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Chief Deputy Clerk

IN THE SUPREME COURT OF FLORIDA

RICHARD SUGGS a/k/a TIMOTHY BOMAR a/k/a DENNIS BOMAR,

Petitioner,

vs.

STATE OF FLORIDA,

Respondent.

CASE NO. 80,529

AMENDED
PETITIONER'S BRIEF ON JURISDICTION

JAMES B. GIBSON
PUBLIC DEFENDER
SEVENTH JUDICIAL CIRCUIT

JAMES R. WULCHAK
ASSISTANT PUBLIC DEFENDER
CHIEF, APPELLATE DIVISION
FLORIDA BAR NO. 0249238
112 Orange Ave., Suite A
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(904) 252-3367

COUNSEL FOR PETITIONER

TABLE OF CONTENTS

## TABLE OF CITATIONS

IN THE SUPREME COURT OF FLORIDA

| | | |
|---|---|---|
| RICHARD SUGGS a/k/a TIMOTHY BOMAR a/k/a DENNIS BOMAR, | ) | |
| Petitioner, | ) | CASE NO. 80,529 |
| vs. | ) | |
| STATE OF FLORIDA, | ) | |
| Respondent. | ) | |

PETITIONER'S BRIEF ON JURISDICTION

STATEMENT OF THE CASE AND FACTS

Petitioner Suggs appealed to the District Court of Appeal, Fifth District, following his conviction for grand theft. On appeal, the district affirmed the petitioner's judgment and sentence despite the fact that the state was permitted to improperly utilize a peremptory challenge on a black member of the jury panel without being able to provide a sufficient race neutral reason for the challenge. Suggs v. State, 17 FLW D1618 (Fla. 5th DCA July 2, 1992). (Appendix A) In so doing the district court did not rule on the merits of the claim, but rather on what the court perceived to be an improper preservation of the issue. Id.

During jury selection, the state had excused Juror Green, the only black member of the jury panel up to that point in the selection process. Upon defense counsel's objection to the peremptory challenge, the trial court required the state to provide its reason for striking Mr. Green. The state initially admitted that it did not have a reason for the peremptory challenge. However, when pushed by the court for a reason, the state indicated that the potential juror had stated that, because the defendant had previous

convictions, he would look closely at the evidence. Id. The court responded that this reason appeared to be one that would cause the defense to desire the juror stricken, not the state. However, the court then ruled that the defense had not met its burden, and allowed Juror Green to be stricken, noting that there was "a tremendous overreaction to these Neil inquiries." Following the completion of jury selection, the court inquired whether the panel was acceptable, to which the defense replied, "That's acceptable, your Honor, other than our prior objection to the striking of number one." Suggs v. State, supra.

The district court, in affirming the defendant's conviction, ruled that in order to properly preserve the issue of the state's use of a racially-motivated challenge, the defense must not only object to the challenge (as was done here), but must also move to strike the **entire jury panel**. Relying on and quoting from its prior ruling in Joiner v. State, 593 So.2d 554 (Fla. 5th DCA 1992), **jurisdiction accepted,** Fla. Sup. Ct. Case No. 79,567, the district court stated:

> Neither the language used by the defense in calling the court's attention to the possibility of racially motivated strikes nor his language expressing disagreement with the trial court's ruling rise to the level of a request that the trial judge obtain a different jury panel, continue the trial, or declare a mistrial.

Suggs v. State, supra. Although Suggs had objected to the challenge and further took exception with the trial court's denial of his objection, by accepting the panel "other than our prior objection to the striking of number one," the district court affirmed because of lack of preservation since "defense counsel did not move to strike the jury panel before the members were sworn." Id.

