. The judge must further decide if these reasons are "first, neutral and reasonable and, second, not a pretext." *Id*. In *Slappy*, the black defendant's counsel objected after the State used four of their six preemptory challenges to remove black jurors. *Id*. at 19. The court found reversible error because the State's preemptory challenges consisted of a pattern to exclude black minorities when the State did not question the jurors and the prospective jurors had indicated impartial attitudes. *Id*. at 23-24.

Preemptory challenges are presumed to be nondiscriminatory, and on appeal, the trial court's ruling will be upheld unless deemed clearly erroneous. *Melbourne v. State*, 679 So. 2d 759, 764-765 (1996). When determining whether the explanation provided by the offering party is credible, the court must evaluate the genuineness of the offering party's explanation not its reasonableness. *Id*. at 764. In *Melbourne*, the defense counsel generally objected to the State's strike on racial grounds, did not ask the prosecutor for his reasons of the requested strike, and proceeded with no further objection. *Id*. at 765. The court held that there was no error and a new trial would be contrary to *Neil* because the defense did not renew its objection and accordingly did not preserve this issue for review. *Id*.

USING PRIOR JURY EXPERIENCE AS PEREMPTORY CHALLENGE

- Prior jury experience cannot be used as a peremptory challenge. However, a person who has served as a juror in the court in which that person is called at any other time within 1 year is a ground of challenge for cause. Fla.R.Civ.P. Rule 1.431(c)(2).

ASKING HYPOTHETICAL QUESTIONS ABOUT YOUR CASE DURING VOIR DIRE

- The trial lawyer has the right to inquire into certain "core areas" to determine juror bias bearing on matters that are at the heart of the party's case. *Carver v. Neidermayer*, 920 So2d 123 (Fla 4th DCA 2006); *see also Ingrassia v. State*, 902 So2d 357 (Fla 4th DCA 2005).
- Trial lawyer is entitled to inquire into juror's attitudes toward:
    - Insurance. *Purdy v. Gulf Breeze Enterprises*, 403 So2d 1325 (Fla 1981).
    - Medical malpractice. *Kelman v. Motta*, 564 So2d 147 (Fla 4th DCA 1990).
    - Tort reform, frivolous lawsuits. *Anderson v. Dixson*, 334 F Supp 928 (S D Miss 2004).
    - Damages for pain and suffering and mental anguish. *Carver v. Neidermayer*, 920 So2d 123 (Fla 4th DCA 2006).
- The scope of voir dire properly includes questing about and references to a particular law even if stated in a hypothetical question. *Lavado v State*, 469 So2d 917 (Fla 3rd DCA 1985) (Pearson, dissenting), adopted in its entirety by Florida Supreme Court in *Lavado v State*, 492 So2d 1322 (Fla 1986). See also, *Carver v Neidermayer*, 920 So2d 123 (Fla 4th DCA 2006).

JUROR MISCONDUCT

Juror Misconduct (in general) in Florida (Pham v. State, 2011 Fla. LEXIS 1346, 9_10 (Fla. June 16, 2011):

> The Court has addressed the issue of juror misconduct and a court's power to discharge the jury and declare a mistrial: "It has been long established and continuously adhered to that the power to declare a mistrial and discharge the jury should be exercised with great care and caution and should be done only in cases of absolute necessity." Thomas v. State, 748 So. 2d 970, 980 (Fla. 1999) (citing Salvatore v. State, 366 So. 2d 745, 750 (Fla. 1978)). Moreover, addressing allegations of juror misconduct is left to the sound discretion of the trial judge. Doyle v. State, 460 So. 2d 353, 357 (Fla. 1984).

England v. State, 940 So. 2d 389, 402 (Fla. 2006). Specifically, with respect to a motion for mistrial, the Court has noted:

> A motion for a mistrial should only be granted when an error is so prejudicial as to vitiate the entire trial. Snipes v. State, 733 So. 2d 1000, 1005 (Fla. 1999). A trial court's ruling on a motion for mistrial is subject to an abuse of discretion standard of review. Perez v. State, 919 So. 2d 347 (Fla. 2005), cert. denied, 547 U.S. 1182, 126 S. Ct. 2359, 165 L. Ed. 2d 285 (2006).
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> Seibert v. State, 64 So. 3d 67, 35 Fla. L. Weekly S437 (Fla. July 8, 2010).

Any inquiry into juror misconduct must be limited to objective demonstration of overt acts committed by or in the presence of the jury or jurors which reasonably could have [*10] affected the verdict. Powell [v. Allstate Ins. Co.], 652 So. 2d [354,] 356 [(Fla. 1995)]; [Baptist Hospital of Miami, Inc. v.] Maler, 579 So. 2d [97,] 101 [(Fla. 1991)]; State v. Hamilton, 574 So. 2d 124, 128_29 (Fla. 1991).

