SC22-984

In the Supreme Court of Florida

JAMES SEADLER,
Petitioner,

v.

MARINA BAY RESORT CONDOMINIUM ASSOCIATION
d/b/a MARINA BAY RESORT,
Respondent.

On Petition for Discretionary Review from the
First District Court of Appeal
DCA No. 1D19-850

AMICUS BRIEF OF THE STATE OF FLORIDA IN SUPPORT OF RESPONDENT

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April 3, 2023

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IDENTITY OF AMICUS CURIAE AND INTEREST IN THE CASE

The Attorney General submits this brief for the State of Florida as amicus curiae in support of Respondent, Marina Bay Resort Condominium Association. As the State's chief legal officer, the Attorney General may appear in any suit in which the State has an interest. *See* Art. IV, § 4(b), Fla. Const.; § 16.01(4), Fla. Stat.

The State has an interest in the issue here: under what circumstances the erroneous denial of a cause challenge is reversible error. This Court's precedent provides that, so long as the issue is preserved, the curative use of a peremptory strike to remedy an erroneous cause denial always warrants reversal, regardless of whether the jury was unbiased, when the trial court refuses to award an extra peremptory. Application of that erroneous precedent has resulted in new trials in roughly 200 criminal cases and three-dozen civil cases. *See infra* 27–34 (Appendices A & B).[1] Whether to recede from it is an

[1] The State compiled these figures by searching for cases where an appellate court granted a new trial based on the erroneous denial of a cause or peremptory challenge, without asking whether the jury was biased. Appendices collecting cases are located at the end of this brief.

important legal question regarding the administration of justice in Florida.

SUMMARY OF ARGUMENT

Since its adoption, the *Hill* rule has resulted in many needless retrials. Under *Hill v. State*, the alleged deprivation of a peremptory strike—whether directly (by denying an attempt to use a peremptory) or indirectly (by denying a meritorious cause challenge later cured by a peremptory)—is per se reversible error. 477 So. 2d 553, 556 (Fla. 1985). That is true even when the lack of an extra peremptory does not cause a biased juror to sit on the jury. Thus, an appellant can obtain reversal despite having "received what [the] federal and state constitutions guarantee[]": a "trial by a fair and impartial" jury. *Busby v. State*, 894 So. 2d 88, 106 (Fla. 2004) (Bell, J., concurring in part and dissenting in part, joined by Wells & Cantero, JJ.).

This Court should recede from *Hill* and its progeny, aligning Florida with the United States Supreme Court and most other states. *Hill* injures judicial economy and disregards the Legislature's determination that no judgment shall be reversed absent prejudicial error. *See* § 59.041, Fla. Stat.; *id.* § 924.33. Unsurprisingly, members of this Court have repeatedly called for revisiting *Hill*, most recently in

Deviney v. State. 322 So. 3d 563, 577, 583–88 (Fla. 2021) (Lawson, J., concurring in part and in result, joined by Canady, C.J., & Grosshans, J.).

When a trial court erroneously denies a cause challenge and a litigant peremptorily strikes the biased juror, the error is harmless because the juror never serves. To justify reversal, the litigant must therefore identify another error.

To that end, *Hill* assumed that the trial court commits a second, and per se prejudicial, error if it denies an extra peremptory to replace the curative strike. That is wrong. When a litigant uses a peremptory on a juror removable for cause, he has not been deprived of any right. Quite the opposite, he has received precisely the benefit that peremptory strikes confer under Florida law: the ability to remove a prospective juror for any reason, including bias. Understanding curative strikes this way respects the purpose of peremptories—ensuring that juries remain unbiased—and avoids the needless retrials that have been the inevitable fruit of *Hill*.

But even if the refusal to award an extra peremptory under those circumstances were error, it would not justify *Hill*. Any error must still be reviewed for harm. The correct approach—adopted by

the federal courts and a majority of the states, and proposed by the *Deviney* concurrence—holds that the error is harmful only if it results in seating a legally objectionable—i.e., biased—juror.

Because *Hill* and its progeny are "clearly erroneous" and demand no respect under *stare decisis*, *State v. Poole*, 297 So. 3d 487, 507 (Fla. 2020), the Court should recede from them and approve the First District's decision. Seadler does not claim that a biased juror served; he contends only that the trial court refused to award him an extra peremptory with which to remove another juror whose fairness was never in doubt. That does not justify the expense of a new trial.

