

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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STEVEN J. WALKER, Personal Representative of  
the estate of NICHOLAS JAMES WALKER,  
deceased

UNPUBLISHED

Plaintiff-Appellant,

v

FORD MOTOR COMPANY,

Defendant-Appellee.

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No. 200362

Wayne Circuit Court

LC No. 94-420988 NP

Before: Smolenski, P.J. and White and Markman, JJ.

WHITE, J. (concurring)

I agree with the majority's resolution of the juror misconduct issue.

Regarding the jury selection issue, although I do not agree that the trial court's action was proper, I concur because I conclude that plaintiff waived the issue by failing to object at the time the court sua sponte excused juror Jeffries, and by affirmatively stating that he "was not asking for a mistrial" after defense counsel stated that that would be the appropriate remedy. Had the objection been made at the point the court announced its decision to excuse the juror, the court would have been alerted to plaintiff's objection to the court taking the action at that time, and the juror could have been retained on the jury, or other alternatives could have been discussed. Further, a mistrial was an appropriate remedy at the point plaintiff objected. The court was not obliged to grant an additional peremptory challenge, but could have declared a mistrial. Plaintiff was not entitled to choose his remedy, and waived the issue by insisting on one particular remedy.<sup>1</sup>

Regarding the issue involving defendant's expert witness and plaintiff's motion for new trial, I conclude that the denial of re-cross did not affect the outcome of the trial, and therefore reversal is not warranted.

/s/ Helene N. White

<sup>1</sup> I recognize that the court later stated that neither an additional peremptory challenge nor a mistrial was appropriate, but this was in the context of plaintiff having only asked that the court consider granting an additional peremptory challenge, and having rejected the mistrial option.