IN THE SUPREME COURT OF FLORIDA

LEONARD SPENCER

-VS-

STATE OF FLORIDA

Supreme Court No. 69,883

Circuit Court No. 86-5921 CF A02

Record on Appeal Consolidated with
Vernon Amos -vs- State of Florida
Supreme Court No. 69,929
Circuit Court No. 86-5921 CF B02

REPLY BRIEF OF APPELLANT

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SUMMARY OF ARGUMENT

The circuit court's good intentions in creating the jury districts in Palm Beach County, and the "racially neutral" placing of a line down the center of the county, are irrelevant. Good intentions, if they result in a racially biased jury selection process, do nothing to render the system valid. **Jordan v. State**, 293 So.2d 131 (2nd DCA Fla. 1974).

An essential component of the right of jury trial afforded by the **Florida** and **United States Constitutions** is the right to a jury drawn from laypersons representative of a fair cross-section of the community served by the court. **Williams v. Florida**, 399 U.S. 78 (1970); **Taylor v. Louisiana**, 419 U.S. 522 (1975); **Bass v. State**, 368 SO.2D 447 (1st DCA Fla. 1979). Palm Beach County's racially biased selection process, using one jury district with a population that is over 50 % Black and another with a population less than 7 % Black, fails to afford that right.

Just as significant is the denial of equal protection of the laws. None of the case authorities relied on by the State deal with this additional issue.

A defendant in the Glades Jury District (the western half of the county) has the option to accept trial with a jury venire that totally **excludes** all persons in the community and part of the county where his crime allegedly was committed, or to elect trial with a jury that **includes** people from the community where his crime is alleged to have occurred. He also has the freedom

to accept trial with a venire less than 7 % Black, or elect trial with a venire over 50 % Black. Furthermore, a resident of the eastern district, charged with a crime in that district, automatically has citizens from his home town in the jury selection process; while a resident of the western half of the county, who is charged with a crime in the eastern district, has no option: the system automatically excludes citizens of his own home town.

All these conflicting jury-trial options afforded residents of the same county standing before the same court, constitute an obvious, blatant denial of equal protection of the laws.

Several provisions in the **Florida Constitution** require legislation affecting either courts or juries be by "general law," meaning the legislature is prohibited from creating jury district's by special act, county by county. **Fla. Constitution, Article III & V. Section 40.015, Fla. Statutes,** authorizing local creation of jury districts, is not a "general law", for it merely delegates to the local courts authority to create their own jury districts county by county. That is an authority the legislature itself does not have, and, so, may not delegate. The mere addition of a population requirement to the statute may render it a "population act", but it clearly does not make the statute a "general law", for the effect of the statute on the various counties to which it does apply is still not "uniform", which it must be to be a "general law".

Section 40.015, **Florida Statutes**, mandates that no cognizable groups be excluded when jury districts are created. Palm Beach County's system, with its exclusion of non-Blacks in the western district, and of Blacks in the eastern, violates the constitutional right to fair cross-representation, and, also, the terms of the statute itself.

The entire trial court system of Florida, under its **Constitution**, is based on counties. **Fla. Constitution, Article V, Section 7.** It should follow that a statute authorizing "jury districts" or any other trial court jurisdictions of less than an entire county, is unconstitutional. **Jordan v. State**, supra.

On the face of the statute in question it is clear, the statute only authorizes counties of over 50,000 population and which happen to have branch courthouses outside the county seat, to set up jury districts, specifically so they may hold trials in their branch courthouses drawing jurors only from the vicinity of those facilities. It does not authorize the courthouse in the county seat itself to be a separate jury district. Yet, in this case, Spencer was tried at the main courthouse in the county seat treated as a separate jury district, in violation of the statute.

POINT I

THE TRIAL COURT IMPROPERLY DENIED APPELLANT SPENCER'S PRETRIAL MOTION TO INPANEL THE JURY VENIRE FROM THE ENTIRE COUNTY, AND IMPROPERLY FAILED TO FIND PALM BEACH COUNTY'S "JURY DISTRICT" SYSTEM UNCONSTITUTIONAL BECAUSE RACIALLY DISCRIMINATORY AND A DENIAL OF EQUAL PROTECTION.

