IN THE SUPREME COURT OF FLORIDA

TOMMY LEE WILLIAMS,

Petitioner,

vs. Case No. 82,914

STATE OF FLORIDA,

Respondent
_____/

MOTION TO ADOPT RESPONDENT'S BRIEF ON THE MERITS FILED IN ROCK V. STATE, CASE NO. 82,530

Respondent, the State of Florida, by and through undersigned counsel, hereby moves this Honorable Court to adopt Issue I of Respondent's Brief on the Merits filed in Rock v. State, case no. 82,530, in lieu of a separate brief in this case, and in support thereof says:

1. The simultaneous jury selection issue in this case and in Issue I of Rock, supra, are identical and Petitioner acknowledges that this Court's decision in Rock (oral argument set for May 3, 1994) will control the results in the instant case.

2. On March 23, 1994, this Court issued an order granting Petitioner's motion to adopt its brief in Rock.

WHEREFORE, Respondent respectfully prays that this Honorable Court accept and adopt Respondent's Brief on the Merits in Rock v. State, attached hereto, in the instant case.

Respectfully submitted,

ROBERT A. BUTTERWORTH
Attorney General

BRADLEY R. BISCHOFF
Assistant Attorney General
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing MOTION TO ADOPT RESPONDENT'S BRIEF ON THE MERITS FILED IN **ROCK V. STATE**, CASE NO. 82,530 has been furnished by U.S. Mail to **MR. CARL MCGINNES**, Assistant Public Defender, Office of the Public Defender, Second Judicial Circuit of Florida, Leon County Courthouse, Fourth Floor North, 301 South Monroe Street, Tallahassee, Florida 32301, this 30th day of March, 1994.

BRADLEY R. BISCHOFF

93-111789

IN THE SUPREME COURT OF FLORIDA

TERRY JEROME ROCK,

Petitioner,

vs. Case No. 82,530

STATE OF FLORIDA,

Respondent.

RESPONDENT'S BRIEF ON THE MERITS

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PRELIMINARY STATEMENT

Petitioner, Terry Jerome Rock, Appellant below, will be referred to herein as "Petitioner." Respondent, the State of Florida, will be referred to herein as either "Respondent" or "the State." References to the record on appeal will be by the symbol "R" followed by the appropriate page number(s). References to the transcripts of proceedings will be by the symbol "T" followed by the appropriate page number(s).

STATEMENT OF THE CASE AND FACTS

Respondent is in agreement with Petitioner's statement of the case and facts.

SUMMARY OF THE ARGUMENT

ISSUE I:

The District Court of Appeal properly affirmed the trial judge's denial of Petitioner's motion to preclude multiple jury selection in his and two other cases where Petitioner failed to demonstrate any actual attorney conflict or even the risk of a conflict. The multiple jury selection procedure is a valid exercise of a trial court's discretion in promoting jury management efficiency.

ISSUE II:

The trial court properly admitted into evidence Petitioner's statement that he had never been in the burglarized beauty salon. The argument presented on appeal was not presented to the trial court and was thus not preserved for appellate review. Even so, the statement was admissible as a false exculpatory statement.

ARGUMENT

ISSUE I

THE TRIAL COURT PROPERLY DETERMINED THAT THE TRIAL COURT DID NOT ABUSE ITS DISCRETION IN CONDUCTING MULTIPLE JURY SELECTION.

Prior to Petitioner's trial for burglary, on January 28, 1992, Petitioner filed a "Motion to Preclude Simultaneous Multiple Jury Instructions" (sic). The motion averred that defense counsel must select two juries and another defense counsel must select a third jury, and that each of the defendants is charged with a different and distinct crime. Defense counsel argued in her motion that the multiple jury selection process would (1) create a substantial likelihood of jury confusion, (2) cause a strong likelihood that the jury will not be impartial, (3) cause defense counsel to co-mingle the interests of one defendant with the other, (4) deny the defendant his right to an individual jury trial, and (5) cause potential prejudices which would outweigh any advantage of judicial economy. (R 25-27). In denying the motion, the trial court stated:

> The procedure which we are using for the benefit of the record is all the jurors are called in, they are in the courtroom, I don't see any difference between this and any other jury selection, the only difference is we question the jurors there, their seats in the courtroom instead of deputing them in the jury box. The defendants are seated -- in this case, the defendants whose jury is not being selected at the present time are seated in the jury box so they can observe the jurors and as the questions are asked, you said that you wanted them here in the courtroom so that they could observe the jury

selection. They don't have to be here but if you want them to be here.

(T 7).

Counsel made no case-specific arguments and did not object to the seating of any particular juror.

On appeal, the District Court of Appeal, First District of Florida, found no reversible error. In the District Court's written opinion reported at 622 So. 2d 487 (Fla. 1st DCA 1993), attached hereto as Appendix "A," the court concluded that

> The instant case only raises speculative nonspecific objections concerning conflict. The record fails to demonstrate that appellant's attorney was required to choose between alternate courses of action due to the consolidated jury selection or that a lawyer not laboring under the claimed conflict would have employed a different strategy during jury selection that would have benefitted the defense. There is no allegation that the nature of the charges against the other defendant was somehow prejudicial to appellant or that any question asked by one of the other attorneys was objectionable. There is no allegation that the method of instructing the jury somehow prejudiced the defense. Absent a demonstration of a conflict which is unique to a particular set of cases or particular defendants, we find no problem with the simultaneous jury selection process which was utilized.

Id. at 489.

A. MULTIPLE JURY SELECTION

In February of 1992, the Office of the State Courts Administrator issued a document entitled Towards an Efficient Jury Management System, A Report of the Jury Management Project

for November 1990 - June 1991 (attached hereto as Appendix "B").[1] One of the key juror management strategies which had been introduced was "multiple voir dire," which the Office of the State Courts Administrator described as ". . . a technique whereby one judge selects multiple juries on one day for two or more jury trials scheduled during the week or term." Report of the Jury Management Project, p. 5.

This technique is apparently commonly employed in Duval County; Rock v. State, 622 So. 2d 487 (Fla. 1st DCA 1993), and in Dade County; Johnson v. State, 600 So. 2d 32 (Fla. 3d DCA 1992). The multiple jury selection process itself is a valid exercise of a trial court's wide discretion in the conduct of jury selection in the interest of the orderliness and dispatch of trials. See, e.g., Barker v. Randolph, 239 So. 2d 110 (Fla. 1st DCA 1970). Trial courts have very broad discretion in the procedural conduct of trials. Feenen v. State, 359 So. 2d 569 (Fla. 1st DCA 1978).

In United States v. Maraj, 947 F.2d 520 (1st Cir. 1991), the court stated:

> While we have been unable to find any cases squarely on point, we think that, in the absence of some founded claim of prejudice on the part of a specific juror or jurors, the mere fact that defense counsel appears before the venire and chooses juries back to back while representing defendants in two different cases will not support a claim of generalized unfairness. *See United States v. Graham*, 739 F.2d 351, 352 (8th Cir. 1984)("In the absence of some showing of actual prejudice . . . we have repeatedly

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[1] A request for judicial notice and motion to supplement the record with this document has been filed in this Court.

rejected the argument that a juror's service in prior cases involving the same attorneys or witnesses supports a per se theory of implied bias.")(citing other Eighth Circuit cases); *United States v. Riebschlaeger*, 528 F.2d 1031, 1032-33 (5th Cir.)(per curiam)(the fact that many of the jurors served in other criminal cases which defense counsel had unsuccessfully defended did not taint venire), *cert. denied*, 429 U.S. 288, 97 S. Ct. 86, 50 L. Ed. 2d 91 (1976); *United States v. Lena*, 497 F.Supp. 1352, 1363 (W.D. Pa. 1980)(similar; same prosecuting attorney involved in both cases), *aff'd*, 649 F.2d 861 (3d Cir. 1981); *see also United States v. Carranza*, 583 F.2d 25, 28 (1st Cir. 1978)(absent a specific showing of bias or prejudice, "the fact that a juror sat in a prior case involving the same government witnesses and the same type of crime will not be grounds for disqualification *per se* unless the defendant is charged with an offense arising from the same transaction"); *Johnson v. State*, 484 F.2d 309, 310 (8th Cir.)(per curiam)(similar), *cert. denied*, 414 U.S. 1039, 94 S. Ct. 539, 38 L. Ed. 2d 329 (1973). Jurors, after all, do not expect that a lawyer will represent only one client in his or her lifetime.

In these days of crowded dockets and severe budgetary constraints, busy trial courts are under considerable pressure to develop more efficient methods of operation. One such method which has gained currency is multiple empanelment. Instead of selecting juries only on the eve of actual trial, federal district judges often select four or five juries at a crack, calling the jurors to serve as the cases are reached. Properly handled, the adverse effects of back-to-back empanelment are negligible. By the same token, the economies of the practice are significant. We encourage use of the method when feasible, much as we applaud other efforts at judicial economy so long as they can be implemented without diluting the parties' rights to a fair trial.

