

# Supreme Court of Florida

## ORIGINAL

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No. 80,529

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RICHARD SUGGS, etc.,  
Petitioner,

vs.

STATE OF FLORIDA,  
Respondent.

[June 24, 1993]

PER CURIAM.

We review Suggs v. State, 603 So. 2d 6 (Fla. 5th DCA 1992), in which the district court held that Richard Suggs (Suggs) waived his Neil<sup>1</sup> challenge because he failed to move to strike the jury panel before the jury was sworn. We have

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<sup>1</sup> State v. Neil, 457 So. 2d 481 (Fla. 1984), clarified, State v. Castillo, 486 So. 2d 565 (Fla. 1986).

jurisdiction. Art. V, § 3(b)(3), Fla. Const.; Jollie v. State, 405 So. 2d 418 (Fla. 1981).

We held in Joiner v. State, 18 Fla. L. Weekly S280 (Fla. May 13, 1993), that moving to strike the jury panel is not the only way to preserve a Neil objection for review; accepting a jury subject to an earlier Neil objection is sufficient to preserve the issue of alleged racial bias in the exercise of peremptory challenges. Suggs accepted his jury subject to an earlier-made Neil objection.<sup>2</sup> Accordingly we quash the decision below and remand to the district court for resolution of the properly preserved Neil issue.

It is so ordered.

BARKETT, C.J., and OVERTON, McDONALD, SHAW, GRIMES, KOGAN and HARDING, JJ., concur.

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

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<sup>2</sup> "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 [juror] number one [based on State v. Neil, 457 So. 2d 481 (Fla. 1984), clarified, State v. Castillo, 486 So. 2d 565 (Fla. 1986)].'" Suggs v. State, 603 So. 2d 6, 8 (Fla. 5th DCA 1992).

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

Fifth District - Case No. 91-1641

(Orange County)

James B. Gibson, Public Defender and James R. Wulchak, Assistant  
Public Defender, Seventh Judicial Circuit, Daytona Beach,  
Florida,

for Petitioner

Robert A. Butterworth, Attorney General; and David G. Mersch and  
Nancy Ryan, Assistant Attorneys General, Daytona Beach, Florida,

for Respondent