The State in its brief notes that the statistical basis for Appellant Spencer's pretrial motion, documenting the significantly different racial make-up of the two jury districts in Palm Beach County, fails to reflect what time period those statistics cover. (Answer Brief of Appellee, at pages 27-28) The State argues the record thus fails to document a systematic discrimination over any significant time period.

As a matter of logic, it makes no difference whether Blacks were systematically excluded by the entire jury selection process only at the time of Mr. Spencer's trial, or whether it has been going on for a number of years. Regardless how long that discriminatory system has been in use, it is just as systematic and just as wrong, and the violation of this particular defendant's constitutional right to jury trial is just as complete, and his conviction just as invalid.

The State is in no position now to be challenging any of the facts upon which the trial court based its ruling. The trial court denied Spencer's motion without a hearing, in effect ruling it was without merit on its face, even taking the facts as al-

leged to be true. It is on that basis this appellate court must review the lower court's ruling.

Besides, if the State has any challenge to make to the statistical predicate, the State could have and should have challenged the factual predicate for the motion when the motion was before the trial court. The State never did so. The State, therefore, is in no position of record to challenge the facts now, on appeal, for the first time.

THE JURY DISTRICT SYSTEM IN PALM BEACH COUNTY IS RACIALLY DISCRIMINATORY

The **Sixth Amendment** of the **U.S. Constitution** guarantees a jury selection process that draws from a representative cross-section of the community served by a court. Federal court decisions make it clear this right is absolute, and that when it is violated no prejudice or bias need be shown for the defendant to have standing to complain. Federal decisions make it clear that a violation is prohibited even if the defendant himself is not a member of the "class" of citizens unlawfully excluded -- even though, in the present case, the class excluded is Blacks and the defendant himself is Black.

In **Duncan v. Louisiana**, 391 U.S. 145 (1968), Supreme Court extended Sixth Amendment rights relating to trial by jury to criminal trials in state courts. In **Peters v. Kiff**, 407 U.S. 493 (1972) the U.S. Supreme Court held that any systematic exclusion of blacks from jury service constitutes denial of due process to

any defendant, white or black, and standing to complain exists even if the defendant is not a member of the class excluded, and harm need not be shown.

The State's brief appears to confuse "systematic" exclusion of Blacks with "intentional" exclusion of Blacks. In an effort to ignore the bad result and concentrate instead on the good purpose, the State seems to suggest that the demarcation line between the two jury districts in Palm Beach County merely divides the county in half geographical, and, therefore, it constitutes a racially neutral placement of the jury district line.

The placement of the demarcation line may be racially neutral in the sense that it may have been placed there for reasons totally unrelated to race — but that is not the question. The real question is, regardless the good faith reasons for placing the demarcation line where it was placed, does that demarcation have consequence that result in any racial discrimination in the system used for drawing jury venires. Based on the record in this case, which shows one jury district with over 50 % of its population being Black, and the other with less that 7 % of its population being Black, quite clearly the system does result in racial discrimination for purposes of jury service.

The State argues the purpose of the demarcation line between Palm Beach County's jury districts is to alleviate travel for people serving on jury duty, between the western and eastern halves of the county. Even assuming that is the purpose, and that it is a valid purpose, that good intention does not authorize a result that creates racial imbalance in the local courts' jury selection processes.

In terms of balancing the conflicting constitutional rights involved with the courts' own efforts to achieve economies, the "good intent" relied on by the State may not be all that compelling in any event. Palm Beach County is one and a half times as long as it is wide: sixty miles long and forty miles wide. The racially neutral east-west demarcation, done for the purely travel-saving reasons relied on by the state, divides the county between the shorter east and west sides, not by the longer distances north and south.