Id. at 524, 525. In the same vein, the First Circuit Court of Appeals stated in United States v. Quesada-Bonilla, 952 F.2d 597, 599 (1st Cir. 1991), that:

We are aware of no authority that prohibits a court, as a general matter, from empaneling juries for several cases in a single proceeding or using the same jurors in several cases, whether or not the defendants in those separate cases use the same lawyers. Such practices are fairly common in several judicial

districts. *See, e.g., United States v. Franklin*, 700 F.2d 1241, 1242 (10th Cir. 1983); see also *United States v. Maraj*, 947 F.2d 520, 523-35 (1st Cir. 1991). And, we see no reason to challenge, or to depart from that circuit authority. See also *United States v. Graham*, 739 F.2d 351, 352 (8th Cir. 1984)(absent showing of "actual prejudice on the part of the challenged jurors, we have repeatedly rejected the argument that a juror's service in prior cases involving the same attorneys or witnesses supports a per se theory of implied bias"); *United States v. Riebschlaeger*, 528 F.2d 1031, 1032-33 (5th Cir.)(per curiam), *cert. denied*, 429 U.S. 828, 92 S. Ct. 86, 50 L. Ed. 2d 91 (1976)(jurors' service in other cases with same defense counsel and same prosecutor and resulting in convictions did not require the court to "quash" entire jury panel; "concept of implied bias" rejected).

B. THE JURY SELECTION PROCEDURE IN THIS CASE IN NO WAY IMPAIRED PETITIONER'S RIGHT TO EFFECTIVE ASSISTANCE OF COUNSEL.

Petitioner first argues that the multiple jury selection process deprived him of effective assistance of counsel because defense counsel represented him and one other unrelated defendant at jury selection. Specifically, Petitioner argues that ". . . where counsel advises the court there is a possibility of a conflict of interests, the court must either appoint separate counsel or conduct further inquiry. Where the trial court fails to do either of these, reversal is automatic." (Petitioner's brief, p. 19).

As a preliminary matter, Respondent would note that Petitioner's boilerplate citations regarding critical stages of proceedings, the right to conflict-free counsel, etc. fail to show the presence of any conflict or denial of counsel whatsoever in this or any other multiple jury selection case. There has been no showing in this case that there was any actual or

potential conflict of interest whereby counsel's divided loyalty damaged the interests of one defendant while benefitting the other. Petitioner has failed to demonstrate that he was prejudiced whatsoever by this procedure.

Petitioner argued on appeal that although generally claims of ineffective assistance of counsel are not appropriate for direct appeal, the error in this case was plain from the record, citing, inter alia, cites Sobel v. State, 437 So. 2d 144 (Fla. 1983). (initial brief of Appellant, p. 13). The State countered that the issue could not be raised for the first time on direct appeal as the exceptions to the general rule did not apply. The district court apparently agreed with the State as the appellate opinion does not address ineffective assistance of counsel. As ineffective assistance was not addressed or ruled on below, this Court should likewise refuse to address it.

Petitioner cites a host of cases involving one attorney representing two codefendants during the guilt and penalty phases of trial for the novel proposition that when one attorney represents two unrelated defendants during jury selection only, per se reversible error occurs. These cases do not support Petitioner's position as it relates to jury selection.

Petitioner also cites Baker v. State, 202 So. 2d 563 (Fla. 1967)(joint representation of codefendants at trial); Belton v. State, 217 So. 2d 97 (Fla. 1968)(joint representation of codefendants at trial); and State v. Youngblood, 217 So. 2d 98 (Fla. 1968)(joint representation of codefendants at trial). This

Court held in Belton and Youngblood that a failure to appoint separate counsel was not error absent a showing of prejudice or conflict of interests and that prejudice does not presumptively follow joint representation.

The other cases cited by Petitioner in this regard are also distinguishable: Holloway v. Arkansas, 435 U.S. 475 (1978)(joint representation of codefendants at trial); Foster v. State, 387 So. 2d 344 (Fla. 1980)(counsel also represented codefendant who testified for the State against Foster); Babb v. Edwards, 412 So. 2d 859 (Fla. 1982)(representation of adverse codefendants by same public defender office).[2] None of these cases are relevant to the issue before this Court.

Petitioner argues that the District Court erred in requiring him to show actual conflict or prejudice to obtain a reversal on appeal. The district court stated:

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[2] In fact, the holding in Babb was based solely on this Court's interpretation of §27.53(3), F.S. (Supp. 1980). The statute has been changed, and now states that

> If at any time during the representation of two or more indigents the public defender shall determine that the interests of the accused are so adverse or hostile that they cannot be counseled by the public defender or his staff without conflict of interest, or that none can be counseled by the public defender or his staff because of conflict of interest, it shall be his duty to move the court to appoint other counsel. The court may appoint one or more members of the Florida Bar, who are in no way affiliated with the public defender, in his capacity as such, or in his private practice, to represent those accused. (emphasis supplied).

> In order to be entitled to a reversal, an appellant would have to demonstrate actual conflict or prejudice. *Foster v. State*, 387 So. 2d 344 (Fla. 1980). Actual conflict exists if counsel's course of action is affected by conflicting representation, i.e., where there is divided loyalty with the result that a course of action beneficial to one client would be damaging to another client. *Main v. State*, 557 So. 2d 946, 937 (Fla. 1st DCA 1990). To show actual conflict, one must show that a lawyer not laboring under the claimed conflict could have employed a different defense strategy and thereby benefited the defense. *McCrae v. State*, 510 So. 2d 874, 877 n. 1 (Fla. 1987). Only when such an actual conflict is shown to have affected the defense is there prejudicial denial of the right to counsel. *Id.*

Rock, supra at 489.

In the present case, Petitioner has failed to demonstrate even a scintilla of conflict or prejudice or that there was ever a risk of such. The District Court correctly held that "[i]n order to be entitled to a reversal, an appellant would have to demonstrate actual conflict or prejudice" (Rock, supra at 489), citing Foster v. State, supra.

In Johnson v. State, 600 So. 2d 32, 33 (Fla. 3d DCA 1992), the Third District stated:

> Defendant Johnson argues that the trial court committed reversible error in consolidating three cases for simultaneous jury selection. Assuming, without deciding that the trial court properly exercised its discretion in consolidating these cases for jury selection, *see United States v. Quesada-Bonilla*, 952 F.2d 597, 599 (1st Cir. 1991), and cases cited therein, we find that the trial court erred in overruling defense counsel's objection to representing multiple clients during jury selection. "To deny a motion for separate representation, where a risk of conflicting interests exists, is reversible error." *Foster v. State*, 387 So. 2d 344, 345 (Fla. 1980); *Belton v. State*, 217 So. 2d 97 (Fla. 1968); *Baker*

> *v. State*, 202 So. 2d 563 (Fla. 1967); *Bellows v. State*, 508 So. 2d 1330 (Fla. 2d DCA 1987); *Washington v. State*, 419 So. 2d 1100, 1100 n. 2 (Fla. 3d DCA 1982); *see Main v. State*, 557 So. 2d 946 (Fla. 1st DCA 1990). Defendant's counsel stated his objection to representing all three defendants in the consolidated jury selection, asserting that his clients' interests conflicted. The record demonstrates a risk of conflict. *Foster; Main; Bellows.* Thus, we hold that the court erred in overruling the objection.

In contrast, the record in this case demonstrates no risk of conflict. Defendant Hartley was charged with robbery (T 8), and Defendant Clark was charged with carrying a concealed firearm and possession of a firearm by a convicted felon (T 10), while Petitioner was charged with burglary. (R 7). There is nothing to show that any of the defendants were disadvantaged or that any of the defendants failed to receive a fair trial before an impartial jury.

The District Court below noted in footnote 3 of the opinion:

> As examples of cases in which the record demonstrated the risk of conflict, the *Johnson* court cited *Main v. State*, 557 So. 2d 946 (Fla. 1st DCA 1990), a case in which the same attorney was compelled to represent in the same trial two codefendants charged with sale of marijuana to a minor, and a factual issue existed as to which of the codefendants sold the drugs. The *Johnson* court also cited *Bellows v. State*, 508 So. 2d 1130 (Fla. 2d DCA 1987), where the same attorney was compelled to represent in separate cases two defendants, one of whom was the state's key witness against the other.

Rock, supra at 489.

Petitioner's jury selection never presented a risk of conflict. Petitioner asserts that "[b]oth Johnson and the instant case demonstrate a 'risk of conflict' because defense

counsel in both cases stated to the court that there was a possibility of conflict." (Petitioner's brief, p. 23). The mere saying of a thing does not make it so. Petitioner's perception that a risk of conflict existed is nothing more than sheer speculation and conjecture. This Court has held that reversible error cannot be predicated on conjecture. Sullivan v. State, 303 So. 2d 632 (Fla. 1974), cert. denied, 428 U.S. 911 (1976); Ford v. Wainwright, 451 So. 2d 471 (Fla. 1984).

In sum, Petitioner has failed to demonstrate that the District Court used the wrong standard in reviewing his claim of attorney conflict or that a risk of such conflict even existed in this case.

C. THE JURY SELECTION PROCESS IN THIS CASE WAS NOT AN IMPROPER CONSOLIDATION OF A CRUCIAL STAGE OF PETITIONER'S TRIAL.

Petitioner contends that the multiple jury selection procedure constitutes an improper "consolidation", however, the procedure is not prohibited by statute or by the Rules of Criminal Procedure. Serial voir dire is no more prejudicial or unconstitutional than serial arraignment. The prosecutions below were not consolidated for trial.

As the trial court noted below, there is no practical difference between the multiple jury selection process and the single jury selection process. Regardless of whether juries are picked through a multiple or sequential process, the prospective jurors all come from the same jury pool and more prospective

jurors are brought in if needed. Each defendant retains the same number of peremptory challenges in both systems.

