ADLER POLLOCK & SHEEHAN P.C.

FAST FIVE

RHODE ISLAND APPELLATE PRACTICE

(1) SUPREME COURT STAUNCHLY ADHERES TO RAISE OR WAIVE RULE.

The raise or waive rule, arguably one of the most important rules of appellate practice, is strictly adhered to by the Rhode Island Supreme Court.

Pursuant to the raise or waive rule, which is applicable in both civil and criminal cases, "an issue that has not been raised or articulated previously at trial is not properly preserved for appellate review." State v. Moten, 2008-51-C.A. at 9 (citing *State v. Gomez*, 848 A.2d 221, 237 (R.I. 2004)); *State v. Figuereo*, 31 A.3d 1283, 1289 (R.I. 2011)). The purpose behind the rule is to prevent appellate review of "'issues that were not presented to the trial court in such a posture as to alert the trial justice to the question being raised.'" *Id*. (quoting *Figuereo*, 31 A.3d 1283, 1289 (R.I. 2011).

In a decision this term, the Rhode Island Supreme Court reminded practitioners of its adherence to the raise or waive rule. *Id*. In so doing, the Court noted that it "'staunchly adhere[s]' to this procedural principle. *Id*. (quoting *Figuereo*, 31 A.3d at 1289). The rule is not "'some sort of artificial or arbitrary Kafkaesque hurdle." *Id*. (quoting *DeMarco v. Travelers Insurance Co*., 26 A.3d 585, 628 n.55 (R.I. 2011)). Rather, "the rule serves as an 'important guarantor of fairness and efficiency in the judicial process.'" *Id*. (quoting *DeMarco*, 26 A.3d at 28 n.55).

(2) GENERAL OBJECTIONS INSUFFICIENT TO PRESERVE ISSUES FOR APPELLATE REVIEW.

Applying the raise or waive rule in State v. Moten, 2008-51-C.A., the Rhode Island Supreme Court held that the defendant's counsel's utterance of the word "Objection" twice, without articulating the basis for that objection, was insufficient to preserve the issue for appeal.

In so doing, the Court cautioned that "'a general objection is not sufficient to preserve an issue for appellate review; rather, assignments of error must be set forth *with sufficient particularity* to call the trial justice's attention to the basis of the objection.'" *Id*. at 10 (quoting *United Station Associates v. Rossi*, 862 A.2d 185, 192 (R.I. 2004)). Thus, an objection without any accompanying explanation is insufficient to preserve an issue on appeal. *Id*.

(3) ONLY THE BASIS FOR OBJECTIONS ARTICULATED ON THE RECORD ARE PRESERVED FOR APPEAL.

In addition to the requirement that a party must make his or her objections with sufficient particularity to preserve the objection for appeal, only the basis for the objection that is articulated on the record is preserved for appeal.

In Greensleeves, Inc. v. Smiley, No. 2010-230-Appeal, the Rhode Island Supreme Court declined to review a party's argument that certain testimony should have been excluded based on a purported conditional immunity. *Id*. at 19. Before the trial court, the party had objected to the testimony on grounds of relevance but failed to raise any objection to the testimony based on the purported conditional immunity. *Id*. Invoking the raise or waive rule, the Court noted that "[i]t is well settled 'that when, at trial, the introduction of evidence is objected to for a specific reason, other grounds for objection are waived and may not be raised for the first time on appeal.'" *Id*.

at 20 (quoting *State v. Hallenbeck*, 878 A.2d 992, 1017-18 (R.I. 2005)).

(4) NARROW EXCEPTION TO THE RAISE OR WAIVE RULE PRESERVES SOME ISSUES FOR APPEAL.

Although the Rhode Island Supreme Court staunchly adheres to the raise or waive rule, it has also recognized a narrow exception to the rule. State v. Moten, 2008-51-C.A. (citing *State v. Dennis*, 29 A.3d 445, 449, 50 (R.I. 2011)). The exception only will apply if the alleged error is "more than harmless" and implicates "an issue of constitutional dimension derived from a novel rule of law that could not reasonably have been known to counsel at the time of trial." *Id*. at 12-13 (citing *State v. Breen*, 767 A.2d 50, 57 (R.I. 2001) and *State v. Burke*, 522 A.2d 725, 731 (R.I. 1987)). In State v. Moten, 2008-51-C.A., the Supreme Court emphasized that the narrow exception applies only to "novel constitutional rules." *Id*. at 17. Thus, it is not available when the Supreme Court merely "applies a familiar constitutional rule to a novel fact pattern." *Id*. Indeed, if the Court were to hold otherwise, "then virtually every constitutional decision of the Supreme Court would provide defendants an opportunity to take advantage of the exception." *Id*. Such a standard would eviscerate the narrow nature of the exception. *Id*.

(5) DID YOU KNOW?

Did you know that it is insufficient to state the basis for an objection to the introduction of certain testimony only in post-trial memoranda? The basis for the objection must be put on the record at the time the objection is made to the testimony at trial. *See* Greensleeves, Inc. v. Smiley, No. 2010-230-Appeal at 19 n.15.

Nicole J. Benjamin

nbenjamin@apslaw.com

www.apslaw.com

APQS | ADLER POLLOCK & SHEEHAN P.C.

One Citizens Plaza, 8th Floor
Providence RI 02903
401.274.7200
fax 401.751.0604

175 Federal Street
Boston MA 02110
617.482.0600
fax 617.482.0604