The logic and law that answer the state's "good intentions" argument were dealt with fully in the trial court's order in the **Alex Joseph** case, attached as an appendix to Appellant Spencer's original brief. Even though Circuit Judge Harold Cohen finds in his order that there are many excellent reasons for creating the two jury districts in Palm Beach County, and finds that the racial discrimination resulting from the county's jury district system is unintentional and not purposeful, he rules,

Nevertheless, the Court cannot overlook the result that has developed, albeit, the un-intentional result, of the "jury district" system. The system presently in use in this Circuit has removed from jury duty in the main courthouse in the Eastern District in West Palm Beach a significant concentration of Blacks. The Black concentration of prospective jurors has then been shifted to the Glades Jury District in Belle Glade and has had a significant impact in maintaining a fair racial balance in the overall selection process for petit juries in both the Glades and Eastern Jury Districts of Palm Beach County.

* * *

Although there is no intent found to cause any racial discrimination, the unintended result simply fails to maintain a basic population mix that is not racially discriminatory. In **Jordan v. State**, 293 So.2d 131 (2nd DCA, 1974) the Court said:

> It should be observed at this point that the record indicates no bad faith or purposeful intention to discriminate in the jury selection process. Yet, the net effect of the system, as it relates to the appellant, was that his jury panel and the venire from which it was selected (as well as the master jury list which was the ultimate source of both) were constituted as if there had been purposeful discrimination. Jury Commissioners, even those with the purest of motives, are "under a constitutional duty to follow a procedure - "a course of conduct" - which would not "operate to discriminate in the selection of jurors on racial grounds."
> **Jordan v. State**, supra, at 134, citing **Avery v. Georgia**, 345 U.S. 559, 561
>
> (Direct Appeal Record 335-336)

PALM BEACH COUNTY'S JURY DISTRICT SYSTEM DOES EVISCERATE A REPRESENTATIVE CROSS-SECTION OF THE COMMUNITY IN THE JURY SELECTION PROCESS

The right of an accused to trial by jury is one of the most fundamental rights guaranteed by our system of government, and is the cornerstone of a fair and impartial trial, and any infringement of that right constitutes fundamental error. **Nova v. State**, 439 So.2d 255 (Fla. 3rd DCA 1983), at 262.

In **Williams v. Florida**, 399 U.S. 78 (1970), the court reaffirmed that in criminal trials the system used to select the six or twelve jurors to try a case must draw from a group of laypersons representative of a fair cross-section of the community, and that this right is part and parcel of the Sixth Amendment right of fair trial by jury. **Williams v. Florida**, 399 U.S. at 101.

In **Taylor v. Louisiana**, 419 U.S. 522 (1975), the Supreme Court said, point blank, "the selection of a petit jury from a representative cross section of the community is an essential component of the Sixth Amendment right to a jury trial." **Taylor v. Louisiana**, 419 U.S. at 528.

In **Bass v. State**, 368 So.2d 447 (Fla. 1st DCA 1979), a conviction was reversed for violating the constitutional mandate of fair-cross-representation in the jury selection process in a Florida state trial court. There was a shortage of prospective jurors in the regular venire, so, with permission of the trial court, a deputy sheriff and court clerk drew the balance of the

panel from their all-caucasian church and their all-caucasian acquaintenances. The appeals court found that to be a systematic, even though unintended, exclusion of Blacks, and reversed, because,

> The constitutional guaranty of a jury trial includes assurance that the jury be drawn from a fairly representative cross-section of the community.
>
> **Bass v. State, id.**, at 449

The State points out in its brief that Spencer's entire argument presupposes the whole county is the "community" for purposes of the fair-cross-section-of-the-community requirement, and contends Spencer gives no authority for that presupposition. (Answer Brief of Appellee, at pages 38-39)

Since, under Florida's constitution, whole counties are the jurisdictions served by all of this state's trial courts, applying the law outlined above supports that presupposition fully. In any event, **Section 40.015** itself, upon which the State relies, supports that presupposition quite sufficiently. It is the statute that authorizes local creation of jury districts, in counties having a population over 50,000. It mandates that,

> (2) In determining the boundaries of a jury district to serve the court located within the district, the board shall seek to avoid any exclusion of any cognizable group.