The jury selection process in Petitioner's case began with a pool of forty people. (T 406). Defendant Hartley selected first. Hartley exercised nine peremptory strikes. The State excused eight members of the panel. Seven jurors were selected to serve in the Hartley case. (T 89-97). The venire panel was left in place, minus those selected to serve but including those excused, and Petitioner began his selection process. Petitioner struck seven jurors, including one who had previously been struck in the Hartley case. The State exercised three peremptory strikes. (T 122-126). Seven jurors were seated. Defendant Clark selected last. His jury panel was composed of the twenty-six jurors who had been excused in the first two cases. In Clark's case, the State excused six jurors, Clark struck seven jurors, and seven jurors were seated.

Petitioner first complains that when a jury is picked for a subsequent case, the jury pool consists of some prospective jurors who were excused in previous cases. Petitioner argues that this result "undermines the integrity of the jury selection process by unfairly diluting the number of peremptory challenges available to defense counsel." (Petitioner's brief, p. 27). The State disagrees. Normally, an excused prospective juror is sent back to the jury pool to participate in a subsequent voir dire. Here, the excused prospective juror merely remains in the courtroom instead of going back to the venire room. The number

of peremptory challenges is in no way "diluted", as each defendant has his full number of challenges. A juror who was struck once may be struck again. Being struck or challenged does not make a prospective juror ineligible for service. If anything, the multiple selection system benefits subsequent counsel as counsel has the benefit of already having observed voir dire of a good portion of the venire, who may be voir dired further by subsequent counsel. Counsel is aware that a prospective juror has previously been struck, as opposed to the sequential system where counsel is unaware whether or not a prospective juror from the jury pool may have been struck in a prior case.

Petitioner further contends that multiple voir dire violated his rights to due process and an impartial jury by giving the State an unfair advantage. Petitioner argues that "[b]y striking jurors themselves, prosecutors can guarantee that a juror who might be more favorable on the third defendant's case will come back if stricken in cases 1 or 2." (Petitioner's brief, p. 27). This scenario is purely speculative and Petitioner does not even allege that this happened in his case. In any event, Petitioner ignores the fact that such a "strategy" would work both ways, and defense counsel could attempt such a "strategy" just as well as prosecutors could.

Next, Petitioner contends that "[c]ounsel for the defendants in cases 1 and 2 also become tools for the State by striking jurors who were less desirable defense jurors." (Petitioner's

brief, p. 270. Petitioner reasons that because these jurors return to the panel in subsequent cases, subsequent defendants get panels composed of "reject jurors."

In the normal jury selection process the same thing occurs, but counsel is unaware of it. If anything, subsequent defendants here are at a greater advantage than normal due to this knowledge. Again, Petitioner's argument is speculative and ignores the clear observation that such a result would work both ways, i.e., would impact prosecution and defense equally. The State has no unfair advantage.

Petitioner fails to identify any aspect of the multiple jury selection process which violated his right to due process and an impartial jury. In fact, Petitioner affirmatively accepted his jury as constituted (T 126), and only exercised 7 of his 10 peremptory challenges. He does not allege that any objectionable juror sat on his jury.

Petitioner also complains that the trial court on more than one occasion urged counsel to "move along" and that the procedure was long and tiring. These complaints were not raised as error below and are not preserved for review. Tillman v. State, 471 So. 2d 32 (Fla. 1985). Even so, trial courts virtually always urge counsel to "move along," and jury trials are normally long and tiring.

Finally, Petitioner contends that the multiple jury selection process abrogated his right to an independent

examination of the venire. The contrary is true. Not only did defense counsel have ample opportunity to question the venire (T 108-120), but she also had the benefit of hearing voir dire in the preceding case. No further time was requested nor was such apparently necessary. The trial judge did not limit counsel's time.

In sum, Petitioner has failed to show that the trial court abused its discretion in conducting multiple jury selection or that he suffered any prejudice whatsoever by this procedure. The District Court's decision must consequently be affirmed.

ISSUE II

WHETHER THE TRIAL COURT ERRED IN ADMITTING INTO EVIDENCE PETITIONER'S STATEMENT THAT HE HAD NEVER BEEN IN THE EN VOGUE BEAUTY SALON

On October 8, 1993, Petitioner filed a notice to invoke this Court's discretionary jurisdiction on the basis that the District Court's decision conflicts with a decision of another district court of appeal or of this Court on the same question of law. The argument set forth under Issue I, supra, addresses the only issue discussed in the opinion below. Consequently, Petitioner's argument as to Issue II is not encompassed by the issue accepted pursuant to this Court's "conflict" jurisdiction.

Furthermore, the District Court below never addressed the instant issue in its opinion, presumably because the State argued that the issue was not preserved for appellate review. Petitioner did not mention Issue II in his jurisdictional brief and Petitioner's current argument is wholly unrelated to the subject of this Court's "conflict" jurisdiction, and this Court should refuse to address it. See State v. Gibson, 585 So. 2d 285 (Fla. 1991); Stephens v. State, 572 So. 2d 387 (Fla. 1991).

Respondent will address Issue II to show that the issue is unpreserved and without merit:

Prior to trial, Petitioner filed a motion in limine seeking to prohibit the State from introducing into evidence Petitioner's statement that he had never been in the burglarized beauty shop. (R 23, 24). The prosecutor argued that:

> The State was entitled -- on page 1241 it says the State was entitled to present evidence the Defendant had lied about his whereabouts at the time of the crimes in question because such false exculpatory statements are admissible in the State's case as substantive evidence tending to show or firmly show a consciousness of guilt.
>
> In this case this Defendant has given a written statement saying he has never been inside that store, inside the business, the En Vogue or En Vogue Beauty Salon. Well, we have his fingerprint on an object that was inside the store, an object that had been inside the store for at least six months, an item that is used in the course of business, and an item that was moved when the place was burglarized; therefore, his statement is false, it's inculpatory or it shows consciousness of guilt by the fact he's denying ever being in there. It's part of our proof of the case.

(T 140). In denying the motion, the trial court cited to Walker v. State, 495 So. 2d 1240 (Fla. 5th DCA 1986), and Moore v. State, 530 So. 2d 61 (Fla. 1st DCA 1988). In Walker, the court held that:

> Evidence of a defendant's acts or statements calculated to defeat or avoid prosecution is admissible against him as showing consciousness of guilt. *Douglas v. State*, 89 So. 2d 659 (Fla. 1956); *Brown v. State*, 391 so. 2d 729 (Fla. 3d DCA 1980), and cases collected therein. The state was entitled to present evidence that the defendant had lied about his whereabouts at the time of the crimes in question because such false exculpatory statements are admissible in the state's case as substantive evidence tending to affirmatively show a consciousness of guilt on the part of the defendant. *See* 2 Wigmore, Evidence § 278 (Chadbourne Rev. 1989); 1 Wharton's Criminal Evidence § 218 (13th Ed. 1972).

Id. at 12431. In Moore, supra, this Court stated:

> We recognize that exculpatory statements, when shown to be false, are rendered inculpatory and are treated as admissions. *Brown v. State*, 391 So. 2d

729, 730 (Fla. 3d DCA 1980). *See also Padro v. State*, 428 So. 2d 290 (Fla. 3d DCA), *review dismissed*, 436 So. 2d 100 (Fla. 1983).

Id. at 65, 66. See also, Simpson v. State, 562 So. 2d 742 (Fla. 1st DCA 1990), rev. denied, 574 So. 2d 143 (Fla. 1990).

Here, Petitioner's fingerprint found inside the beauty salon showed his statement that he had never been there to be false.

Petitioner argued on appeal and now here that the only way that the falsity of his statement could be established was by proof of his guilt of the crime, citing Douglas v. State, 89 So. 2d 659 (Fla. 1956), and that on this basis his false exculpatory statement should have been ruled inadmissible.

Petitioner never presented this argument to the trial court and this argument was not preserved for appellate review. In order to be preserved for further review by a higher court, the specific legal argument or ground to be argued on appeal must be a part of the presentation below if it is to be considered preserved. Tillman v. State, 471 So. 2d 32 (Fla. 1985); Steinhorst v. State, 412 So. 2d 332 (Fla. 1982). The District Court did not address the issue other than to say that ". . . appellant raises four issues on appeal. We find no reversible error has occurred. . .". Rock, supra at 487. This issue is thus not properly before this Court.

Even so, any purported error is harmless as the introduction of the false exculpatory statement did not affect the verdict. The statement was not a crucial piece of evidence, but merely a circumstance tending to show a consciousness of guilt.

CONCLUSION

Based on the above arguments and citations of legal authorities, Respondent respectfully urges this Honorable Court to approve the decision of the District Court in this case.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing RESPONDENT'S BRIEF ON THE MERITS has been furnished by U.S. Mail to **MS. NADA CAREY**, Assistant Public Defender, Office of the Public Defender, Second Judicial Circuit of Florida, Leon County Courthouse, Fourth Floor North, 301 South Monroe Street, Tallahassee, Florida 32301, this 21st day of March, 1994.

Bradley R Bischoff

BRADLEY R. BISCHOFF

Appendix A

mit the issue to the jury. The motion for new trial should have been granted.

Reversed and remanded.

Terry Jerome ROCK, Appellant,

v.

STATE of Florida, Appellee.