The petitioner filed a motion for rehearing and rehearing en banc, arguing that in adopting this requirement for moving to strike the entire jury venire in order to preserve the issue for appeal, the district court was ruling that the only appropriate remedy where racially-motivated challenges have been utilized is to strike the entire jury panel. (Appendix B) Otherwise, the petitioner contended on rehearing, simply objecting to the striking of the particular juror and taking exception to the state's explanation to the strike would seem entirely sufficient to preserve the issue for appeal. In making this ruling, the petitioner argued, the district court had ignored or overlooked this Court's holding in Jefferson v. State, 595 So.2d 38 (Fla. 1992) (which case had been cited by Suggs as supplemental authority prior to oral argument in the case), that the sole remedy of such a racially-motivated challenge is **not** the striking of the entire panel. Rather, the party may seek, and the trial court may order, the seating of the improperly challenged juror (which this Court indicated may, in fact, be the preferred remedy. Jefferson v. State, supra at 40. Therefore, the petitioner contended, the issue was properly preserved by counsel's objecting to the challenge and taking exception to the trial court's ruling, as was done in the instant case.

The district court denied rehearing and rehearing en banc on August 24, 1992. (Appendix C) A notice to invoke the discretionary jurisdiction of this Court was timely filed. This proceeding follows.

## SUMMARY OF THE ARGUMENT

The opinion of the District Court of Appeal, Fifth District, in the instant case conflicts with cases of this Court and other district courts, wherein a different result was reached on essentially the same facts, so as to cause confusion among precedents. Additionally, the case was decided by the district court by relying on a case which is currently pending in this Court, i.e., Joiner v. State, 593 So.2d 554 (Fla. 5th DCA 1992), **jurisdiction accepted,** Fla. Sup. Ct. Case No. 79,567.

## ARGUMENT

THE DECISION OF THE DISTRICT COURT OF APPEAL, FIFTH DISTRICT, IN THIS CASE EXPRESSLY AND DIRECTLY CONFLICTS WITH THE DECISIONS OF THIS COURT AND THE THIRD AND FOURTH DISTRICT COURTS OF APPEAL.

The Florida Supreme Court and other District Courts of Appeal have never required that the moving party move to replace the entire venire in order to preserve review of a Neil issue. To require such action ignores the fact that other, less severe remedies, short of striking the entire panel, may be applied by the trial court. The opinion of the district court, in Suggs v. State, 17 FLW D1618 (Fla. 5th DCA July 2, 1992), stating that a party must move to strike the entire, otherwise acceptable, jury venire in order to preserve an objection to a racially-discriminatory peremptory challenge, is erroneous and must be vacated.

Initially it should be noted that the district court's decision in the instant case relied on its prior decision of Joiner v. State, 593 So.2d 554 (Fla. 5th DCA 1992), **jurisdiction accepted,** Fla. Sup. Ct. Case No. 79,567. This decision has been accepted for review by this Court and is currently pending. (Oral argument has been scheduled for February 1, 1993.) Pursuant to Jollie v. State, 405 So.2d 418 (Fla. 1981), where a case is cited by the district court as controlling authority and that case is currently pending review by the Supreme Court, conflict jurisdiction will lie.

Additionally, the instant decision conflicts with decisions of this Court and other district courts of appeal on the same issue. This Court established the procedure under State v. Neil, 457 So.2d 481 (Fla. 1984), to protect a party from constitutionally impermissible prejudice where the opposing party has used its peremptory

challenges to exclude a distinct racial group from serving on the jury. Nowhere in that case does the Court require the procedure for preservation undertaken by the Fifth District in the instant case and in Joiner v. State, supra. See Jefferson v. State, 595 So.2d 38 (Fla. 1992). The fact that the parties ultimately picked a panel from the venire does not remove the taint of racially motivated challenges. The precedent in this area has also established that the issue is preserved for appeal when a defendant timely objects, demonstrates that the challenged jurors are black, and establishes the likelihood that the peremptory challenges resulted from impermissible bias.

The proper procedure in order to preserve a Neil issue for review, was referred to in State v. Castillo, 486 So.2d 565 (Fla. 1986). This Court in Castillo found that the procedure was outlined in Neil, supra. The procedure is as follows:

> A party concerned about the other sides' use of peremptory challenges must make a timely objection and demonstrate on the record that the challenged persons are members of a distinct racial group and that there is a strong likelihood that they have been challenged solely because of their race. If a party accomplishes this, then the trial court must decide if there is a substantial likelihood that the peremptory challenges are being exercised solely on the basis of race. If the court finds no such likelihood no inquiry may be made of the person exercising the questioned peremptory. On the other hand, if the court decides that such a likelihood has been shown to exist, the burden shifts to the complained-about party to show that the questioned challenges were not exercised solely because of the respective jurors' race. . . . If the party shows that the challenges were based on the particular case on trial, the parties or witnesses, or characteristics of the challenged person other than race, then the inquiry should end and jury selections should continue. On the other hand if the party has actually been challenging prospective jurors solely on the basis of race, then the court should dismiss that jury pool and start voir dire over with a new pool.