Obviously, since the statute itself mandates that, when the jury district boundaries are drawn to divide up a county, no

cognizable group be excluded from the jury district thus created, the statute itself presupposes, and specifically seeks to preserve, a right to a jury venire made up of a group of citizens representative of a fair cross-section of the entire county's population.

The primary argument the State makes on this whole issue of fair cross-representation is that, in the Eastern Jury District where this defendant's case was tried, no real harm results. The State emphasizes that in the eastern district it only means the difference between having a jury venire that is 6.393% Black under the jury district system in use, and having a jury venire that is 7.487% Black if the jury venire were drawn county wide. The State puts great store in the fact that it is only in the other jury district on the other side of the county where the really big percentage changes result, in terms of the make-up of the jury venire when drawn from within that jury district as compared to its make-up when drawn from the entire county.

The State's basic argument seems to be that the jury district system is only invalid in half the county -- the other half -- and, therefore, this defendant has neither cause nor standing to complain.

But if that argument were valid, what would the remedy be? Obviously, the remedy would be to allow trials in the eastern half of the county with jurors drawn from that half of the county (since that is what is done now and no great prejudice results),

but to allow trials in the western half only if the jurors are drawn from the entire county (in order to resolve the great disparity in the racial make-up of that area compared to the county as a whole). As a matter of common sense, that result would be wrong.

That result also would defeat the fundamental travel-saving purposes for the statute, and the whole purpose for creation of the two jury districts in Palm Beach County, as earlier argued by the State.

In any event, such an outcome would completely fail to address or in any manner resolve the equal-protection-of-the-laws issue which Spencer also raises. (More will be said on that issue momentarily.)

Even though the State belittles the percentage changes for Black participation in the jury selection process in the Eastern Jury District where Spencer's case was tried, none of the case authorities relied on by the State to support its argument concern discrimination imposed on groups of jurors after they are called up for jury duty. The appellate decisions relied on are, instead, decision dealing with voir dire processes that are to some degree discriminatory as to who will be called for jury duty in the first place. It is a difference that is important.

In **Bryant v. State**, 386 So.2d 237 (Fla. 1980), which the State relies on with particular emphasis, for example, the

Florida Supreme Court found that the disparity between total Black population in the county and Black voter registration was not sufficient to constitute racial discrimination by a jury venire process that draws only from voter registration lists.

In the present case the issue is different. Here the question is racial discrimination resulting from how the county, for purposes of creating jury districts, has elected to divide up and use groups of citizens after they already have been called up for jury duty. This is an important difference, because none of the problems relating to how, as a practical matter, the courts may compile a representative list for jury service in the first place have any bearing on how, once a group of citizens have been drawn, the courts may avoid discrimination among them, as when deciding how to divide them up for service in respective "jury districts". None of the same practical problems of judicial administration have to be thrown onto the scales. The State's authorities were concerned with determining a fair balance between what is an acceptable level of discrimination in the system versus what is a feasible, workable method of compiling a representative list of prospective jurors in the first place.

After prospective jurors are drawn for jury duty, a higher standard for avoiding discrimination applies -- or clearly should apply -- in terms of what is required to avoid racial discrimination in the overall jury-selection process. A higher standard should apply because, if for no other reason, it is much easier

to accomplish once the court has a specific group of people it is working with. See, for example, **State v. Neil**, 457 So.2d 481 (Fla. 1981), concerning racial discrimination in the use of preemptory challenges.

It may not be necessary to address this last point anyway. None of the authorities relied on by the State deal at all with the other, additional constitutional issue that entirely distinguishes Spencer's case from all those authorities. In addition to his complaint about a racial bias in the system, Spencer also makes a separate and quite substantial "equal protection of the laws" claim in this case. Whether or not the racial bias is sufficient to impact jury composition in the Eastern Jury District, there still remains the problem of a significant difference in the jury trial rights accorded defendants in the eastern district of Palm Beach County as compared to what is accorded defendants in the same county's -- and same court's -- western jury district.