No. 92–693.

District Court of Appeal of Florida, First District.

July 7, 1993.

Rehearing Denied Sept. 10, 1993.

Defendant was convicted in the Circuit Court, Duval County, R. Hudson Olliff, J., and he appealed. The District Court of Appeal, Wolf, J., held that simultaneous jury selection was not improper, absent showing of actual conflict or prejudice.

So ordered.

1. Criminal Law ⇐1166.10(3)

To be entitled to reversal on grounds that defense counsel's conflict of interest violated defendant's right to counsel, defendant must demonstrate actual conflict or prejudice. U.S.C.A. Const.Amend. 6.

2. Criminal Law ⇐641.5(.5)

"Actual conflict," depriving defendant of right to counsel, exists if counsel's course of action is affected by conflicting representation, or, in other words, where there is divided loyalty with result that course of action beneficial to one client would be damaging to interest of another client. U.S.C.A. Const.Amend. 6.

See publication Words and Phrases for other judicial constructions and definitions.

3. Criminal Law ⇐641.5(.5)

To show "actual conflict," depriving defendant of right to counsel, defendant must show that lawyer not laboring under claimed conflict could have employed different defense strategy and thereby benefited defense. U.S.C.A Const.Amend. 6.

4. Criminal Law ⇐641.12(1)

Utilization of simultaneous jury selection process in criminal case, whereby separate juries are selected from same venire panel, does not violate right to counsel, absent demonstration of conflict of interest on part of defense counsel which is unique to particular set of cases or particular defendants. U.S.C.A. Const.Amend. 6.

5. Criminal Law ⇐641.12(1)

Simultaneous jury selection did not violate defendant's right to counsel, absent demonstration that defendant's attorney was required to choose between alternate courses of action due to consolidated jury selection, that nature of charges against other defendant was prejudicial to defendant, that any question asked by one of other attorneys was objectionable, or that method of instructing jury was objectionable. U.S.C.A. Const.Amend. 6.

Nancy A. Daniels, Public Defender, Nada M. Carey, Asst. Public Defender, Tallahassee, for appellant.

Robert A. Butterworth, Atty. Gen., Bradley R. Bischoff, Asst. Atty. Gen., Tallahassee, for appellee.

WOLF, Judge.

Terry Rock, appellant, raises four issues on appeal. We find no reversible error has occurred, but feel that it is necessary to discuss one issue: Whether the trial court erred in conducting simultaneous jury selection for appellant's case and two unrelated cases involving other defendants.

The jury in the instant case was selected through a process whereby three juries were selected from the same venire panel.[1]

1. Simultaneous jury selection is apparently commonly employed in Duval County.

A jury is chosen for one defendant while the other defendants and their counsel watch the process. After the first jury is selected, a jury is then selected for one of the other defendants from the same venire. Prior to jury selection, defense counsel orally objected to the "jury selection process where we have all three defendants in the same room," arguing a violation of the defendant's sixth amendment right. Defense counsel then stated, "My written motion will incorporate the rest of my arguments." A pretrial written motion to preclude "simultaneous multiple jury instructions" was filed. There were no other objections made during the jury selection process, neither before jury selection began, nor during the selection of appellant's particular jury.

The motion filed by appellant raised the following issues:

1. To force the undersigned attorney to participate in simultaneous multiple jury selection for two separate trials, where each Defendant is charged with a difference [sic] crime, under the circumstances would create a very substantial likelihood of jury confusion, in contravention of this Defendant's right to due process of law as guaranteed by the Fifth and Fourteenth Amendments to the United States [sic] and by Article I, Section 9 of the Florida Constitution.

2. Compounding the substantial likelihood of jury confusion is that this attorney represents two of the three Defendants involved in the Voir Dire Process.

3. The knowledge the jury will have that the undersigned attorney represents two Defendants simultaneously will cause a strong likelihood that the jury will not be impartial, in that the presumption of innocence would be minimized by the fact that not one but three defendants are all claiming innocence before the jury panel. This is contrary to the defendants' right to an impartial jury trial guaranteed by the Sixth and Fourteen [sic] Amendments to the United States [sic] and by Article I, Section 16 of the Florida Constitution.

4. This attorney will not be able to adequately represent the Defendant since he will have to co-mingle the interest of one Defendant with that of the other Defendant she represents during this simultaneous multiple jury selection process.

5. This process denies the Defendant his right to an individual jury trial because the panel Jury Voir Dire will be exposed to and questioned about issues totally irrelevant to this Defendant's case.

No further objections or case specific arguments were made by counsel. Counsel also did not object to the seating of any particular juror.

In *United States v. Quesada-Bonilla*, 952 F.2d 597, 599 (1st Cir.1991), the court stated, "We are aware of no authority that prohibits a court, as a general matter, from empaneling juries for several cases in a single proceeding or using the same jurors in several cases, whether or not the defendants in those separate cases use the same lawyers." *Accord United States v. Maraj*, 947 F.2d 520, 524 (1st Cir.1991). In *Maraj*, the court reasoned, "In these days of crowded dockets and severe budgetary constraints, busy trial courts are under considerable pressure to develop more efficient methods of operation. One such method which has gained currency is multiple empanelment.... We encourage use of the method when feasible." *Maraj, supra* at 524.

We fully agree with the rationale utilized in *Quesada-Bonilla* and *Maraj*.[2]

Appellant, however, relies on *Johnson v. State*, 600 So.2d 32 (Fla. 3d DCA 1992), to argue that the lower court erred in rejecting the defense counsel's conflict of interest assertion. In *Johnson*, the trial court consolidated the defendant's case with the cases of two other defendants, solely for jury selection. There, the same defense counsel represented all three defendants,

2. This court has recently affirmed four cases without opinion where the issue of simultaneous jury selection was raised: *Copeland v. State*, 613 So.2d 14 (Fla. 1st DCA 1993); *Losco v. State*, 615 So.2d 161 (Fla. 1st DCA 1993); *Gray v. State*, No. 91-3950 (Fla. 1st DCA March 18, 1993); *Davis v. State*, 618 So.2d 214 (Fla. 1st DCA 1993).

and counsel objected on conflict grounds. The Third District Court of Appeal held that the lower court erred in overruling the objection:

> Assuming, without deciding, that the trial court properly exercised its discretion in consolidating these cases for jury selection, *see United States v. Quesada-Bonilla*, 952 F.2d 597, 599 (1st Cir.1991), and cases cited therein, we find that the trial court erred in overruling defense counsel's objection to representing multiple clients during jury selection. "To deny a motion for separate representation, where a risk of conflicting interests exists, is reversible error." *Foster v. State*, 387 So.2d 344, 345 (Fla.1980).

Johnson, supra at 33. *See also Abraham v. State*, 606 So.2d 489 (Fla. 3d DCA 1992), where the state conceded error on a similar point.

In *Johnson*, without explaining the facts giving rise to the conflict of interest, the court stated that because the record in that case demonstrated a risk of conflict, reversal was required.[3] *Johnson* is distinguishable from the instant case, however, because the record in this case does not demonstrate potential conflict.

[1–3] In order to be entitled to a reversal, an appellant would have to demonstrate actual conflict or prejudice. *Foster v. State*, 387 So.2d 344 (Fla.1980). Actual conflict exists if counsel's course of action is affected by conflicting representation, i.e., where there is divided loyalty with the result that a course of action beneficial to one client would be damaging to the interest of another client. *Main v. State*, 557 So.2d 946, 947 (Fla. 1st DCA 1990). To show actual conflict, one must show that a lawyer not laboring under the claimed conflict could have employed a different defense strategy and thereby benefited the defense. *McCrae v. State*, 510 So.2d 874, 877 n. 1 (Fla.1987). Only when such an actual conflict is shown to have affected the defense is there prejudicial denial of the right to counsel. *Id.*

[4, 5] The instant case only raises speculative nonspecific objections concerning conflict. The record fails to demonstrate that appellant's attorney was required to choose between alternate courses of action due to the consolidated jury selection or that a lawyer not laboring under the claimed conflict would have employed a different strategy during jury selection that would have benefited the defense. There is no allegation that the nature of the charges against the other defendant was somehow prejudicial to appellant or that any question asked by one of the other attorneys was objectionable. There is no allegation that the method of instructing the jury somehow prejudiced the defense. Absent a demonstration of a conflict which is unique to a particular set of cases or particular defendants, we find no problem with the simultaneous jury selection process which was utilized.

ERVIN, J., and CAWTHON, Senior Judge, concur.

BERMUDA ATLANTIC LINE LIMITED, Appellant,

v.

FLORIDA EAST COAST RAILWAY COMPANY, Appellee.

No. 92-2939.

District Court of Appeal of Florida, First District.

July 7, 1993.

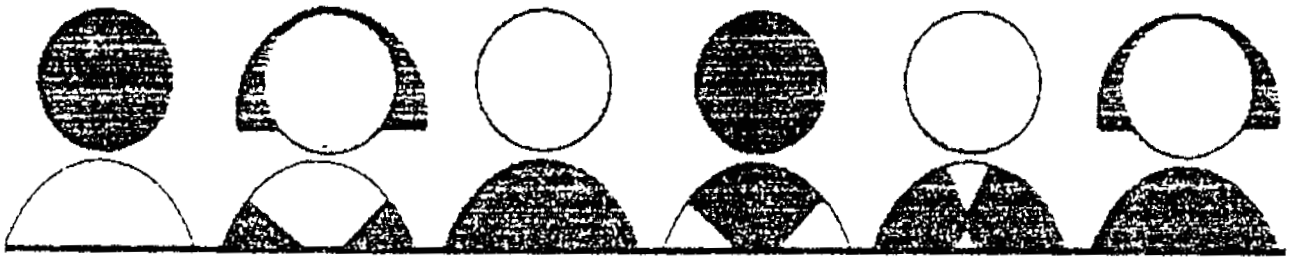
Rehearing Denied Sept. 19, 1993.

