IN THE SUPREME COURT OF FLORIDA

FRANK A. WALLS, :

Appellant, :

v. : CASE NO. 80,364

STATE OF FLORIDA, :

Appellee. :

_____/

REPLY BRIEF OF APPELLANT

NANCY A. DANIELS
PUBLIC DEFENDER
SECOND JUDICIAL CIRCUIT

W. C. McLAIN
ASSISTANT PUBLIC DEFENDER
FLORIDA BAR NO. 201170
LEON COUNTY COURTHOUSE
FOURTH FLOOR NORTH
301 SOUTH MONROE STREET
TALLAHASSEE, FLORIDA 32301
(904) 488-2458

ATTORNEY FOR APPELLANT

TABLE OF CONTENTS

TABLE OF CITATIONS

IN THE SUPREME COURT OF FLORIDA

FRANK A. WALLS,

Appellant,

v. CASE NO. 80,364

STATE OF FLORIDA,

Appellee.

_____/

REPLY BRIEF OF APPELLANT

PRELIMINARY STATEMENT

Appellant relies upon his initial brief to respond to the State's arguments presented in the answer brief except for the following additions:

ARGUMENT

ISSUE I

ARGUMENT IN REPLY TO THE STATE AND IN SUPPORT OF THE PROPOSITION THAT THE TRIAL COURT ERRED IN DENYING CAUSE CHALLENGES TO A PROSPECTIVE JUROR WHO'S BELIEF IN FAVOR OF THE DEATH PENALTY RENDERED HER UNABLE TO FAIRLY CONSIDER A LIFE SENTENCE RECOMMENDATION FOR PREMEDITATED MURDER.

On page 10 of the State's answer brief, the argument is made that this Court's decision in Singer v. State, 109 So.2d 7 (Fla.

1959), was distinguished in the more recent of Hall v. State, 614 So.2d 473 (Fla. 1993). This is a misstatement of the opinion in Hall. The issue in Hall was whether the trial court had abused its discretion in refusing to grant an additional peremptory challenge. The issue was not whether the trial court erred in denying a challenge for cause. 614 So.2d at 475-476. This Court cited Singer, but did not distinguish it. The entire paragraph in which Singer is cited is as follows:

> "To show reversible error, a defendant must show that all peremptories had been exhausted and that an objectionable juror had to be accepted." Pentecost v. State, 545 So.2d 861, 863 n. 1 (Fla. 1989); Trotter v. State, 576 So.2d 691 (Fla. 1990). Although Hall claimed that he would have excused Cavanaugh, the record discloses that, even though Cavanaugh had seen a newspaper headline about Hall's resentencing, he did not read the article and that Cavanaugh did not hear what some jurors were talking about in the hallway. We have previously held that the competency of a challenged juror is a mixed question of law and fact, the resolution of which is within the trial court's discretion. Singer v. State, 109 So.2d 7 (Fla. 1959). Hall has shown no abuse of discretion in the trial court's refusal to grant him more peremptory challenges, and there is no merit to this issue.

Hall, 614 So.2d at 476. This court has, in no way, receded or modified the principals announced in Singer. Therefore, the principles announced in Singer regarding the method of evaluating a juror's responses are applicable to the analysis of the issue presented in Walls' case.

ISSUE II

ARGUMENT IN REPLY TO THE STATE AND IN SUPPORT OF THE PROPOSITION THAT THE PROSECUTOR'S DISCRIMINATORY USE OF PEREMPTORY CHALLENGES TO EXCLUDE BLACKS FROM THE JURY DENIED WALLS HIS RIGHT TO AN IMPARTIAL JURY AS GUARANTEED BY ARTICLE I, SECTION 16, OF THE FLORIDA CONSTITUTION, AND THE SIXTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION.

The State, on pages 11-12 of the answer brief, contends that trial counsel conceded he had no basis for his Neil objection. The State quotes a portion of counsel's comments to the trial judge as follows:

> Your Honor, that's not the issue. I'm not charging racial prejudice. I'm not charging that there was any pattern of exclusion. I am charging that it appears that at least four persons were excluded because of their race,....

