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NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States v. Detroit Timber & Lumber Co.*, 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

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**LEE v. KEMNA, SUPERINTENDENT, CROSSROADS
CORRECTIONAL CENTER****CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR
THE EIGHTH CIRCUIT**

No. 00–6933. Argued October 29, 2001—Decided January 22, 2002

Petitioner Lee was tried for first-degree murder and a related crime in state court. His planned alibi defense—that he was in California with his family at the time of the murder—surfaced at each stage of the proceedings. Although Lee’s mother, stepfather, and sister voluntarily came to Missouri to testify to his alibi, they left the courthouse without explanation at some point on the third day of trial, the day the defense case began. Lee’s counsel moved for an overnight continuance to gain time to find the witnesses and enforce the subpoenas he had served on them. Neither the trial judge nor the prosecutor identified any procedural flaw in the motion’s presentation or content. The trial judge denied the motion, stating that it looked as though the witnesses had in effect abandoned Lee, that his daughter’s hospitalization would prevent the judge from being in court the next day, and that he would be unavailable on the following business day because he had another trial scheduled. The trial resumed without pause, no alibi witnesses testified, the jury found Lee guilty as charged, and he was sentenced to prison for life without possibility of parole. Lee’s new trial motion, grounded in part on the denial of his continuance motion, was denied, as was his motion for state postconviction relief, in which he argued, *inter alia*, that the refusal to grant his continuance motion deprived him of his federal due process right to a defense. His direct appeal and his appeal from the denial of postconviction relief were consolidated before the Missouri Court of Appeals, which disposed of the case on state procedural grounds. The appeals court held that the denial of the continuance motion was proper because Lee’s counsel had failed to comply with Missouri Supreme Court Rule 24.09, which requires that such motions be in

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writing and accompanied by an affidavit, and with Rule 24.10, which sets out the showings a movant must make to gain a continuance grounded on witnesses' absence. Declining to consider the merits of Lee's due process plea, the Missouri Court of Appeals affirmed his conviction and the denial of postconviction relief. He then filed a federal habeas application, which the District Court denied. The Eighth Circuit affirmed, ruling that federal review of Lee's due process claim was unavailable because the state court's rejection of that claim rested on state-law grounds—the failure of the continuance motion to comply with Rules 24.09 and 24.10—independent of the federal question and adequate to support the judgment, *Coleman v. Thompson*, 501 U. S. 722, 729.

Held: The Missouri Rules, as injected into this case by the state appellate court, did not constitute state grounds adequate to bar federal habeas review. Pp. 12–25.

(a) Although violation of firmly established and regularly followed state rules ordinarily bars federal review, there are exceptional cases in which exorbitant application of a generally sound rule renders the state ground inadequate to stop consideration of a federal question. See *Davis v. Wechsler*, 263 U. S. 22, 24. This case fits within that limited category. The Court is guided here by *Osborne v. Ohio*, 495 U. S. 103, 122–125. *Osborne* applied the general principle that an objection ample and timely to bring an alleged federal error to the attention of the trial court, enabling it to take appropriate corrective action, satisfies legitimate state interests, and therefore suffices to preserve the claim for federal review. The sequence of events in Lee's case also guides the Court's judgment. The asserted procedural oversights, Lee's alleged failures fully to comply with Rules 24.09 and 24.10, were first raised more than two and a half years after his trial. The two Rules, Missouri asserted, work together to enhance the reliability of a *trial court's* determination whether to delay a scheduled criminal trial due to the absence of a witness. Yet neither the prosecutor nor the trial judge so much as mentioned the Rules as a reason for denying Lee's continuance motion. If either had done so at the appropriate time, Lee would have had an opportunity to perfect his plea to hold the case over until the next day. Instead, the State first raised Rule 24.10 as a new argument in its brief to the Missouri Court of Appeals, and that court, it seems, raised Rule 24.09's writing requirements on its own motion. Pp. 12–17.

(b) Three considerations, in combination, lead to the conclusion that the asserted state grounds are inadequate to block adjudication of Lee's federal claim. First, when the trial judge denied Lee's motion, he stated a reason that could not have been countered by a perfect motion for continuance: He said he could not carry the trial over

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until the next day because he had to be with his daughter in the hospital; he further informed counsel that another scheduled trial prevented him from concluding Lee's case on the following business day. Although the judge hypothesized that the witnesses had abandoned Lee, no proffered evidence supported this supposition. Second, no published Missouri decision directs flawless compliance with Rules 24.09 and 24.10 in the unique circumstances of this case—the sudden, unanticipated, and at the time unexplained disappearance of critical, subpoenaed witnesses on what became the trial's last day. Third and most important, the purpose of the Rules was served by Lee's submissions both immediately before and at the short trial. As to the "written motion" requirement, Rule 24.09 does not completely rule out oral continuance motions, and the trial transcript enabled an appellate court to comprehend the situation quickly. As to Rule 24.10, two of the Rule's components were stressed by the State. Missouri asserted, first, that Lee's counsel never mentioned in his oral motion the testimony he expected from the missing witnesses, and second, that Lee's counsel gave the trial court no reason to believe that those witnesses could be located within a reasonable time. These matters, however, were either covered by the oral continuance motion or otherwise conspicuously apparent on the record. Thus, the Rule's essential requirements were substantially met in this case, and nothing would have been gained by requiring Lee's counsel to recapitulate in rank order the showings the Rule requires. See, e.g., *Osborne*, 495 U. S., at 124. The case is therefore remanded for adjudication of Lee's due process claim on the merits. Pp. 17–25.

213 F. 3d 1037, vacated and remanded.

GINSBURG, J., delivered the opinion of the Court, in which REHNQUIST, C. J., and STEVENS, O'CONNOR, SOUTER, and BREYER, JJ., joined. KENNEDY, J., filed a dissenting opinion, in which SCALIA and THOMAS, JJ., joined.