Neil, 457 So.2d at 486-487. There is no requirement, however, that the complaining party move to dismiss the panel, or move for mistrial.

In the instant case, the defense counsel followed the procedure outlined above. There was an objection to the State's challenge as being racially motivated. The court then required the prosecutor to provide a reason for these challenges. The State then provided its alleged race neutral reason. The trial court determined that the inquiry was based on a reason other than the prospective juror's race. At this point, according to Neil, supra, the inquiries should end and jury selection should continue. (The defense even went further here and took exception to the ruling prior to the jury panel being accepted and sworn.) The trial court was only required to dismiss the jury pool if it was determined that the challenge had been based on the juror's race. In Bryant v. State, 565 So.2d 1298, 1300 (Fla. 1990), "we find that this record demonstrates that the appellants satisfied their burden. They timely objected, demonstrated that the challenged jurors were black, and established a likelihood that the peremptory challenges resulted from impermissible bias, specifically, that the State exercised five of its first seven peremptory excusals against black persons." This was the same procedure used to preserve the objection in the instant case. Thus, according to Bryant, the issue was properly preserved for appeal.

Furthermore, in the case of Jefferson v. State, supra, this Court found that striking the entire panel is not the exclusive remedy to be used for discriminatory peremptory challenges. "The rationale behind striking the entire jury pool is to provide the complaining party with a proper venue and not one that has been partially or totally stripped of the potential jurors through the use of discriminatory peremptory challenges." Jefferson, supra. This Court authorized the remedy chosen by the trial judge in Jefferson, which was to seat the impermi-

ssibly challenged juror. This decision therefore conflicts with the District Court's decision in the instant case which seems to indicate that the sole remedy, and thus a requirement for preservation, is to move to strike the entire jury or move for a mistrial. According to Jefferson, though, this action is not required of defense counsel.

The decision in the instant case also conflicts with Kibler v. State, 546 So.2d 710 (Fla. 1989), in that the explanation offered by the prosecutor, namely that he wished to make room for other potential jurors to be added to the panel, was held to be insufficient to rebut the defendant's prima facia showing of discrimination. In Kibler, the trial judge refused to dismiss the jury on the ground that the prosecutor used racially motivated strikes. The opinion nowhere provides that this motion to dismiss the panel was required to bring the issue up on appeal.

The opinion in the case at bar is also in conflict with the Fourth District Court of Appeal's decision in Charles v. State, 565 So.2d 871 (Fla. 4th DCA 1990). In Charles, the court rejected the State's argument that the Neil issue was waived due to the defendant's response that he was satisfied with the jury panel. Despite the defendant's acceptance of the jury, the court dealt with ruling on the merits of the Neil issue.

The ruling in the instant opinion is also in conflict with the Third District Court of Appeal's decision in Adams v. State, 559 So.2d 1293 (Fla. 3d DCA 1990). In Adams, the district court held specifically that the defendant had made a timely objection and preserved the Neil issue for appellate review. Again, the actions taken by the defense counsel in Adams were identical to those taken by Mr. Suggs' counsel in the case at bar. The trial counsel: first, pointed out the

juror struck by the State was black, secondly, pointed out that Adams was black, and lastly asserted that the State could not furnish a reasonable explanation for challenging the black juror. The trial judge's response showed that he had been apprised of the defendant's objection and felt that no error had occurred at this point in the proceedings. The issue was properly preserved for review. A lawyer is not required to pursue a completely useless course when it would be fruitless. Thomas v. State, 419 So.2d 634 (Fla. 1982); Brown v. State, 206 So.2d 377, 384 (Fla. 1968). Requiring that defense counsel move to strike the jury panel or move for mistrial as suggested in the instant opinion, would be essentially mandating an attorney to complete a useless act.