(R 335, State's Brief at page 12). The State continues its argument and contends, "trial counsel never explained this facially inconsistent position." State's Brief at page 12.

The State has quoted trial counsel out of context, and has misconstrued the record. The complete exchange, which contains this small portion of trial counsel's argument, reads as follows:

> COURT: How about Mr. Wilson or Miss Wilson? That's all of the strikes. The Court sees no pattern whatsoever, Mr. Loveless, in the defense allegation that Mr. Williams' strikes have in any way been race related or race motivated and have not been race neutral. The Court feels that the jury we now have contains several blacks, and I don't know how many, because I didn't actually keep up with them by color, but I do know that we do have blacks on this jury. As far as I know, the defense struck some blacks. I don't know that, but I assume that you did, I didn't keep up with it, but I don't see anything that has occurred in this courtroom today

that would give rise to any charge of racial prejudice in this case.

LOVELESS: Your Honor, that's not the issue. I'm not charging racial prejudice. I'm not charging that there was any pattern of exclusion. I am charging that it appears that at least four persons were excluded because of their race, because I believe those persons--

COURT: You may state whatever you want for the record, but it's a question of what appears to whom. To the Court it does not appear that that's any pattern that was established by the State.

LOVELESS: I'm sure the Court's aware that pattern is not one of those things that's required as part of an element of proof, Your Honor. The issue is whether or not any person has been denied his right to serve as a juror because of his race.

WILLIAMS: I would represent to the Court hat each of the reasons I gave were race-neutral reasons, and I would have excluded those people whether they were white or black, and I have just as much right to put that on the record as you have of your accusation.

LOVELESS: That is the issue for the Court to decide, not for Mr. Williams.

COURT: I have determined the issue previously, gentlemen. I stated my feelings on the record, and I'll not go into it any further. Do we just have thirteen chairs in the jury box?

(R 334-336)(emphasis added).

It is apparent from the record that trial counsel was trying to correct the trial judges misconceptions concerning the Neil standard. The trial judge was laboring under the belief that unless a pattern of racial discrimination on the part of the prosecution was demonstrated, the defense had no meritorious objection. The judge was continuing to follow the now disapproved

standards announced in Swain v. Alabama, 380 U.S. 202, 85 S.Ct. 824, 13 L.Ed.2d 759 (1965). This Court in State v. Neil, 457 So.2d 481 (Fla. 1984) eliminated the need for a showing of a pattern or systematic use of peremptory challenges in a discriminatory manner. Consequently, trial counsel's statement that he was not charging racial prejudice and not charging a pattern of exclusion of jurors because of their race was merely part of his explanation to the court as to the legal standard to be employed.

On page 13 of the answer brief, the State also argues that the trial court's finding of no racial bias in the use of peremptory challenges is entitled to great weight and that this Court must presume the fairness of the trial judge's decision on this matter. However, as the above quotation demonstrates, the trial judge was laboring under a incorrect legal standard when ruling upon defense counsel's objections. The trial judge still believed that the defense was required to show a systematic pattern of discrimination in the use of peremptory challenges. The judge did not have an understanding of Neil and was not applying the correct legal standard. Consequently, the trial judge's finding and discretionary rulings are not entitled to the kind of difference and weight the State suggests.

CONCLUSION

For the reasons presented in the initial brief and this reply brief, Frank Walls asks this Court to reverse his convictions and sentence.

Respectfully submitted,

NANCY A. DANIELS
PUBLIC DEFENDER
SECOND JUDICIAL CIRCUIT

W. C. McLAIN #201170
Assistant Public Defender
Leon Co. Courthouse, #401
301 South Monroe Street
Tallahassee, Florida 32301
(904) 488-2458

ATTORNEY FOR APPELLANT

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Reply Brief of Appellant has been furnished by delivery to Mark C. Menser, Assistant Attorney General, Criminal Appeals Division, The Capitol, Plaza Level, Tallahassee, Florida, 32301; and a copy has been mailed to appellant, Mr. Frank A. Walls, on this 31 day of January, 1994.

W. C. McLAIN