The constitutional right to "equal protection of the laws" means a citizen is entitled to stand before the law on equal terms with, and to enjoy the same rights as belong to, others in like situation. C.f., **Caldwell v. Mann**, 157 Fla. 633, 26 So.2d 788 (Fla. 1946).

Palm Beach County's jury-district system denies equal protection of the laws to Leonard Spencer and other defendants

charged with offenses in the Eastern Jury District. Persons charged with crimes in that district have no choice but to stand trial at the main courthouse in that district (i.e., at the courthouse in the county seat) before a jury drawn only from that jury district, which means for jury selection in their cases citizens from the community where their crimes are alleged to have taken place automatically are included.

But, under the administrative order for Palm Beach County, persons charged with the same crimes but in the other half of the county automatically get trial in the Eastern Jury District, too, using a jury drawn from that same district, which automatically excludes from jury service in their cases all persons living in the town or area of the county where their crimes are alleged to have occurred. This is so unless the defendants themselves in those cases personally elect to stand trial in the Glades District, which they are free to elect at their discretion. Their cases are transferred to the western or Glades District for trial only if and only when they make that election, and no grounds even need be given for their election. **Administrative Order 1.006-1/80.** (5248)

The latter group of defendants have an automatic and very real change of venue, which they may enjoy at their total discretion. However, defendants such as Leonard Spencer, in the former group, have no such option. This holds true even though the two categories of defendants are charged with the same crime

in the same county and are to be tried before the same judge by the same prosecutor. Clearly this is a denial of equal protection of the laws.

Under the administrative order setting up the two jury districts in Palm Beach County, Leonard Spencer could not even make a request for trial in the Glades Jury District, though, as the record reflects, he made such a request anyway, and it was denied. (5299-5302, 100-101) Another defendant with identical charges, if alleged to have occurred in the Glades District, could make the identical request and it would be granted as a matter of administrative routine, automatically.

An additional element of this same denial of equal protection is reflected in this case by the fact that Leonard Spencer is, himself, a resident of the western or Glades Jury District. (763, 5246)) Since he was tried for an offense committed in the eastern half of the county, people from his community and area of the county where he lives were automatically and totally excluded from the jury selection process for his trial.

Yet, for defendants who are residents of the eastern half of the county, people from their home town are automatically and necessarily included in the process, regardless which side of the county it is alleged they committed their crimes in.

This disparity of treatment in terms of jury trial options applies even as compared to co-defendants in the very same case.

It would apply in this case if any co-defendant were a resident of the eastern half of the county. Equal protection of the laws?

The racial diversity between the two jury districts (one being over 50 % Black, the other less than 7 % Black) makes the denial of equal protection even more profound. Defendants in cases arising in the western half of the county have an option, to elect trial with a jury venire drawn from a population over 50% Black, or to accept trial with a venire drawn from a population under 7% Black. But defendants charged with crimes in the eastern half of the county have no choice, and automatically stand trial with a jury venire drawn from a population that is less than 7% Black. Such a significant difference in the jury trial options afforded defendants in the same circuit, is a clear violation of equal-protection-of-the-laws standards. In this particular case, since Leonard Spencer happens to be Black, and the victims all were white, the denial of equal protection is of even more direct impact.

[As previously pointed out, it is obvious as well that equal protection of the laws is denied to those citizens of the Glades Jury District who serve jury duty. Citizens of any community on the <u>eastern</u> side of the county are always assured their names will be included in the potential list of prospective jurors for trial of crimes committed in their communities. But citizens of the western or Glades District are assured their names will **not** be included for jury service for crimes committed in their commu-

nities. They are automatically **excluded**, unless the accused himself personally chooses to have them included as potential jurors by electing trial in their district.]

