

Supreme Court of Florida

No. SC01-702

JAMES BORNEMANN, et al.,
Petitioners,

vs.

WANDA LYNN URE, et al.,
Respondents.

[August 29, 2002]

LEWIS, J.

We have for review Bornemann v. Ure, 778 So. 2d 1077 (Fla. 4th DCA 2001), which expressly and directly conflicts with this Court's decision in Roberts v. Tejada, 814 So. 2d 334 (Fla. 2002). We have jurisdiction. See art. V, § 3(b)(3), Fla. Const.

It is clear that the district court below viewed the failure of counsel to discover during trial information concealed by prospective jurors during voir dire as lack of diligence under this Court's decision in De La Rosa v. Zequeira, 659 So. 2d

239 (Fla. 1995). Further, the court below reasoned, without stating a “hard and fast rule,” that counsel was required to investigate records during trial to satisfy the diligence necessary to preserve a posttrial challenge to juror nondisclosure, contrary to the views we expressed in Roberts. The Fourth District Court of Appeal did not have benefit of our decision in Roberts when it considered this case, and, therefore, the decision of the Fourth District Court of Appeal is hereby quashed, and we remand this case for reconsideration by the district court pursuant to Roberts.

It is so ordered.

ANSTEAD, C.J., and SHAW, HARDING, and PARIENTE, JJ., concur.
WELLS, J., dissents with an opinion, in which QUINCE, J., concurs.

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING MOTION, AND
IF FILED, DETERMINED.

WELLS, J., dissenting.

I would discharge jurisdiction in this case. First, as I read the district court’s opinion, it determined that the concealed information was not material, and therefore, the materiality requirement of De La Rosa v. Zequeria, 659 So. 2d 239 (Fla. 1995), was not met. Second, I hope Roberts v. Tejada, 814 So. 2d 334 (Fla. 2002), was not intended to eliminate the due diligence requirement of De La Rosa altogether. In the present case, the district court merely came to a conclusion, in

the fact-specific situation, that there was not due diligence. I do not understand on what jurisdictional basis or for what reason this Court substitutes its judgment for that of the district court as to whether due diligence was exercised in this particular situation.

QUINCE, J., concurs.

Application for Review of the Decision of the District Court of Appeal -
Direct Conflict

Fourth District - Case No. 4D00-1000

(Palm Beach County)

William G. Edwards of Marlow, Connell, Valerius, Abrams, Adler & Newman, Miami,
Florida,

for Petitioners

Julie H. Littky-Rubin of Lytal, Reiter, Clerk, Fountain & Williams, LLP, West Palm
Beach, Florida,

for Respondents