

Objecting to Violations of Prior Rulings

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Most recognize the well-known rule that, “once a trial court has definitively ruled on an issue on the record, before or during trial, a party need not renew an objection at trial to preserve a claim for appeal.” A slightly less well-known corollary, however, provides: “yes, but make sure you’re the one who actually objected in the first instance.” In *Miller v. Allman*, 17-0080, 2018 WL 1701373, at *15 (W. Va. Apr. 6, 2018),

the Supreme Court of Appeals of West Virginia illustrates this point. Before trial, the defendants in *Miller* filed a motion in limine to prevent opposing counsel from engaging in “golden rule” arguments. That motion was granted. During closing, however, opposing counsel made comments that the defendants felt were just such golden rule arguments. Believing the trial court’s pretrial grant of the motion in limine constituted a definitive ruling on the issue and no objection was needed to preserve the issue for appeal, no objection was made to the golden rule comments. The appellate court disagreed and held the issue was waived. Citing to its own prior case law and to cases interpreting Federal Rule of Evidence 103(b), the court held that only the party who has *opposed* an earlier ruling is entitled to rely on the ruling to preserve a claim of error for appeal. The party who *obtained* the favorable ruling must still timely object if the opposing party violates the ruling.

Preservation Tip If you prevail on a ruling before or at trial, particularly on a motion in limine, and the opposing party violates that ruling during trial, you must timely object to that violation to preserve the issue for appeal.

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