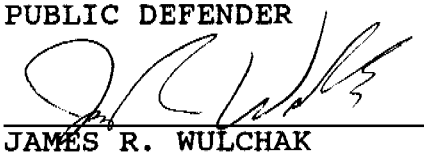
The decisions from this Court and from the District Courts of Appeal have never required that the complaining party move to dismiss the panel or move for mistrial in order to preserve a Neil issue for review on appeal. This Court should exercise its discretionary jurisdiction, and vacate the decision of the Fifth District Court of Appeal.

## CONCLUSION

BASED ON the cases, authorities, and policies cited herein, the Petitioner requests that this Honorable Court accept jurisdiction of this cause and reverse the decision of the District Court of Appeal, Fifth District.

Respectfully submitted,

JAMES B. GIBSON
PUBLIC DEFENDER



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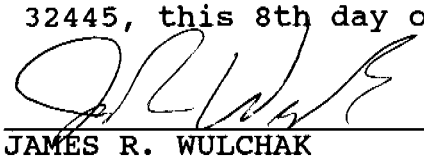
COUNSEL FOR PETITIONER

## CERTIFICATE OF SERVICE

I DO HEREBY CERTIFY that a true and correct copy of the foregoing has been served upon the Honorable Robert A. Butterworth, Attorney General, 210 N. Palmetto Ave., Suite 447, Daytona Beach, Florida 32114, in his basket at the Fifth District Court of Appeal; and mailed to Mr. Richard Suggs, a/k/a Dennis Bomar, a/k/a Michael Brown, #3395-16, P.O. Box 4900, Malone, FL 32445, this 8th day of October, 1992.



JAMES R. WULCHAK
ASSISTANT PUBLIC DEFENDER

IN THE SUPREME COURT OF FLORIDA

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| RICHARD SUGGS a/k/a TIMOTHY BOMAR a/k/a DENNIS BOMAR, Petitioner, | ) | |
| vs. | ) | CASE NO. 80,529 |
| STATE OF FLORIDA, Respondent. | ) | |

**A P P E N D I C E S**

APPENDIX A -- Suggs v. State
17 FLW D1618 (Fla. 5th DCA July 2, 1992)

APPENDIX B -- Motion for Rehearing

APPENDIX C -- Order denying Motion for Rehearing

JAMES B. GIBSON
PUBLIC DEFENDER
SEVENTH JUDICIAL CIRCUIT

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HIV testing and the court shall order such testing, the results of which shall be disclosed only to the accused and the victim or his or her legal guardian and shall not be admissible in any criminal proceeding.

[2]1 R. Waters, AIDS and Florida Law § 10.16 (1989).

* * *

**Criminal law—Jurors—Peremptory challenge—Racial discrimination—State's back-striking of only black member of jury, who initially had been accepted by both sides for service on jury panel, by exercising peremptory challenge not preserved for appeal where defense counsel did not move to strike jury panel before members were sworn—Defense counsel's expression of disagreement with trial court's finding, after inquiry, that challenge was not based on racial discrimination insufficient to preserve issue for appeal**

RICHARD SUGGS a/k/a TIMOTHY BOMAR a/k/a DENNIS BOMAR, Appellant, v. STATE OF FLORIDA, Appellee. 5th District. Case No. 91-1641. Opinion filed July 2, 1992. Appeal from the Circuit Court for Orange County, Richard F. Conrad, Judge. James B. Gibson, Public Defender, and James R. Wulchak, Chief, Appellant Division, and Kenneth Witts, Assistant Public Defenders, Daytona Beach, for Appellant. Robert A. Butterworth, Attorney General, Tallahassee, and David G. Mersch, Assistant Attorney General, Daytona Beach, for Appellee.

(SHARP, W., J.) Suggs appeals from his judgment of guilt and sentence for grand theft after a jury trial. He argues the trial court departed from the directives of *State v. Slappy*, 522 So.2d 18 (Fla.), *cert. denied*, 487 U.S. 1219, 108 S.Ct. 2873, 101 L.Ed.2d 909 (1988) and *State v. Neil*, 457 So.2d 481 (Fla. 1984) when it allowed the state attorney to back-strike the only black member of the jury who had been (at that point) accepted by both sides for service on the jury panel, through the exercise of a peremptory challenge. Because we do not think defense counsel preserved this point below, we affirm.