ARGUMENT

I. The erroneous denial of a cause challenge does not warrant reversal when no biased juror sat on the jury.

In *Hill*, this Court held that a litigant is entitled to a new trial if he is denied an extra peremptory after expending one to strike a juror who should have been struck for cause. 477 So. 2d 553, 556 (Fla. 1985). That decision has imposed enormous costs on the judicial system, and the Court should overrule it.

Litigants realize the constitutional right to an impartial jury by challenging prospective jurors "for cause." Fla. R. Civ. P. 1.431(c);

Fla. R. Crim. P. 3.300. Florida has a liberal standard for cause challenges: "A juror must be excused for cause if *any reasonable doubt* exists as to whether the juror possesses an impartial state of mind." *Kopsho v. State*, 959 So. 2d 168, 170 (Fla. 2007) (emphasis added). Thus, by definition, the impartiality of a juror who cannot be struck for cause is not subject to reasonable debate. This Court has also provided a supplementary prophylactic—the peremptory strike—which allows litigants to remove a set number of jurors without meeting the cause standard. Fla. R. Civ. P. 1.431(d); Fla. R. Crim. P. 3.350. A litigant may use a peremptory for "a[ny] reason" other than discriminatory animus. *Busby v. State*, 894 So. 2d 88, 99 (Fla. 2004)

Florida law sensibly requires litigants who believe that the trial court has erroneously denied a cause challenge to "remedy the . . . error" by using a peremptory to strike the objectionable juror. *Id.* at 102. To preserve the issue for appeal, litigants must also exhaust their remaining peremptories and request that the trial court award an extra strike, identifying a specific juror that they would remove if that request were granted. *Trotter v. State*, 576 So. 2d 691, 693 (Fla. 1990). Rightly so: litigants should be incentivized to cure error where

possible, not ignore easily remedied problems at trial to obtain a windfall on appeal.

Florida law has gone awry, however, by treating the fulfillment of these preservation requirements as "sufficient to warrant automatic reversal." *Busby*, 894 So. 2d at 109 (Bell, J., concurring in part and dissenting in part); *see also Deviney v. State*, 322 So. 3d 563, 570–72 (Fla. 2021) (Lawson, J., concurring in part and in result). Jury selection is not a reversible-error trap—it is a tool for securing litigants' right to an impartial jury. Consistent with the Legislature's directive that appellate courts not reverse judgments absent prejudicial error, *see* § 59.041, Fla. Stat.; *id.* § 924.33, this Court should hold that the erroneous denial of a cause challenge is harmless if no biased juror served on the appellant's jury. As Seadler's jury was impartial, the Court should approve the First District's judgment.

A. *Hill* and its progeny are clearly erroneous.

Hill, *Trotter*, and *Busby* are clearly erroneous. When a litigant uses a peremptory to strike an objectionable juror, any error in not striking that juror for cause is cured—the biased juror did not serve. That denial cannot be the source of the prejudice required to reverse.

The record reflects no alternate reason for reversal. Seadler's claim that he was deprived of a peremptory is wrong—he exercised each of his allotted strikes, using one to cure what he believed to be an erroneous cause denial. That curative use did not entitle Seadler to an extra strike. And even if it did, any error was harmless because it did not result in a biased jury.

1. Any harm from an erroneous cause denial is cured when the litigant uses a peremptory strike to remove the objectionable juror.

To begin with, the trial court's denial of Seadler's cause challenge to Juror 16 was harmless because Seadler immediately struck the objectionable juror using a peremptory. Init. Br. 6. That such a strike "cure[s] the trial court's improper denial of [the] cause challenge" is both common sense and settled law. *Busby*, 894 So. 2d at 96; *see also Ross v. Oklahoma*, 487 U.S. 81, 88 (1988) ("[T]here is no need to speculate whether [a juror removed using a curative peremptory strike] would have been removed absent the erroneous ruling by the trial court; [the objectionable juror] was in fact removed and did not sit."). Consistent with that, even Seadler's supporting *amici* concede that harm review applies to cause-challenge error. Fla. Pub. Defs. Ass'n (FPDA) Br. 3–8; Fla. J. Ass'n (FJA) Br. 15–16. Under this

Court's precedent, trial-court error that "did not contribute to the verdict" is harmless. *State v. DiGuilio*, 491 So. 2d 1129, 1135 (Fla. 1986). Because Seadler struck Juror 16 immediately after the trial court denied his cause challenge, the denial contributed nothing to the jury's verdict.