Litigant appealed from order of the Circuit Court, Duval County, Thomas Oak-

3. As examples of cases in which the record demonstrated the risk of conflict, the *Johnson* court cited *Main v. State*, 557 So.2d 946 (Fla. 1st DCA 1990), a case in which the same attorney was compelled to represent in the same trial two codefendants charged with the sale of marijuana to a minor, and a factual issue existed as to which of the codefendants sold the drugs. The *Johnson* court also cited *Bellows v. State*, 508 So.2d 1330 (Fla. 2d DCA 1987), where the same attorney was compelled to represent in separate cases two defendants, one of whom was the state's key witness against the other.

Appendix

B



Towards an Efficient Jury Management System

A Report of the Jury Management Project
For November 1990 – June 1991

Office of the State Courts Administrator
Tallahassee, Florida
February 1992

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State Courts System Launches Jury Management Program

A Historical Perspective

Efficient jury management has been a concern for the court system in Florida for well over a decade. During this period the Florida Supreme Court and the Office of the State Courts Administrator (OSCA) promoted the use of various juror management techniques and practices for reducing the amount of money spent on juror compensation[1] and minimizing the inconvenience of jury duty. Despite these efforts, the annual expenditure for juror compensation increased in eight of the past ten fiscal years from a low of $5.2 million in fiscal year 1980-81 to over $7.8[2] million in fiscal year 1989-90.

In the spring of 1990, the Florida Office of the Auditor General completed an in-depth performance audit of juror management procedures in the trial courts. The auditor general's staff compared the local courts' performance against the standards for jury management operations recommended by the OSCA. They found the courts that were employing the techniques and practices recommended to reduce the cost and inconvenience of jury service actually had lower juror costs. Conversely, those that had not implemented the more efficient procedures were well over the standards for juror costs. The auditor general recommended that the Supreme Court develop statewide policy governing jury management and that individual trial courts make changes in local policy to reduce the number of jurors who are unnecessarily called for service.

The OSCA responded to the auditor general's recommendations on behalf of the State Courts System. While acknowledging that there was considerable room for improvement in the efficiency of jury management operations in many courts, the OSCA argued that the chief judges must be provided with resources to implement the required changes.

As a result, during the fall of 1990, the State Courts System undertook a major initiative designed ultimately to save $1.5 million, or 20 percent, of the annual appropriation for juror compensation. To implement the Jury Management Project, the Legislature agreed to advance up to 10 percent of the appropriation for juror compensation in fiscal year 1990-91. The funds were to be used to hire and train staff to assist the chief judges and the trial courts in their efforts to implement proven, efficient jury management techniques at the local level. The continued funding for the staff was contingent upon the project realizing at least enough cost-savings to offset program expenses.

Additionally, it was envisioned that the Supreme Court would develop policy that would mandate the implementation of efficient jury management practices.

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1 The state compensates jurors at the rate of $10 per day and $.14 per mile for each mile traveled to and from the courthouse. All administrative costs of operating the jury system (including salaries, summonses, postage, etc.) are borne by the counties.

2 Source: Florida Office of the Comptroller. Includes the per diem and mileage reimbursements paid to county grand jurors which amounts to approximately 2 percent of the total expenditure.

Success Requires Cooperation

A project of this magnitude required the cooperation of many people on several different levels. Florida Supreme Court Chief Justice Leander J. Shaw, Jr., wrote in his initial administrative order that the "achievement of the goals of this project cannot be realized without the cooperation of all chief judges, all judges hearing jury trials, trial court administrators and their staffs, and clerks' offices."

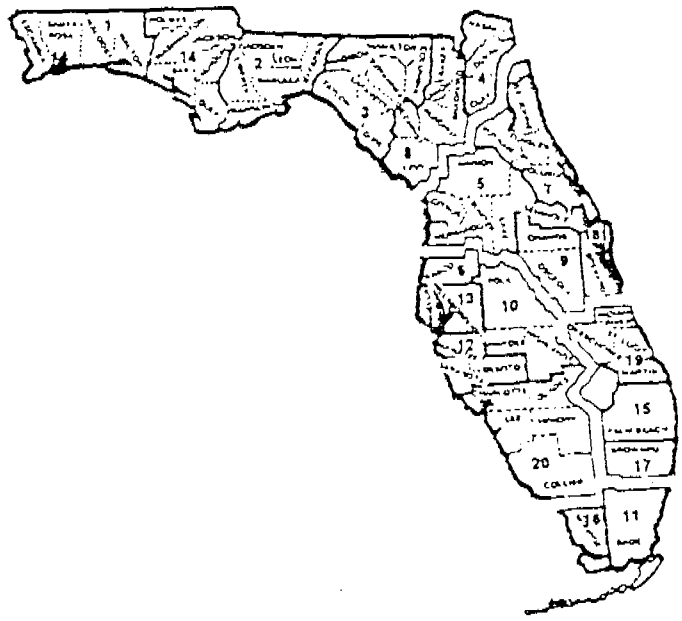
The Chief Justice and the Florida Supreme Court

The Jury Management Project was initiated in October 1990, when Chief Justice Shaw allocated deputy court administrator positions to sixteen of Florida's twenty judicial circuits; these circuits were chosen because they exhibited the greatest savings potential. The remaining four circuits — Fourth, Sixth, Fourteenth, and Sixteenth — were already operating at an efficient level and the potential savings were too low to justify the cost of a new position. These circuits participated in the project without the aid of a deputy court administrator. (See Figure 1 for a map showing the boundaries of the judicial circuits.)

Goals and responsibilities for jury management were outlined in the Chief Justice's administrative order (the text of the order is in the Appendix). They included:

- The chief judge of each circuit was made responsible for implementing needed changes in jury management practices.
- Specific savings goals were set for each county within the various circuits.
- Smaller panel sizes were mandated so that more jurors would actually participate in the jury selection process.
- Each circuit was required to prepare a detailed jury management plan that described the circuit's current jury systems

Figure 1: Florida's Counties and Judicial Circuits



and outlined the reforms the circuit would implement to correct deficiencies.

The Jury Management Steering Committee

The Chief Justice appointed a Jury Management Steering Committee to advise the Supreme Court and to guide the Jury Management Project. (The text of the administrative order by which the committee was created is in the Appendix.) The committee's activities included:

- developing training curricula for judicial and non-judicial personnel;
- reviewing Chapter 40, Florida Statutes, and recommending changes to ensure the efficient and effective use of jurors; and
- revising the reporting format for jury management data.

The training programs developed under the auspices of the Jury Management Steering Committee proved to be a vital component of the program. Teams of representatives from each circuit — judges, trial and deputy court administrators, and clerk's office staff — attended one of four regional workshops on jury management. G. Thomas Munsterman, a nationally recognized expert on jury management from the National Center for State Courts, led the workshops. Florida judges who had successfully used the recommended techniques and the OSCA staff assisted in the presentations.

The team approach allowed individuals, each of whom had a different role in jury management, to reach a consensus on specific problems within their counties and circuits. After identifying areas where changes were needed and agreeing to potential solutions, the teams designated those who would be responsible for implementing the changes.

Additional training for judges was incorporated into the continuing education curriculum at the annual meeting of the Conference of Circuit Judges in November 1990.

The Office of the State Courts Administrator

The OSCA staff provided guidance and support for the entire project, including:

- drafting of project goals and requirements;
- providing staff support to the Jury Management Steering Committee;
- conducting initial, on-site orientations in each circuit;
- reviewing, analyzing and providing feedback on the jury management plans submitted by each circuit;
- monitoring the savings progress in each circuit and county; and
- providing technical assistance to circuits.

Site visits were an essential part of project implementation. To more fully understand the unique situation of each circuit, the OSCA staff met with judges, the deputy court administrators, and staff from the offices of the state attorneys, public defenders, and clerks. Detailed analyses of jury management data were conducted and specific recommendations for change were offered.

The Judiciary

The trial judges were key to the success of the project. The chief judges were responsible for overseeing the project in their circuits and developing local strategies, plans, and policies. Pursuant to the Chief Justice's administrative order, the chief judges were accountable for achieving the goals of the jury management program.

The project could not succeed without the cooperation of the bench as a whole. Implementation of the reduced panel sizes was dependent on the cooperation of the individual judges. Coordination and communication among the judges, as well as between the judges and the jury staff, were critical to project success.

The Deputy Court Administrators

The primary responsibilities of the new deputy court administrators were to (1) assist the chief judge in coordinating the preparation and implementation of local jury management plans and (2) act as agents of the chief judges in monitoring jury activity and solving problems. Other functions included:

- orienting judges with new jury management techniques;
- performing initial and continuous statistical analyses on the performance of the jury operations;
- developing and reviewing options for improvements; and
- providing regular updates on the status of the project at the local level.