During *voir dire* in this case, the state attorney questioned and talked with many members of the venire, including the juror in question, Green. He inquired about Green's job and responsibilities as a supervisor for UPS. Nothing remarkable occurred during that exchange.

When the public defender took his turn at *voir dire*, he told the *venire* that his client would probably testify at trial. However, he told them that Suggs had prior criminal convictions. He asked what effect that information would have on the prospective jurors' thinking.

To juror Green, defense counsel directed the following question: "Will that make you judge his testimony?" Green replied, "Make me listen more intently to the actual evidence in this case." To another member of the *venire* (White), he posed the same question. White said, "I'd just listen to the facts." White was not later struck by a peremptory challenge, but it is also clear from the record that he was not ever seated as a prospective juror.

After the *venire* was excused, the process of selecting the jury commenced. Neither side challenged any prospective juror for cause. Both initially accepted Green as juror number one. The public defender exercised three peremptory challenges against jurors number three, four and eight. Both accepted juror number nine. At that point, the state attorney back-struck Green. Both accepted juror number ten.

Then, defense counsel objected. He said, "Your Honor, we'd ask that the State give reasons why Mr. Green was struck, the only black juror we've gone through?" The prosecutor argued that the public defender had not made a sufficient showing to require him to explain his reasons for striking Green. However, the judge pressed him to state his reasons.

The prosecutor admitted he did not have a reason he could fully express. He said he had a "bad feeling" about Green, which stemmed from his response to Jewett's question at *voir dire* concerning Sugg's prior criminal record. "He said I'm going to have to look at the evidence a little bit more carefully....That's the response I didn't like."

The prosecutor refused to admit the peremptory challenge was exercised for an improper reason—racial bias. He pointed out that Green was the only black juror he had struck. There were still other blacks left on the *venire*. And defense counsel had also exercised a peremptory challenge against another black (Ms. Morter) who had been called to sit on the jury panel. The public defender explained his reasons for striking Morter, but he had no further basis to attack the state's peremptory against Green.

After hearing argument and considering the conduct of the trial up to that point by both attorneys, the trial judge ruled that he did not think there was a pattern of racial discrimination at this trial by either side. Further, he determined that the state's challenge of Green (in particular) was not based on a racial or other improper motive. He said, "When you start striking based on race or religion or nationality or begin—that's something else again. I don't have any indication that is the case here. So I'm going to allow the strikes."

The attorneys and the court then completed selecting the balance of the jurors for the panel. The court asked the attorneys whether the panel was acceptable. The prosecutor accepted the jury panel. Defense counsel said, "That's acceptable, your Honor, other than our prior objection to the striking of number one."

In *Joiner v. State*, 593 So.2d 554 (Fla. 5th DCA 1992), this court held that defense counsel failed to preserve his objection to the composition of the jury panel, in a similar situation. We said:

> Neither the language used by the defense in calling the court's attention to the possibility of racially motivated strikes nor his language expressing disagreement with the trial court's ruling rise to the level of a request that the trial judge obtain a different jury panel, continue the trial, or declare a mistrial. We believe that it takes stronger language to indicate to the trial court that a defendant does not wish to subject his case to that jury panel. It is not sufficient to accept the jury panel and then wait until receipt of an adverse judgment before asserting an objection.

In this case, as in *Joiner*, defense counsel did not move to strike the jury panel before the members were sworn. His expression of disagreement with the trial court's determination after a *Neil*[1] inquiry was not sufficient to preserve this issue for appeal.

AFFIRMED. (DAUKSCH and DIAMANTIS, JJ., concur.)

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[1]*See* State v. Neil, 457 So.2d 481 (Fla. 1984).

