LIMITATIONS ON THE SCOPE OF VOIR DIRE

In trying criminal cases in state court, the importance of jury selection cannot be overstated. Occasionally, however, defense counsel will encounter a trial judge who attempts to severely limit the scope of the voir dire examination. This may take the form of limiting questions about the defense in the case, or may include prohibitions on questioning the venire about constitutional protections and concepts.

Florida Rule of Criminal Procedure 3.300(b) provides for a reasonable voir dire examination of prospective jurors by counsel. The scope of meaningful voir dire which will satisfy the constitutional imperative of a fair and impartial jury depends on the issues in the case to be tried. Voir dire Ashould be so varied and elaborated as the circumstances surrounding the juror under examination in relation to the case on trial would seem to require….@ Lavado v. State, 469 So.2d 917 (Fla 3d DCA 1985). Where a juror=s attitude about a particular legal doctrine is essential to a determination of whether challenges for cause or peremptory challenges are to be made, the scope of voir dire properly includes questions about and references to that legal doctrine. Id. (citing Pait v. State, 112 So.2d 380).

In Lavado, supra, the trial court advised defense counsel that it was "not proper on a jury selection to go into law," and permitted counsel only to ask general questions about the ability to follow the court's instructions. Id., at 1322. Quoting the dissenting judge in the court of appeal opinion, the supreme court said that "[i]f he knew nothing else about the prospective jurors, the single thing that defense counsel needed to know was whether the prospective jurors could fairly and impartially consider the defense…." Id. (citation omitted). It therefore reversed the conviction.

Similarly, in Helton v. State, 719 So.2d 928 (3rd DCA 1998), the court held that it was error to preclude defense counsel from questioning the venire with respect to its understanding of the defense. Id., at 930. The court therefore reversed and remanded, noting that "defense counsel must be allowed the latitude to make sufficient inquiry into jurors' attitudes toward the defense." Id.

In Walker v. State, 724 So.2d 1232 (4th DCA 1999) the court held it was an abuse of discretion to preclude defense counsel from fully inquiring of the jurors as to both their understanding of, and their opinions about, the defense of entrapment. In Lavado, supra, the court would not permit inquiry into voluntary intoxication. 495 So.2d at 1322. Limitations on questioning about a specific recognized defense are clearly improper.

In Ingrassia v. State, 902 So.2d 357, the court precluded defense counsel from questioning the jury about the defendant's alleged recanted confession. Id. The trial court evidently believed that defense counsel was improperly "pre-trying" his case and would not permit inquiry into juror bias on the subject of recanted statements. Id. Similarly, in Perry v. State, 675 So.2d 976 (4th DCA 2006), the court held that restricting inquiry into whether a confession could be false was an abuse of discretion. Id., at 979. In Moses v. State, 535 So.2d 350 (4th DCA 1988), the court reversed because the trial court restricted defense counsel's questioning about the defendant's status as a convicted felon. Finding no distinction between questions about legal doctrine and questions designed to undercover

bias, the court held that "a defendant must be permitted to conduct a 'meaningful' voir dire and what constitutes a meaningful voir dire varies with each case." Id., at 351. Thus, the inquiry of counsel need not be limited to a strict definition of "defense."

In Mosely v. State, 842 So.2d 279 (3rd DCA 2003), the court held that counsel must be permitted to question the prospective jurors about the defense of misidentification, and also held that the court cannot preclude the defense from exploring other critical issues, even if those areas are covered by the trial court's questioning. "[T]he trial court cannot question prospective jurors on critical areas such as the presumption of innocence, burden of proof, and the right to silence, and then preclude counsel from further individual examination under the guise that it would be repetitive". Id., at 280 (citations omitted). See Ramirez v. State, 90 So.2d 332 (3rd DCA 2005) (trial court's admonition to counsel not to talk about reasonable doubt, burden of proof, and all that stuff" before jury selection improper).

In Miller v. State, 683 So.2d 600 (2nd DCA 1996), the court noted that prospective jurors do not respond in the same way to inquiry by a judge as they do to questions by defense counsel. Id., at 600-601. For this reason, the court may not cover "the most important areas of inquiry and then forbid…defense counsel from further exploration." Miller v. State, 785 So.2d 662, 664 (3rd DCA 2001). Thus, when trial judges choose to question potential jurors extensively, they should not do it in such a way as to impair counsel's right and duty to question the venire. Id., at 664.

As stated by Judge Fulmer of the Second District, "lack of adequate voir dire can infringe on the accused's constitutionally guaranteed right to a fair and impartial jury. Jurors' attitude about a legal doctrine or law can be essential in a particular case to a determination of whether challenges for cause or preemptory challenges should be made. The scope of voir dire properly includes questions about and references to such legal doctrines." Nicholson v. State, 639 So.2d 1027 (2nd DCA 1994) (citations omitted).

In defending their clients, defense counsel should object to limitations on voir dire, and, in order to preserve the record, proffer the questions that would be asked of the venire if permitted to do so. In addition, counsel must object to the panel at the time that jury selection is completed in order to raise the issue on appeal.