In addition to keeping judges informed and helping to coordinate the reform efforts, the deputy court administrators facilitated the formation of county-level jury management committees in several circuits. These committees made local officials active participants in planning improvements.

Jury Operations Staff

The staff of the sixty-four clerks of court and three court administrators dedicated to managing the day-to-day jury operations in the sixty-seven counties were an invaluable resource. In addition to being responsible for assisting in implementing the local plans, jury staff provided information and insight into the nuances of the local jury practices and customs. Local jury staff initiated many of the ideas and suggestions on efficiency improvements.

Jury Management Strategies Lead to Positive Results

Key Strategies

New juror management strategies were introduced this past year in many of Florida's courts in furtherance of project goals. Moreover, the use of techniques which had previously been successful in a few courts were adopted by many other courts. Several of the key strategies and techniques are listed and defined below:

Standard Panel Sizes — Mandated by the Chief Justice, standard panel sizes allow local jury management staff to improve their ability to predict the number of jurors required each day. The strict standards also help limit the number of cases for which excessive numbers of jurors are requested.

The administrative order set the standard panel sizes as follows:

- Capital cases (in which the death penalty is sought) — no more than 50;
- Other twelve-person juries and life felonies — no more than 30;
- Circuit criminal juries — no more than 22;
- Circuit civil juries — no more than 16;
- County court juries — no more than 14.

Exceptions to these panel sizes must be approved by the chief judge.

Consolidated Trial Starts — Consolidated trial starts is a technique designed to reduce the number of days on which trials begin. This strategy allows the court to eliminate those days when a pool is brought in and few or no trials begin.

Single Day Empanelment — Under this version of consolidated trial starts, one day of

the week or month is set aside for all judges to select juries for all jury trials scheduled for the week or term. This procedure allows for better use of juror time, more jurors to participate in the selection process, and overall increased efficiencies.

Multiple Voir Dire — Multiple voir dire is a technique whereby one judge selects multiple juries on one day for two or more jury trials scheduled during the week or term.

Staggered Trial Starts — This practice involves distributing voir dire start times throughout the day to avoid the potential for there being an insufficient number of jurors in the pool because too many panels were requested at the same time.

Telephone Notification System — A telephone notification system allows jurors to call a recorded message each day to learn if they need to report for jury service. This system, based on information about cases set for trial which have settled or been continued, allows the court to adjust the number of jurors scheduled to report as late as the evening before the trial day.

Different combinations of these techniques were implemented in the various courts. The size and work load of the court dictated which techniques could be employed. Nevertheless, these key strategies led to the positive results detailed in the next section.

Courts Meet, Exceed Goals

The Supreme Court's goal for many years has been for each county to average $180 to start a six-person jury trial and $300 to start a 12-person jury trial. These goals are based on national studies which have found that 95 percent of the time a six-person jury can be selected from a panel of 18 persons, and a 12-person jury can be selected from a panel of 30 persons. These average panel sizes multiplied by the per diem rate of $10 per day result in the $180 and $300 goals for average costs to start six- and 12-person trials, respectively.

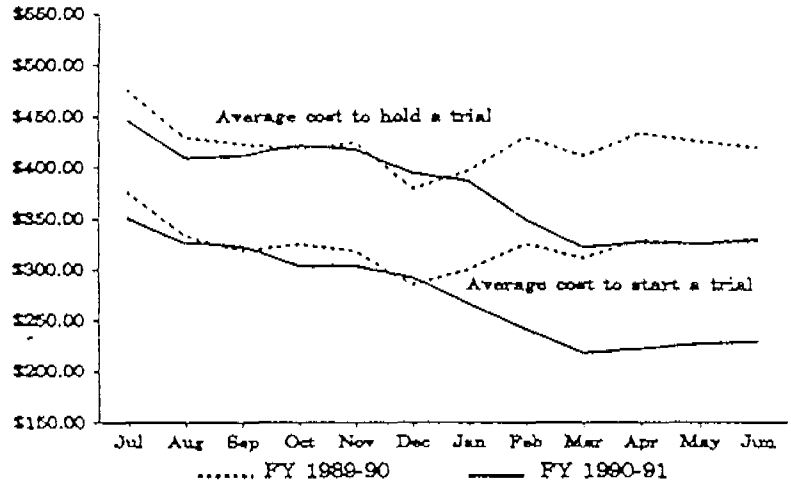
The cost goal for holding a trial was set at no more than $300 for a six-person trial and no more than $500 for a 12-person trial. The cost to hold a trial includes the juror per diem costs to start the trial plus juror per diem costs to continue the trial until the verdict is reached.

For purposes of analysis, the cost goals for the two different sizes of juries can be combined. Over 97 percent of all jury trials in Florida use six-person juries, so weighting the two cost goals produces an overall cost goal for starting trials of $183 and an overall cost goal for holding trials of $305.

A noticeable decrease in these two measures of efficiency coincided with the November 1990 inception of the Jury Management Project. More dramatic results were realized in January 1991, when local Jury Management Plans became fully operational. For the last quarter of fiscal year 1990-91, the statewide averages remained relatively constant at approximately $225 to start a trial and $330 to hold a trial. Although still slightly above the Supreme Court's goals, these measures compare favorably to the levels of the previous year when the statewide average to start a trial was $323 and the cost to hold a trial was $423. (See Figure 2 for a comparison of costs in 1989-90 and 1990-91.)

Almost all counties showed improved efficiency. Of the sixty-seven counties in the state, fifty-eight (87 percent) reduced their average cost to start a trial in the first six months of 1991 compared to the same time period in 1990. The nine counties that increased their average costs were among the

Figure 2: Measures of Efficiency



Source: Jury System Management Reports.

top 20 in efficiency prior to the start of the project.

Neither geographical size nor work load appeared to be factors in the ability of courts to implement changes. Courts of all sizes showed remarkable improvements in efficiency during 1990-91; small, medium, and large courts were equally represented among the well-performing counties. In 1990-91 the number of counties that met or exceeded the Supreme Court's goal for the average cost to hold a trial was almost 2 1/2 times as many as in 1989-90. (See Table 1.) Thirty-nine counties averaged over $400 to hold a trial in the first six months of 1990, but only 13 counties remained over that standard for the first six months of 1991. A complete listing of the counties' average cost to start a trial is shown in Table 2. The average costs to hold a trial are shown in Table 3.

The combined efforts of the counties led to a reduction in state expenditures on juror compensation of $850,958 in fiscal year 1990-91 compared to the previous fiscal year[3]. The cost savings occurred in spite of the fact that 141 more jury trials were conducted in 1990-91. Taking into account the increased trial activity would boost the effective savings to

Table 1: Counties that Met/Surpassed Average-Cost Goal

January - June, 1990 (n = 12)		
Alachua	Escambia	Lee
Baker	Franklin	Monroe
Bay	Gulf	Putnam
Duval	Lafayette	Washington

January - June, 1991 (n = 29)		
Alachua	Hamilton	Osceola
Baker	Highlands	Pinellas
Bradford	Indian River	Putnam
Calhoun	Jackson	Seminole
Charlotte	Lafayette	St. Johns
Columbia	Lee	Taylor
Dade - Civil	Levy	Wakulla
Duval	Madison	Walton
Escambia	Marion	Washington
Gulf	Okeechobee	

Source: Jury System Management Reports.

3 Source: Florida Office of the Comptroller.

Table 2: Average Cost to Start a Trial
January — June 1991

County	Cost
Wakulla	$ 130.00
Alachua	139.80
Marion	159.50
Baker	161.20
Highlands	162.00
Washington	169.60
Dade-Civil	170.30
Escambia	170.50
Putnam	172.60
Duval	184.80
Madison	185.00
Lafayette	192.00
St. Johns	195.20
Okeechobee	198.50
Lee	199.20
Charlotte	201.10
Taylor	203.70
Polk	205.30
Seminole	207.10
Bradford	209.20
Osceola	214.20
Indian River	215.80
Walton	219.10
Columbia	220.50
Volusia	220.90
Broward	223.00
Jackson	225.40
Hamilton	231.60
Okaloosa	236.50
Bay	238.00
Dade-Criminal	239.00
Clay	239.50
Holmes	240.00
Suwannee	245.00

County	Cost
Levy	$ 246.30
Hillsborough	247.30
Pinellas	249.40
Gulf	250.00
Lake	255.70
DeSoto	257.50
Brevard	261.10
Monroe	261.40
Citrus	262.90
Palm Beach	263.40
Sumter	266.60
Jefferson	272.50
Calhoun	272.50
Santa Rosa	273.30
Hendry	274.50
Sarasota	277.20
Franklin	283.30
Collier	285.30
Gadsden	290.30
Manatee	291.00
Orange	296.20
Hernando	308.00
Pasco	311.60
St. Lucie	322.90
Martin	325.60
Dixie	345.00
Glades	356.60
Nassau	370.00
Liberty	400.00
Leon	421.80
Flagler	442.50
Gilchrist	490.00
Hardee	525.00
Union	560.00

Source: Jury System Management Reports.