* * *

URBAN v. URBAN. 5th District. #91-2087. July 2, 1992. Appeal from the Circuit Court for Osceola County. AFFIRMED on the authority of *Canakaris v. Canakaris*, 382 So.2d 1197 (Fla. 1980); *Dobson v. Samson*, 17 F.L.W. D990 (Fla. 5th DCA Apr. 17, 1992); *Conroy v. Conroy*, 585 So.2d 957 (Fla. 5th DCA 1991), *rev. den.*, 595 So.2d 556 (Fla. 1992); *Baldwin v. Baldwin*, 576 So.2d 400 (Fla. 5th DCA 1991); *Cole v. Cole*, 530 So.2d 467 (Fla. 5th DCA 1988); *Jones v. Vrba*, 513 So.2d 1080 (Fla. 5th DCA 1987); *Elebash v. Elebash*, 450 So.2d 1268 (Fla. 5th DCA 1984); *Giachetti v. Giachetti*, 416 So.2d 27 (Fla. 5th DCA 1982); and the majority opinion in *Mast v. Reed*, 578 So.2d 304 (Fla. 5th DCA 1991) (en banc).

* * *

**Criminal law—Limitation of actions—Where defendant was charged with first degree murder and defense counsel accepted and approved a jury instruction on the lesser included offense of manslaughter and briefly argued it to the jury during his closing argument by telling jurors they could return a verdict based on one of the lesser offenses, defendant could not, after jury returned guilty verdict on manslaughter charge, assert that manslaughter conviction was barred by statute of limitations**

JEWELL D. WEBER, Appellant, v. STATE OF FLORIDA, Appellee. 5th District. Case No. 91-1642. Opinion filed July 2, 1992. Appeal from the Circuit Court for Orange County, Michael F. Cycmanick, Judge. James B. Gibson, Public Defender, and Lyle Hitchens, Assistant Public Defender, Daytona Beach, for Appellant. Robert A. Butterworth, Attorney General, Tallahassee, and Anthony J. Golden, Assistant Attorney General, Daytona Beach, for Appellee.

(SHARP, W., J.) Weber was indicted for the first degree murder[1] of her husband, and a jury found her guilty of the lesser included offense of manslaughter with a firearm.[2] She argues she

IN THE DISTRICT COURT OF APPEAL, FIFTH DISTRICT
OF THE STATE OF FLORIDA

| | | |
|---|---|---|
| RICHARD SUGGS a/k/a TIMOTHY BOMAR a/k/a DENNIS BOMAR, Appellant, | ) | |
| vs. | ) | CASE NO. 91-1641 |
| STATE OF FLORIDA, Appellee. | ) | |

MOTION FOR REHEARING AND REHEARING EN BANC

Appellant, by and through the undersigned counsel, and pursuant to Rules 9.330 and 9.331, Florida Rules of Appellate Procedure, hereby requests that this Honorable Court grant rehearing and rehearing en banc in this cause. As grounds, Appellant states:

1. In an opinion filed July 2, 1992, this Court affirmed Appellant's conviction despite the fact that the state was permitted to improperly utilize a peremptory challenge on a black member of the jury panel without being able to provide a sufficient race neutral reason for the challenge. In so doing, this Court ruled not on the merits of the claim, but rather on what this Court perceived to be an improper preservation of the issue.

2. In so ruling, the Court held that in order to properly preserve the issue of the state's use of a racially-motivated challenge, the defense must not only object to the

challenge, but must also move to strike the entire jury panel. Quoting from the previous decision of this Court of Joiner v. State, 593 So.2d 554 (Fla. 5th DCA 1992), **disc. rev. pending,** Fla. Sup. Ct. Case No. 79,567, this Court stated:

> Neither the language used by the defense in calling the court's attention to the possibility of racially motivated strikes nor his language expressing disagreement with the trial court's ruling rise to the level of a request that the trial judge obtain a different jury panel, continue the trial, or declare a mistrial.

Although Suggs objected to the challenge and further took exception with the trial court's denial of his objection, by accepting the panel "other than our prior objection to the striking of number one," this Court affirmed because of lack of preservation since "defense counsel did not move to strike the jury panel before the members were sworn." Suggs v. State, 17 FLW D1618 (Fla. 5th DCA July 2, 1992).

