

2022
EDITION

ERROR PRESERVATION

A Quick-Reference Trial Guide for South Carolina Criminal Defense Attorneys



LEGAL DISCLAIMER

This quick-reference guide is general in nature and is for informational purposes only. It is not intended to be relied upon as legal advice or as a substitute for proper legal research. In the event of any conflict, real or apparent, between this guide and any applicable law, rule, or other governing authority, that authority will control.

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ERROR-PRESERVATION QUICK REFERENCE

GENERAL RULES:

- 1. STATE THE GROUNDS FOR YOUR MOTION/OBJECTION**
- 2. GET A CLEAR RULING**
- 3. CO-DEFENDANT ACTIONS - You must join co-defendant motions/objections for them to apply to your client.**
- 4. MAKE SURE EVERYTHING GETS PUT ON THE RECORD - ALL DISCUSSIONS/RULINGS (SIDE-BARS, BENCH CONFERENCES, CHAMBERS MEETINGS, ETC.)**
- 5. MAKE SURE ALL TANGIBLE ITEMS ARE MADE EXHIBITS**
- 6. MAKE SURE ALL EXHIBITS YOU WANT THE FACT-FINDER TO CONSIDER ARE PLACED IN EVIDENCE**
- 7. REFER TO EXHIBITS BY NUMBER/LETTER**

➔ **PRE-TRIAL MATTERS:**

INDICTMENT:

IF THE INDICMENT IS DEFECTIVE, YOU MUST OBJECT TO IT/MOVE TO QUASH BEFORE TRIAL

- *State v. Gentry*, 363 S.C. 93, 610 S.E.2d 494 (2005)

VOIR DIRE REQUEST

■ YOU WANT IT, BUT THE JUDGE SAYS “NO”.

- PROFFER IT (MAKE IT A COURT’S EXHIBIT) AND ARGUE IT
- MAKE SURE TO BE CLEAR WHAT THE REQUEST IS AND YOUR BASIS FOR REQUESTING IT
- GET A CLEAR RULING

MOTIONS IN LIMINE

■ **TESTIMONY OF WITNESS:**

■ YOU WANT IT IN BUT THE JUDGE SAYS “NO”.

- PROFFER IT (TAKE THE TESTIMONY *IN CAMERA*) AND ARGUE IT.

■ **OTHER EVIDENCE:**

STATEMENTS, PHOTOGRAPHS, DOCUMENTS, OTHER PHYSICAL EVIDENCE

■ YOU WANT IT IN BUT THE JUDGE SAYS “NO”.

- PROFFER IT (MAKE IT A COURT’S EXHIBIT) AND ARGUE IT.

■ **YOU OPPOSE STATE’S TESTIMONY/EVIDENCE, BUT THE JUDGE RULES THAT IT’S IN.**

- ***DON’T FORGET TO OBJECT AGAIN WHEN IT IS INTRODUCED IN TRIAL.***
- ***EXCEPTION: Don’t have to object again if ruling is on a constitutional issue and nothing changes during trial that might reasonably cause the judge to alter the pretrial ruling.*** *State v. Jones*, Op. No. 28074 (S.C. Sup. Ct. filed December 8, 2021).

➔ **RULINGS DURING TRIAL:**

■ **OPENING STATEMENTS**

- You must timely object when the error occurs, so the judge can fix it.

■ **TESTIMONY/EVIDENCE**

■ **YOU OPPOSE STATE'S TESTIMONY/EVIDENCE, BUT THE JUDGE RULES THAT IT'S IN.**

- ***OBJECT AGAIN IF ANY INTERVENING TIME BETWEEN INITIAL RULING AND INTRODUCTION OF TESTIMONY/EVIDENCE AT TRIAL WHICH MIGHT ALLOW THE JUDGE TO ALTER THE PREVIOUS RULING.***

- ***EXCEPTION: Don't have to object again if ruling was on a constitutional issue and nothing has changed during trial that might reasonably cause the judge to alter the pretrial ruling. State v. Jones, Op. No. 28074 (S.C. Sup. Ct. filed December 8, 2021).***

■ **OBJECTIONS**

- STATE YOUR GROUNDS
- GET A CLEAR RULING

■ **CURATIVE INSTRUCTIONS**

IMPROPER TESTIMONY = **OBJECTION**

JUDGE OFFERS CURATIVE INSTRUCTION

YOU DON'T LIKE IT, BUT WHAT CAN YOU DO?

DO NOT REFUSE THE CURATIVE INSTRUCTION! THAT WAIVES THE ISSUE ON APPEAL.

INSTEAD, IF TRUE,

1. Argue that the prejudice cannot be cured by a curative instruction
2. BUT THEN ACCEPT the curative instruction
3. and then, AFTER the curative instruction is given, OBJECT to it again and state your grounds

→ **AT THE END OF THE STATE'S CASE:**

- MAKE SURE JURY IS EXCUSED
- MOVE FOR DIRECTED VERDICT
- STATE GROUNDS FOR MOTION
- GET A CLEAR RULING

→ **BEFORE YOU REST:**

- MAKE SURE ALL EVIDENCE YOU WANT THE JURY TO CONSIDER IS PROPERLY MARKED AND ADMITTED.

→ **AT CLOSE OF ALL TESTIMONY**

(WHETHER DEFENSE PUTS UP NO CASE OR AFTER DEFENSE CASE AND ANY REPLY):

- RENEW MOTION FOR DIRECTED VERDICT
- STATE GROUNDS FOR MOTION
- GET A CLEAR RULING

→ **REQUESTS TO CHARGE – JURY INSTRUCTIONS**

■ YOU WANT IT, BUT THE JUDGE SAYS “NO”.

- PROFFER IT (MAKE IT A COURT'S EXHIBIT) AND ARGUE IT
- MAKE SURE TO BE CLEAR WHAT THE REQUEST IS AND YOUR BASIS FOR REQUESTING IT
- GET A CLEAR RULING

- NOTES:
1. Jury Charges MUST CONTAIN correct citations of law.
 2. If ANY PART of a requested charge is NOT a CORRECT statement of law, the judge may refuse to give the whole instruction.
 3. Beware of Charges on the Facts of the Case

→ **CLOSING ARGUMENTS**

- You must timely object when the error occurs, so the judge can fix it.

→ **AFTER VERDICT OF GUILTY**

- MOVE FOR NEW TRIAL
- STATE GROUNDS FOR MOTION
- GET A CLEAR RULING