Table 3: Average Cost to Hold a Trial
January — June 1991

County	Cost
Wakulla	$ 130.00
Washington	181.10
Baker	205.00
Highlands	205.00
Putnam	217.10
Alachua	221.80
Taylor	228.70
Walton	232.50
Marion	234.80
Madison	235.00
Lafayette	244.00
Charlotte	246.00
Lee	248.70
Jackson	250.00
Osceola	250.90
St. Johns	261.90
Escambia	262.10
Indian River	266.30
Hamilton	266.60
Bradford	275.60
Okeechobee	278.50
Gulf	285.00
Columbia	289.40
Dade-Civil	289.90
Calhoun	290.00
Seminole	294.20
Duval	302.70
Levy	305.00
Pinellas	305.60
Suwannee	307.80
Bay	308.60
Polk	310.00
Holmes	311.20
Hendry	313.60

County	Cost
Sumter	$ 315.80
Brevard	318.80
Monroe	328.60
Franklin	330.00
Volusia	330.00
Gadsden	331.10
DeSoto	337.50
Clay	340.00
Citrus	343.20
Dixie	345.00
Okaloosa	350.60
Collier	354.80
Jefferson	355.00
Lake	357.60
Hillsborough	358.00
Manatee	361.00
Pasco	370.20
Dade-Criminal	379.20
Broward	379.60
Glades	381.60
Santa Rosa	396.60
Martin	408.60
St. Lucie	410.80
Orange	411.60
Hernando	419.30
Palm Beach	429.50
Sarasota	432.40
Nassau	438.30
Liberty	470.00
Leon	481.90
Gilchrist	490.00
Hardee	560.00
Flagler	566.20
Union	570.00

Source: Jury System Management Reports.

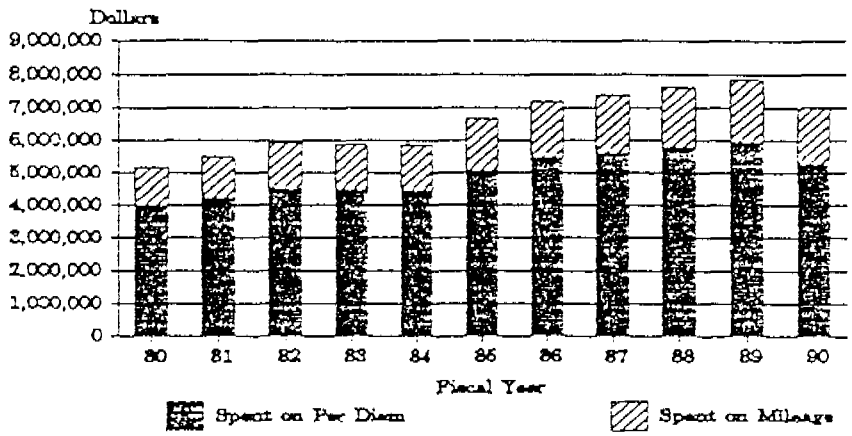
nearly $930,000. Total expenditures for juror per diem and mileage dropped to just over $7.0 million, the lowest expenditure level since fiscal year 1985-86 (see Figure 3).

Nearly 90 percent of the savings achieved this year were realized after January 1, 1991. In fact, if the rate of savings achieved since January 1, 1991, were annualized, total savings would have been approximately $1.48 million — nearly the goal of 20 percent of the annual appropriation. This savings will continue to accrue as long as the courts continue to practice the jury management practices that were instituted in early 1991.

The actual savings that were achieved must be offset by the cost of the Jury Management Project. The primary expenses were for salaries, training, and travel, totalling $554,000. In other words, the state realized almost $851,000 in actual savings on a $554,000 investment, a 53.4 percent return on its investment. This rate of return is compared to the return rate of other investment opportunities during the same period in Figure 4.

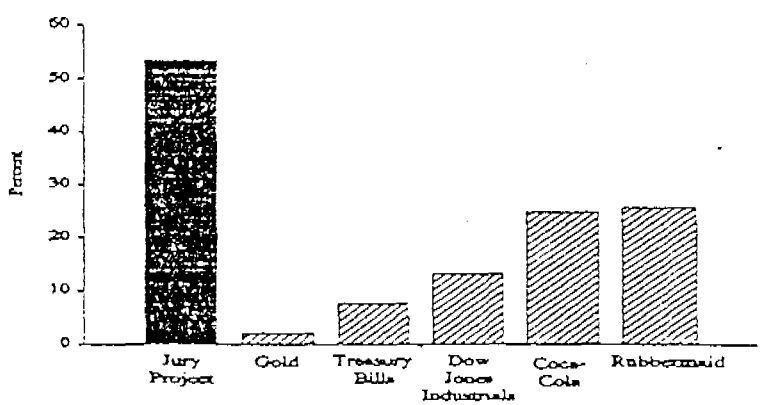
Each circuit was expected to save a specific dollar amount based on the juror expenditures for fiscal year 1989-90. The targeted dollar savings and the effective dollar savings

Figure 3: Juror Expenditures



Source: Florida Office of the Comptroller.

Figure 4: Rate of Return on Investment



Source: Florida Office of the Comptroller

Source: *Standard and Poor's Corporate Security Owners Stock Guides*, Vol. 44, No. 7, July 1990 and Vol. 45, No. 7, July 1991.

that were achieved between January and June 1991 are shown in Table 4.

The "Effective Savings" displayed in the table is based on an estimate of what would have been spent if no changes had been made to the jury system. The calculation controls for the changes in trial activity. The computation is performed as follows:

- The cost to hold a trial in fiscal year 1989-90 is multiplied by the number of trials between January 1 and June 30, 1991. The product is the estimated total per diem cost that would have been incurred if no changes had been made to the system.
- The actual dollars paid is subtracted from the expected expenditure. The result is the "effective savings."

Because the effective dollar savings covers only six-months, those circuits that have achieved at least 50 percent of their goal have the capability to reach the overall target in the current fiscal year.

The savings are further detailed in a breakdown by county (see Table 5). The estimate of "expected juror days" assumes that the rate of expenditure would have remained the same as in fiscal year 1989-90 if no procedural changes had been made. The difference

Table 4: Moving Towards the Target

Circuit	Target Dollar Savings (1-year goal)	Effective Dollar Savings* (January - June, 1991)	Percent of Goal Achieved (in 6 months)
1	$ 26,570	$ 15,290	57.5
2	55,140	8,264	15.0
3	13,530	17,190	127.0
4	11,650	-318	—
5	38,720	22,967	59.3
6	4,560	8,460	185.5
7	27,080	16,479	60.9
8	12,930	18,010	139.6
9	193,230	54,886	28.4
10	34,270	20,909	61.0
11	281,230	175,979	62.6
12	82,340	20,518	24.9
13	62,530	55,489	88.7
14	3,690	2,874	77.9
15	114,890	37,550	32.7
16	2,070	-3,470	—
17	132,740	45,396	34.2
18	38,600	39,706	102.9
19	81,650	46,660	57.1
20	47,520	36,960	77.8
State Total	$ 1,264,940	$ 604,580	47.8

* This column reflects savings in juror per diem costs only for the last six months of fiscal year 1990-91; savings resulting from decreased mileage costs are not included.

Source: Jury System Management Reports.

between the "expected juror days" in Column 3 and the "actual juror days" in Column 4 is the savings achieved this year. The savings is converted into a "rate of savings" so that comparisons can be made across counties. The asterisk next to the county denotes those jurisdictions which achieved the rate of savings mandated by the Chief Justice's administrative order.

While dollar savings are very important during these tight budget years, it is also important to realize that fewer people were needed to fill the state's need for jurors. In fact, just over 60,000 "juror days" were saved this year; that is 60,000 days of unnecessary waiting by citizens were eliminated by improving the use of those who did report for jury duty.

The improved levels of efficiency resulted in one unforeseen circumstance. The operator of the snack bar in one jury assembly room complained of a drastic decline in business because fewer jurors were reporting each day; those who were reporting spent more time in the courtroom and less time in the jury assembly room!

Individual summaries of jury system performance of each of the sixty-seven counties are available upon request. Any questions or comments regarding the Jury Management Project or this report should also be directed to the OSCA.