3. By adding this requirement for preservation, this Court, therefore, is stating that the only appropriate remedy where racially-motivated challenges have been utilized is to strike the entire jury panel. Otherwise, simply objecting to the striking of the particular juror and taking exception to the state's explanation to the strike would seem entirely sufficient to preserving the issue for appeal. In making this ruling, then, this Court has ignored or overlooked the Florida Supreme Court's holding in Jefferson v. State, 595 So.2d 38 (Fla. 1992) (cited by the appellant as supplemental authority), that the sole remedy to

such a racially-motivated challenge is **not** the striking of the entire panel. Rather, the party may seek, and the trial court may order, the seating of the improperly challenged juror. "If," the Court stated, "the trial court denies the improper peremptory and the improper challenge has no effect upon the composition of the jury pool," the judge may simply order the seating of the juror. Jefferson v. State, supra at 40. In fact, the Supreme Court noted, there is nothing to be gained by striking the entire jury panel and incurring the additional time and expense of drawing a new venire. Id.

Therefore, since the preferred method of challenging the use of racially-motivated peremptory challenges is to object to the striking of the juror and to seek the seating of the challenged juror, it is not required that a complaining party seek to have the entire jury venire stricken. The issue is thus preserved simply by objecting to the challenge (and, perhaps, by taking exception to the court's ruling) as was done here.

4. This issue now has occurred at least twice in this district (Joiner and the instant case). Yet, this Court has not addressed the effect that Jefferson v. State, supra, has on the issue of preservation. It is likely to occur again in this district and throughout the state. As required by Rule 9.331 (c)(2), Florida Rules of Appellate Procedure, undersigned counsel hereby expresses a belief, based on a reasoned and studied professional judgment, that the panel decision is of exceptional importance, and that a consideration by the full court is war-

ranted.

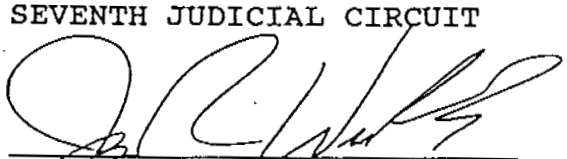
5. Moreover, should this Court maintain its belief that the issue was not preserved, the appellant requests that the following question be certified to the Florida Supreme Court as being of great public importance:

> WHERE A PARTY OBJECTS TO A RACIALLY-MOTIVATED PEREMPTORY CHALLENGE AND THE TRIAL COURT OVERRULES THE OBJECTION, WHETHER, IN LIGHT OF THE DECISION IN JEFFERSON V. STATE, 595 So.2d 38 (Fla. 1992), THE COMPLAINING PARTY MUST MOVE TO STRIKE THE ENTIRE JURY PANEL?

WHEREFORE, Appellant requests that this Honorable Court grant rehearing and rehearing en banc in this cause, reverse and remand the case for a new trial, or, at least, to certify the question to the Florida Supreme Court.

Respectfully submitted,

JAMES B. GIBSON
PUBLIC DEFENDER
SEVENTH JUDICIAL CIRCUIT



JAMES R. WULCHAK
ASSISTANT PUBLIC DEFENDER
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112 Orange Ave., Ste. A
Daytona Beach, FL 32114
(904) 252-3367

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been hand delivered to: The Honorable Robert A. Butterworth, Attorney General, 210 N. Palmetto Ave., Ste. 447, Daytona Beach, FL 32114, via his basket at the Fifth District Court of Appeal and mailed to: Mr. Richard Suggs, a/k/a Dennis Bomar, a/k/a Michael Brown, No. 339516, P.O. Box 4900, Malone, FL 32445, this 17th day of July, 1992.

JAMES R. WULCHAK
ASSISTANT PUBLIC DEFENDER

91-834
JW

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FIFTH DISTRICT

RICHARD SUGGS a/k/a TIMOTHY BOMAR, a/k/a DENNIS BOMAR,
Appellant,

v.

Case No. 91-1641

STATE OF FLORIDA,
Appellee.
_____/



DATE: August 24, 1992

BY ORDER OF THE COURT:

ORDERED that Appellant's MOTION FOR REHEARING AND REHEARING EN BANC, filed July 17, 1992, is denied.

I hereby certify that the foregoing is
(a true copy of) the original court order.

Frank J. Habershaw

FRANK J. HABERSHAW, CLERK

BY: _____
Deputy Clerk

(COURT SEAL)

cc: Office of the Public Defender, 7th JC
Office of the Attorney General, Daytona Beach
Richard Suggs

APPENDIX C