THE STATUTE AUTHORIZING PALM BEACH COUNTY'S JURY DISTRICT SYSTEM IS AN UNCONSTITUTIONAL DELEGATION OF LEGISLATIVE AUTHORITY

In Florida the ultimate source of all judicial power is the constitution, statutory allocations of jurisdiction being limited to such as the constitution authorizes. **Re Cox**, 44 Fla. 537, 33 So. 509 (Fla. 1902); **Summer Lbr. Co. v. Mills**, 64 Fla. 513, 60 So. 757 (Fla. 1913); and, **Dunedin v. Bense**, 90 So.2d 300 (Fla. 1956).

Three provisions in the Florida Constitution require legislative enactments affecting jurisdiction or venue of the courts be only by "general law:" **Article III, Section 11(a)(6); Article III, Section 11(a)(1); and, Article V, Section 1, Florida Constitution.**

A statute empowering local circuit courts to set up their own jury districts, at local option, simply cannot be a "general law," regardless what other provisions the statute may contain.

If the statute contained a population requirement, and automatically created "jury districts" in all counties that met the criteria, and created them based on uniform criteria uniformly applied to all such counties, then the statute might at least be

classified as a general law of local application. Cf., **City of Miami Beach v. Frankel**, 363 So.2d 555 (Fla. 1978); and, **Department of Legal Affairs v. Sanford-Orlando Kennel Club, Inc.**, 434 So.2d 879 (Fla. 1983).

But the statute in question fails even to do that. Instead, the statute merely authorizes **local** creation of jury districts, not uniformly, but at local option.

Section 40.015's failure to be a general law would be clear if the legislature waited to hear from the circuit judges of each circuit, then enacted special acts for each circuit as requested. Such legislation quite obviously would be "special," not "general." But, in reality, that is precisely what **Section** 40.015 does do. The statute does not create jury districts; it delegates authority to do so to the local judiciary of the respective circuits, county-by-county, if and when desired. Since that is a power the legislature itself has no constitutional authority to exercise, it is one they have no authority to delegate.

Under this statute, the actual creation of jury districts is not done by the legislature itself, but by the local circuit courts, meaning, the actual creation of such jury districts is neither automatic nor uniform among the various counties. Such a statute is not and cannot be, as the State contends, a "general law" merely because it is a "population act," for it does not

automatically accomplish uniform results in only those counties that meet whatever population requirement is written into the statute. See: **Lightfoot v. State**, 64 So.2d 261 (Fla. 1953). True, the statute delegates the authority to create jury districts at local option, and delegates that authority only to counties that meet the population requirement of the act. But the mere insertion of a population requirement, by itself, does not make a statute a "general law".

Since the legislature lacks constitutional authority to create jury districts by special act, county by county, it necessarily follows that the legislature may not delegate the authority to do so to the local counties, regardless whether it delegates that authority to all counties at once, or only to those which meet a certain population requirement.

The State also says that, since the purpose of **Section 40.015** is to relieve the inconvenience of persons travelling great distances for jury duty in large counties, the population threshold written into the statute, of 50,000 population, is rational. (Answer Brief of Appellee, at page 36)

There simply is no logical relationship between counties that are "large" geographically, and those that are "large" in terms of population. The statute is limited to use of "large" counties in terms of population according to the terms of the statute itself, when, according to the State's argument, the purpose of the statute is to serve the special needs of counties

that are "large" in their geography. What is rational about that?

In any event, the State's suggestion, that saving travel in large counties is the reason for the statute's existence, is refuted right on the face of the statute.

> (1) In any county having a population exceeding 50,000 according to the last preceding decennial census and one or more locations in addition to the county seat at which the county or circuit court sits and hold jury trials, the chief judge, with the approval of a majority of the circuit court judges of the circuit, is authorized to create a jury district for each courthouse location, from which jury lists shall be selected in the manner presently provided by law.
>
> **Section 40.015(1), Florida Statutes**

The statute refers not to the geographical size of counties or to distances people must travel to serve jury duty in large counties, but to the mere circumstance of whether the county in question happens to have one or more locations, in addition to the county seat, at which county or circuit court sits and holds jury trials. **Florida Statutes, Section 40.015(1).** The existence of a branch courthouse outside the county seat, where county or circuit court already holds jury trials, is the prerequisite to the statute's use.