Wilding v. State, 674 So. 2d 114, 117_118 (Fla. 1996), receded from in part by Devoney v. State, 717 So. 2d 501, 505 (Fla. 1998) ("We recede from that portion of Wilding which says that, while the jurors' subjective beliefs inhere in the verdict, any discussion of them can become an overt act of misconduct.").

If the [misconduct is] such that [it] would probably influence the jury, and the evidence in the cause is conflicting, the onus is not on the accused to show he was prejudiced for the law presumes he was. But it should be clearly understood that not all [misconduct] will vitiate a verdict, even though such conduct may be improper. It is necessary either to show that prejudice resulted or that the [misconduct was] of such character as to raise a presumption of prejudice. Amazon v. State, 487 So. 2d 8, 11 (Fla. 1986) (alterations in original) (quoting Russ v. State, 95 So. 2d 594, 600_01 (Fla.1957)).

JUROR MISCONDUCT (CONT.)

Estate of Roberts v. Tejada, 814 So.2d 334 (Fla. 2002): The Florida Supreme Court remanded a defense verdict back to the trial court to determine if juror misrepresentations were material thereby necessitating a mistrial where the jurors failed to disclose prior litigation experience in response to the trial court's and counsel's questioning and where other potential jurors were kept off of the jury who had prior litigation experience. Further, the Supreme Court held that conducting a background check by counsel was not considered part of the counsel's lack of due diligence in evaluating juror misconduct.

- In evaluating the juror misrepresentation and whether a mistrial was appropriate, the Florida Supreme Court cited to the test outlined in De La Rosa v. Zequeria, 659 So.2d 239 (Fla. 1995): 1) the information must be relevant and material to jury service; 2) the juror concealed the information in response to questioning; and 3) the non-disclosure was not because of the complaining party's lack of due diligence.

Out of State:

> The superior court held a series of evidentiary hearings in which counsel and the court questioned each juror as to his or her knowledge of and reliance on the Internet definitions during jury deliberations. Juror eight, the jury foreman, testified that after the first day of deliberations, he did a "Google" search at home on "first degree murder Arizona" (emphasis added), spending about one_half hour researching the issue. He printed the Internet definitions, brought them into the jury room, and discussed his research with other members of the jury. The foreman was not the only person who accessed the Internet to obtain definitions; so too did juror number nine, who acknowledged he had researched "premeditation" (unless otherwise noted, included in the "Internet definitions"). Jurors discussed and considered these Internet definitions during deliberations.

State v. Aguilar, 224 Ariz. 299, 300 (Ariz. Ct. App. 2010)(reversing where jurors accessed internet for key definitions).

JUROR PRIVACY

Florida Constitution—Article I, § 23. Right of privacy

Every natural person has the right to be let alone and free from governmental intrusion into the person's private life except as otherwise provided herein. This section shall not be construed to limit the public's right of access to public records and meetings as provided by law.

Sarasota Herald-Tribune v. State, 916 So. 2d 904 (Fla. 2d DCA 2005): In a case attracting incredible national media attention in the murder trial of Carlie Brucie, the lower court entered an order protecting the identities of the jurors, requiring the parties to the action to omit the names and addresses of the jurors, and preventing photography of the jury during the trial. The media appealed portions of the lower court's order as a prior restraint on speech and a violation of its first amendment rights.

In balancing the rights of the parties, the Court reasoned:

> In article 1, section 23, of the Florida Constitu-tion, every natural person is guaranteed the right "to be let alone and free from governmental intrusion into the person's private life." Admittedly, we do not guarantee our citizens that they will be free from me-dia intrusion into their lives, but citizens who are compelled to serve as jurors would seem to be entitled to some degree of protection when the government partners with the media to transform a courtroom into a live television show, supplemented by a large number of multimedia internet sites.
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> When a trial becomes such an extraordinary event, the trial court often needs to protect the jury from outside influence. Without some protection during the trial, jurors' names and faces would be readily recognizable by strangers who see them at the gas station, grocery store, or a restaurant. The like-lihood that one or more persons would try to influence their decisions, innocently or otherwise, seems very high.

See Sarasota Herald-Tribune, 916 So.2d at 907-08.

In finding that the lower court's order was too restrictive in protecting all disseminations of juror information, the Court stated:

> Nothing in the record before this court allows us to conclude that any specific intimidation or threat to the jury has occurred, but the trial court clearly sets forth a basis for why the publication of jurors' names and addresses might create individualized in-stances of intimidation. Taking steps to prevent court-provided access to the very information that would enable specific identification of individual juror members would appear to be within the trial court's discretion.