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✓ **FEB 1 1999**

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IN THE SUPREME COURT OF FLORIDA

GUY HAMMOND, :  
 :  
 Petitioner, :  
 :  
 vs. :  
 :  
 STATE OF FLORIDA, :  
 :  
 Respondent. :  
 \_\_\_\_\_ :

Case No.

94,780

DISCRETIONARY REVIEW OF DECISION OF THE  
DISTRICT COURT OF APPEAL OF FLORIDA  
SECOND DISTRICT

BRIEF OF PETITIONER ON JURISDICTION

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TENTH JUDICIAL CIRCUIT

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STATEMENT OF TYPE USED

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STATEMENT OF THE CASE AND FACTS

On March 19, 1997, the State Attorney for the Twelfth Judicial Circuit, in and for Sarasota County, Florida, filed an amended information against the Petitioner, Guy Hammond, charging him with five counts of capital sexual battery, a violation of section 794.011, Florida Statutes (1995) and one count of committing a lewd/lascivious act in the presence of a child in violation of section 800.04(4), Florida Statutes (1995). The Petitioner had a jury trial before the Honorable Bob McDonald, Circuit Judge from March 10-13, 1997. The jury found the Petitioner guilty as charged on all counts. The Petitioner appealed and on January 15, 1999, the Second District Court of Appeal affirmed the Petitioner's conviction and sentence with a discussion as to one assignment of error regarding jury selection. Hammond v. State, 24 Fla. L. Weekly D204 (Fla. 2d DCA January 15, 1999), Appendix A-1) Petitioner filed a notice to invoke the jurisdiction of this Court in the Second District on January 22, 1998.

SUMMARY OF THE ARGUMENT

The decision of the Second District Court of Appeal in this case adds further elements to the requirements that a defendant must follow to preserve error involving the denial of a strike of a juror for cause. The issue involves the preservation of a denial of a motion to strike a juror for cause. Petitioner followed this Court's ruling in Trotter by requesting additional peremptory challenges and by naming particular jurors that he wished to strike with those challenges. The district court by requiring an additional objection is in conflict with this Court's decision in Trotter and should be reviewed.

## ARGUMENT

### ISSUE

WHETHER THE DECISION OF THE SECOND DISTRICT IN THE INSTANT CASE CONFLICTS WITH THE OPINION OF THIS COURT IN TROTTER V. STATE, 576 So. 2d 1120 (Fla. 1990).

The opinion of the Second District is in conflict with this Court's opinion in Trotter v. State, 576 So. 2d 691 (Fla. 1990). This Court stated in Trotter that:

Under Florida law, 'to show reversible error, a defendant must show that all that all peremptories have been exhausted and that an objectionable juror had to be accepted.' Pentecost v. State, 545 So. 2d 861, 863 n. 1 (Fla. 1989). By this we mean the following. Where a defendant seeks reversal based upon a claim that he was wrongfully forced to exhaust his peremptory challenges, he initially must identify a specific juror whom he otherwise would have struck peremptorily. The juror must be an individual who actually sat on the jury and whom the defendant either challenged for cause or attempted to challenge peremptorily or otherwise objected to after his peremptorily challenges had been exhausted.

Trial counsel followed each of the steps mandated in Trotter but the second district ruled the matter was not properly preserved for appeal.<sup>1</sup> Adding yet another step to the mix, the Second District found that the contemporaneous objection rule required trial

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<sup>1</sup> In order to preserve such an error, the defendant must use all his peremptory, request an additional challenge, and identify the objectionable juror he would strike. See Trotter v. State, 576 So. 2d 691, 693 (Fla. 1990). Hammond did request additional peremptory challenges and identify jurors he would strike, but his basis for doing so was not the court's denial of his request to strike Ms. Mulligan. Hammond v. State, 24 Fla. L. Weekly D204 (Fla. 2d DCA January 15, 1999).

counsel to mention Ms. Mulligan as the basis for requesting more peremptories. The Second District even admits it could find no cases that require a defendant to specifically state that he is requesting the additional peremptories because the court did not grant his motion to strike a particular juror for cause.

But the same district court in Jones v. State, 660 So. 2d 291, 293 (Fla. 2d DCA 1995), referring to Trotter, noted that it was not important that the defendant was not allowed to strike a particular additional juror but it was important that the denial of the cause challenge of a juror "forced Jones to exhaust his peremptory challenges on these individuals who should have been excused for cause." This Court affirmed Mr. Trotter's appeal concerning the issue of jury selection because counsel "failed to object to **any** venireperson who ultimately was seated." Trotter, at 693. Trial counsel for Petitioner did request additional peremptory challenges and specifically named three jurors who stated they had doubts whether they could be fair. If counsel was forced to exhaust his peremptory challenges to strike a juror that should have been struck for cause, the error was not harmless. Huber v. State, 669 So. 2d 1079 (Fla. 4th DCA 1996).

In his concurring opinion in Milstein v. Mutual Security, 705 So. 2d 639 (Fla. 3d DCA 1998), Judge Sorondo began his opinion with the premise that "jury selection is the most significant stage of any trial." Citing Hill v. State, 477 So. 2d 553 (Fla.), cert denied, 485 U.S. 993, 108 S.Ct. 1302, 99 L.Ed.2d 512 (1988) and Trotter, ibid, for the proposition the "improper denial of a motion



to excuse a juror for cause is reversible error, if the error is properly preserved. Considering the cases of Jones, Trotter, and Hill, Judge Sorondo considered the following to properly preserve the issue for review:

1. A timely motion to strike the juror for cause,
2. The improper denial of the motion,
3. The exhaustion of all peremptory challenges during the jury selection process,
4. A request for additional peremptory challenges,
5. An identification of the juror(s) to be stricken with the additional challenge(s),
6. The denial of the request for additional challenges, and
7. The objectional jury must actually serve on the jury.

There is no requirement that the Petitioner reiterate that the basis for requesting the additional jurors was the trial court's denial of Ms. Mulligan. The Petitioner was wrongly denied a cause challenge and then named certain jurors that he would have peremptorily struck had he not exhausted his peremptory challenges. The Petitioner attempted to follow the spirit of Trotter by requesting more peremptories and naming jurors he would strike, Petitioner would believe any attempt to again bring Juror Mulligan to the attention of the trial court would have been a futile gesture. Mercer v. State, 40 Fla. 216, 24 So. 154 (1898).

Because the decision in the instant case conflicts with the decisions of this Court, this Court should exercise its jurisdiction to review the decision of the Second District in this case.

CONCLUSION

For the above reasons, the Petitioner respectfully requests that this Honorable Court accept jurisdiction to review his case.

APPENDIX

PAGE NO.

A1-A3

1. Second District Court of Appeal's opinion dated January 15, 1999.