Right on the face of it, the statute is intended merely to afford some counties the ability to use their branch courthouse, to afford them the ability to hold trials in their branch court-

houses using only jurors drawn from the vicinity of those facilities. Nothing more.

Closely examining the wording of the statute, and viewing the legislative intent in that light, it becomes rather clear the statute neither intends nor authorizes the main courthouse in the county seat to be a "jury district". The statute, right on its face, is addressed only to branch courthouses outside the county seat, and to the creation of jury districts to serve them.

In this case, Leonard Spencer was tried at the main courthouse in the county seat, set up as a separate jury district. Doing so not only violated the Florida constitution, but also violated the intent, and authorization, of the statute.

The State contends **Section 40.015** does not violate the constitutional requirement that county courts exercise the jurisdiction proscribed by general law and that "such jurisdiction shall be uniform throughout the state." **Article V, Section 6(b), Florida Constitution.** The State says that constitutional mandate deals with "subject matter" jurisdiction rather that "geographical" jurisdiction.

Spencer contends this constitutional provision clearly does apply, to both subject matter and geographical jurisdiction.

In any event, the state's argument presumes that every jury district created under this statute is automatically authorized, by the statute, to handle all matters within its geographical jurisdiction: all matters that are within the circuit or county

court's subject matter jurisdiction. If -- as the Florida Supreme Court knows to be the case -- jury districts are used under this statute for limited subject matter jurisdiction, too, then the State's argument fails. If a jury district can be created under this statute for handling limited subject matter jurisdiction -- e.g., only traffic court matters, or only misdemeanors, or only small-claims-court matters, or only felonies, or only circuit court civil matters -- then clearly the statute does affect subject matter jurisdiction, too. And so, just as clearly, it is contrary to this constitutional provision.

The State answers Spencer's challenge to the validity of <u>any</u> jury district system under Florida's constitution, by relying on a Federal Court decision upholding the validity of divisions for jury trials within the Federal trial court system, **United States v. Herbert**, 698 F.2d 981 (9th Cir. 1983). The **Herbert** decision, upon which the State relies, simply does not apply here, for that decision is based on the Federal Constitution's provisions for setting up trial courts at the Federal level. The present case is based on how the **Florida Constitution** organizes the Florida system of trial courts, and raises the question whether any state statute authorizing "jury districts" can be in compliance with that constitutional system of trial courts. Unlike the Federal constitution, the **Florida Constitution** sets up trial courts with jurisdiction based on counties, which is just another way of

saying that, according to the state constitution itself, counties are the communities served by our state's trial courts. Any legislatively created system for trial courts in Florida, that provides for courts of lesser geographical jurisdiction than whole counties, is in conflict with the **Florida Constitution.**

CONCLUSION

The legislative intent of **Section 40.015, Florida Statutes,** is to serve the convenience of those counties which happen to have branch courthouses outside the county seat. The intent is one of judicial economy. But in trying to accomplish that economy, the statute fails to comply with all applicable state constitutional requirements relating to legislation affecting the jurisdiction and venue of this state's trial courts. It also fails to comply with state and Federal constitutional mandates relating to the rights of jury trial accorded to criminally accused citizens. The statute is unconstitutional.

Leonard Spencer's convictions, by use of a jury drawn pursuant to **Section 40.015,** and done over his strenuous objections, must be reversed and remanded, for re-trial before a jury drawn from a fair cross-representation of the entire county.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of this pleading was served, by mail delivery, upon Florida Attorney General Robert A. Butterworth (Attention: **Assistant Attorney General Amy Lynn Diem**), Palm Beach County Regional Service Center, Room 204, 111 Georgia Avenue, West Palm Beach, Florida, 33401, on this date, the 29th day of the month of June, 1988.

Respectfully submitted,

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