Table 5: Rate of Savings
January — June 1991

County	Avg. Juror Days Per Trial for FY 89-90	Trials Jan 91 - Jun 91	Expected Juror Days	Actual Juror Days Paid	Juror Days Saved	Dollars Saved on Per Diem	Rate of Savings (percent)	Mandated Rate of Savings (percent)
Alachua*	28.25	160	4,519.74	3,688	831.74	8,317.39	18.40	—
Baker*	25.23	8	201.85	164	37.85	378.46	18.75	—
Bay	28.12	105	2,952.19	3,205	-252.81	-2,528.13	-8.56	—
Bradford*	69.29	25	1,732.14	676	1,056.14	10,561.43	60.97	60
Brevard*	36.25	250	9,061.68	7,971	1,090.68	10,906.76	12.04	4.5
Broward	42.16	1,084	45,696.07	41,151	4,545.07	45,450.74	9.95	15
Calhoun*	83.20	8	665.60	246	419.60	4,196.00	63.04	60
Charlotte	57.27	71	4,066.28	1,775	2,291.28	22,912.84	56.35	60
Citrus*	37.90	31	1,175.05	1,075	100.05	1,000.48	8.51	—
Clay*	43.03	20	860.63	630	230.63	2,306.25	26.80	15
Collier	37.33	78	2,912.00	2,775	137.00	1,370.00	4.70	15
Columbia*	40.71	18	732.86	521	211.86	2,118.57	28.91	4.5
Dade - Civil*	39.13	562	21,988.67	16,296	5,692.67	56,926.74	25.89	15
Dade - Criminal*	57.78	665	38,426.24	25,223	13,203.24	132,032.35	34.36	30
DeSoto*	38.88	4	155.50	135	20.5	205.00	13.18	4.5
Dixie*	81.83	4	327.33	138	189.33	1,893.33	57.84	15
Duval	28.26	298	8,420.89	8,937	-516.11	-5,161.10	-6.13	—
Escambia*	26.87	225	6,046.51	5,881	165.51	1,655.07	2.74	—
Flagler	32.39	8	259.15	432	-172.85	-1,728.48	-66.70	4.5
Franklin	27.07	9	243.62	324	-80.38	-803.79	-32.99	4.5
Gadsden*	54.38	26	1,413.75	922	491.75	4,917.50	34.78	30
Gilchrist	55.56	1	55.56	49	6.56	65.56	11.80	30
Glades	30.05	12	360.63	492	-131.37	-1,313.70	-36.43	4.5
Gulf	20.78	4	83.11	156	-72.89	-728.89	-87.70	—
Hamilton	63.75	6	382.50	160	222.50	2,225.00	58.17	60
Hardee	68.30	2	136.60	112	24.60	246.00	18.01	60
Hendry	65.79	11	723.64	345	378.64	3,786.43	52.32	60
Hernando	48.27	31	1,496.27	1,300	196.27	1,962.67	13.12	30
Highlands*	31.71	34	1,078.05	697	381.05	3,810.49	35.35	—
Hillsborough*	47.59	471	22,416.88	16,866	5,550.88	55,508.77	24.76	15
Holmes*	45.21	8	361.71	256	105.71	1,057.14	29.23	15
Indian River*	32.07	95	3,046.74	2,520	526.74	5,267.42	17.29	15
Jackson*	40.89	11	449.78	335	114.78	1,147.78	25.52	—
Jefferson*	52.20	4	208.80	140	68.80	688.00	32.95	30

* Denotes those jurisdictions which achieved the rate of savings mandated by the Chief Justice's administrative order.

Table 5: Rate of Savings, continued

County	Avg. Juror Days Per Trial for FY 89-90	Trials Jan 91 - Jun 91	Expected Juror Days	Actual Juror Days Paid	Juror Days Saved	Dollars Saved on Per Diem	Rate of Savings (percent)	Mandated Rate of Savings (percent)
Lafayette*	93.33	6	559.98	103	456.98	4,569.80	81.61	45
Lake	34.01	42	1,428.58	1,502	-73.42	-734.17	-5.14	45
Lee*	33.17	203	6,732.92	5,257	1,475.92	14,759.19	21.92	45
Leon	52.45	111	5,821.86	5,350	471.86	4,718.61	8.10	45
Levy*	40.42	22	889.17	662	227.17	2,271.67	25.55	15
Liberty	38.80	2	77.60	93	-15.40	-154.00	-19.85	15
Madison*	47.11	8	376.84	187	189.84	1,898.42	50.38	—
Manatee	50.87	85	4,323.91	3,057	1,266.91	12,669.13	29.30	45
Marion*	42.99	110	4,728.76	2,589	2,139.76	21,397.64	45.25	30
Martin	50.40	51	2,570.32	2,099	471.32	4,713.17	18.34	45
Monroe	29.53	75	2,214.55	2,561	-346.45	-3,464.55	-15.64	45
Nassau	99.42	6	596.50	295	301.50	3,015.00	50.54	60
Okaloosa	50.04	32	1,601.37	1,083	518.37	5,183.71	32.37	60
Okeechobee*	44.56	7	311.89	195	116.89	1,168.89	37.48	30
Orange	50.96	360	18,345.19	14,882	3,463.19	34,631.91	18.88	45
Osceola*	46.69	91	4,248.42	2,328	1,920.21	19,202.09	45.20	45
Palm Beach	51.00	467	23,817.00	20,062	3,755.00	37,550.00	15.77	30
Pasco	38.39	114	4,376.93	4,221	155.93	1,559.34	3.56	45
Pinellas*	32.47	344	11,170.58	10,505	665.58	6,655.78	5.96	—
Polk*	39.19	183	7,170.94	5,674	1,496.94	14,969.40	20.88	15
Putnam*	28.02	53	1,485.00	1,240	245.00	2,450.00	16.50	45
St. Johns*	42.13	36	1,516.75	951	565.75	5,657.55	37.30	15
St. Lucie	96.45	89	8,583.93	3,905	4,678.93	46,789.25	54.51	60
Santa Rosa*	48.72	31	1,510.32	932	578.32	5,783.20	38.29	30
Sarasota	51.41	101	5,192.53	4,374	818.53	8,185.30	15.76	45
Seminole*	53.60	152	8,147.20	4,464	3,683.20	36,832.00	45.21	30
Sumter	35.76	12	429.16	379	50.16	501.58	11.69	30
Suwannee*	73.44	14	1,028.16	431	597.16	5,971.60	58.08	30
Taylor*	46.25	8	370.00	183	187.00	1,870.00	50.54	45
Union	80.00	1	80.00	45	35.00	350.00	43.75	60
Volusia*	39.07	179	6,992.68	5,919	1,073.68	10,736.84	15.35	15
Wakulla*	79.00	1	79.00	13	66.00	660.00	83.54	60
Walton*	55.10	12	661.14	284	377.14	3,771.40	57.04	45
Washington*	32.19	26	836.88	441	395.88	3,958.75	47.30	45
State	42.30	7,383	312,301	251,843	60,458	604,580	19.36	20

Appendix

Supreme Court of Florida

IN RE: COURT JURY MANAGEMENT COMMITTEE

AUGUST 20, 1990

ADMINISTRATIVE ORDER

The purpose of this Administrative Order is to create a Jury Management Steering Committee. The Committee will review selection, management, and payment affecting petit jurors and make recommendations for the establishment of rules, policies, and procedures to ensure the efficient and effective use of jurors in Florida's courts. The Committee is also to provide guidance to the Office of the State Court Administrator and Supreme Court regarding implementation of the 1990 jury management project.

The following individuals are appointed to the Committee:

Honorable Chester B. Chance, Chairman
Chief Judge
Eighth Judicial Circuit

Honorable Susan C. Bucklew
Judge
Thirteenth Judicial Circuit

Honorable Richard L. Oftedal
Judge
Fifteenth Judicial Circuit

Honorable Michael H. Salmon
Judge
Eleventh Judicial Circuit

Honorable Robert Young
Judge
Polk County

Honorable Kathleen F. Dekker
Judge
Leon County

Honorable Douglas McKoy
Clerk of Court
Levy County

Honorable R. C. Winstead, Jr.
Clerk of Court
Brevard County

Carol Ortman
Court Administrator
Seventeenth Judicial Circuit

Richard Sletton
Court Administrator
Ninth Judicial Circuit,

Staff support for the Jury Management Steering Committee will be provided by the Office of the State Courts Administrator.

It is so ordered.

Chief Justice
Supreme Court of Florida

ATTEST:
By: Chief Deputy Clerk

Supreme Court of Florida

In Re: Reducing Juror Compensation Costs

October 8, 1990

ADMINISTRATIVE ORDER

Pursuant to authority vested in this court by Article V of the Florida Constitution and in consideration of the State Court System's responsibility for efficient administration of funds appropriated for juror per diem and expenses, a comprehensive jury management program is hereby instituted to reduce jury system costs and to minimize inconvenience to citizens summoned for jury service.

Chief circuit judges shall have primary responsibility for the achievement of cost savings and other goals of the jury management program. The Office of the State Courts Administrator shall coordinate the program and shall provide technical assistance and training at the request of judges, court administrators and clerks of court. Support staff will be provided to the circuits on the basis of relative need for jury management improvement. Each judicial circuit shall, at a minimum, comply with the following cost reduction measures:

I. Mandatory reductions in total juror days paid as prescribed in Attachment I shall be achieved.

II. For the purpose of determining the maximum number of jurors to be summoned, the panel sizes for any trial shall be as follows:

A. Capital Cases(in which the Death Penalty is Sought) = No Greater Than 50
B. Other Twelve-Person Juries and Life Felonies = No Greater Than 30
C. Circuit Criminal Juries = No Greater Than 22
D. Circuit Civil Juries = No Greater Than 16
E. County Court Juries = No Greater Than 14

Exceptions to these panel sizes must be approved by the chief judge.

III. Each Judicial Circuit shall develop a plan to implement the cost reductions goals set forth in this order. The Office of the State Courts Administrator shall provide each Judicial Circuit with guidelines for preparation of the plan with December 1, 1990 as the deadline for submission to the Supreme Court for approval. The guidelines shall be advisory and each Judicial Circuit may design procedures appropriate for local conditions and practices.

IV. The clerk of the circuit court, or the trial court administrator, if designated by the Chief Judge, shall report the activity of all jury cases before all courts within that jurisdiction to the Supreme Court in the manner and format established by the Office of the State Courts Administrator and approved by the Chief Justice.

V. As authorized in the 1990-91 Appropriations Act, 20 Deputy Trial Court Administrator positions have been allocated among the circuits on the basis of need for juror compensation cost savings. These positions may be retained only if the goals delineated in the attachment are achieved.

Failure to achieve these goals will result in permanent withdrawal of these positions.

The standards set forth herein shall be implemented immediately.

It is so ordered.

Chief Justice
Supreme Court of Florida

ATTEST:

Clerk