

and reversed her convictions. The ruling as to Wright was affirmed by the U.S. Supreme Court. Not federalizing his claim cost Giles a reversal of his conviction.

Of course, the federal rules apply equally to state review: no objection on appropriate grounds, no review on appeal because the issue has not been preserved. (**People v. Clark** (1993) 5 Cal. 4th 950, 988 n. 13 (When a party does not raise an argument at trial, he may not do so on appeal).

This is no small point. Precious constitutional rights can be sacrificed for lack of a few syllables in stating an objection. *See, e.g.* **Peterson v. Lampert** (9th Cir. 2003) 319 F.3d 1153 (petitioner did not fairly present his federal claim to state supreme court because on the face of his petition for review he expressly limited his claim to state constitutional law, used the term "inadequate" assistance instead of "ineffective" assistance, and cited only state law cases – federal petition dismissed as a result.)

If there is an appeal of this matter, the State will urge that trial counsel waived raising a constitutional claim and thus the defendant must be deemed procedurally barred from asserting it.

A remedy. To save this court's time during this trial, to not frustrate the jury during needless record-making sidebars for objections, and to not unduly interrupt opposing counsel's presentation of his or her case, present counsel requests permission to use abbreviated terminology in making his constitutional objections. This same simplified technique is commonly used to make standard evidentiary objections under the Evidence Code. Thus, it is common to object by saying "2403" in order to make an objection to evidence which has some relevance but which outweighed by its prejudicial value.

By the same token, the defense requests to make his constitutional objections in the following manner.

Option #1: The simplest alternative would make every hearsay,

relevance or "2403" objection **deemed to have been made** under the due process clause of the 14th Amendments, and under the confrontation clause of the 6th and 14th amendments. (This requires agreement by the court on the record.)

Option #2: If option #1 is rejected, then a "by the numbers" alternative is proposed: Any 5th Amendment due process objection would be made by simply by adding "5" to the evidentiary objection. Sixth Amendment confrontation or right to present evidence issues would be made by adding "6" to such claim protected by the 6th Amendment. When objecting to unconstitutional argument by the prosecutor to the jury, counsel would object by saying "prosecution error."¹ This too requires agreement by the court on the record. The specifics of incorporated meaning of either option #1 or #2 are as follows:

☛ **"5" ='s FIFTH AMENDMENT DUE PROCESS**

This objection encompasses the Fifth Amendment of the U.S. Constitution due process guarantee of a fair trial as made available to the States through the 14th Amendment, and under separate independent Oklahoma Constitutional protections provided therein are violated.

☛ **"6" ='s SIXTH AMENDMENT CONFRONTATION & RIGHT TO PRESENT EVIDENCE IN DEFENSE OF THE ACCUSED**

This objection states that the defendant's state and federal constitutional rights to confront witnesses against him as guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution, and under the similar, but separate and independent Oklahoma Constitutional protections provided therein are violated.

☛ **"PROSECUTION ERROR" MEANS THE FOLLOWING:**

1 **People v. Hill** (1998) 17 CAL.4TH 800, 823, FN. 1, HELD THAT THE CLAIM OF PROSECUTORIAL MISCONDUCT IS MORE PROPERLY CALLED PROSECUTORIAL "ERROR."

This objection includes the statement that the prosecutor's comment is irrelevant, inflammatory, and prejudicial. The objection is grounded in the defendant's state and federal due process rights to a fair trial under the Fifth and Fourteenth Amendments to the United States Constitution, as well as my client's state and federal constitutional right to confront witnesses against him as guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution, and under the similar, but separate and independent Oklahoma Constitutional protections provided therein. The error has "so infected the trial with unfairness as to make the resulting conviction a denial of due process." (**Donnelly v. DeChristoforo** (1974) 416 U.S. 637, 643.) I also ask the court to assign this as misconduct, strike the offending comments, and admonish the jury to disregard it. If the court will not do that, I ask for a mistrial given the extremely prejudicial nature of the statements on my client's fair trial rights. (**Berger v. U.S.**(1935) 295 U.S. 78.)

WHEREFORE, DEFENDANT ASKS THAT THE COURT CONDUCT A HEARING ON THIS MOTION AND GRANT THE RELIEF REQUESTED HEREIN.

RESPECTFULLY SUBMITTED,

Certificate of Service

THIS IS TO CERTIFY THAT THE UNDERSIGNED HAND DELIVERED A TRUE AND CORRECT COPY OF THIS PLEADING TO THE OFFICE OF THE TULSA COUNTY DISTRICT ATTORNEY, 9TH FLOOR, TULSA COUNTY COURT HOUSE, 500 S. DENVER AVE., TULSA, OKLAHOMA, ON THE ____ DAY OF _____, 200__.

BY: _____