2. A litigant who opts to cure an erroneous cause denial is not entitled to an extra peremptory.

Because Seadler's use of a peremptory cured the cause-challenge error, any prejudice sufficient to justify reversal must come from elsewhere. *Hill*, *Trotter*, and *Busby* locate that error in the trial court's refusal to award an extra peremptory to compensate for the "loss" of the curative strike. *Hill*, 477 So. 2d at 556–57; *Trotter*, 576 So. 2d at 692–93; *Busby*, 894 So. 2d at 96–97. Seadler and his *amici* cite this theory as grounds for retaining *Hill*. Init. Br. 20–25; FPDA Br. 9–14; FJA Br. 20–22.

That view misconstrues the value of peremptories. At their core, peremptory strikes "work in tandem with cause challenges to secure the constitutional right to trial by an impartial jury." *Kopsho*, 959 So. 2d at 174 (Bell, J., concurring in result only, joined by Wells & Cantero, JJ.); *see also Meade v. State*, 85 So. 2d 613, 615 (Fla. 1956)

(explaining that the purpose of peremptories "is the effectuation of the constitutional guaranty of trial by an impartial jury"); *Skilling v. United States*, 561 U.S. 358, 395 n.31 (2010) ("[T]he use of a peremptory challenge to effect an instantaneous cure of [cause-challenge] error exemplifies a principal reason for peremptories: to help secure the constitutional guarantee of trial by an impartial jury." (cleaned up)). Peremptories are thus not an end in themselves; "[t]hey are a means to achieve the end of an impartial jury." *Ross*, 487 U.S. at 88.

Peremptories serve this aim by providing litigants a concrete benefit—the ability to strike a number of prospective jurors for any reason short of unlawful discrimination. *Busby*, 894 So. 2d at 99; *see also* Init. Br. 22; Am. Bd. of Trial Advocs. Br. 6. Part of that benefit is that litigants can—and must, under this Court's preservation precedents—cure what they believe to be the erroneous denial of a cause challenge. *See, e.g.*, *Busby*, 894 So. 2d at 96–97. That rule makes sense: peremptories enable litigants to cure jury-selection errors

before those errors poison the verdict, thus avoiding the need for costly retrials. *Cf. Skilling*, 561 U.S. at 395 n.31.[2]

In other words, far from depriving litigants of their allotted peremptory strikes, curative strikes put peremptories to their highest and best use. By contrast, a litigant *is* deprived of a peremptory when, for instance, a court refuses to allow backstrikes or outright denies a litigant's request to use an allotted peremptory.

Seadler and his *amici* respond that there is a constitutional right to peremptory strikes. Init. Br. 22; FPDA Br. 11–14; FJA Br. 20–22. Even if true, that would be irrelevant because Seadler received his full complement of strikes. Florida's regime differs from the minority of states which formally guarantee that litigants need not exhaust peremptories on jurors challengeable for cause. New York's rules creating peremptory strikes, for example, expressly incorporate *Hill*'s theory that a litigant has the right to use the full allotment of peremptories on jurors who could not be struck for cause. *E.g.*, N.Y.

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[2] In criminal prosecutions, for instance, the curative use of a peremptory facilitates an unbiased jury and increases the odds of an acquittal, eliminating the need to appeal, which is often a lengthy process during which the defendant may be incarcerated. That is a sizeable benefit.

Crim. Proc. Law § 270.20(2) ("An erroneous ruling by the court denying a challenge for cause by the defendant does not constitute reversible error unless the defendant has exhausted his peremptory challenges at the time or, if he has not, he peremptorily challenges such prospective juror and his peremptory challenges are exhausted before the selection of the jury is complete."); *see also Busby*, 894 So. 2d at 104 n.14 (noting similar jurisdictions).

At any rate, there is no constitutional right to peremptory strikes. Unlike other states that have constitutionalized peremptories, *e.g.*, Art. I, § 19, Conn. Const.; Art. I, § 17, La. Const., Florida's Constitution protects only the right to trial by a fair and impartial jury. Art. I, §§ 16, 22, Fla. Const. Peremptories are merely a judicially created backstop. *See* Fla. R. Civ. P. 1.431(d); Fla. R. Crim. P. 3.350. Indeed, the United States Supreme Court has "long recognized that peremptory challenges are not of constitutional dimension." *Ross*, 487 U.S. at 88. "When States provide peremptory challenges (as all do in some form), they confer a benefit 'beyond the minimum requirements of fair [jury] selection.'" *Rivera v. Illinois*, 556 U.S. 148, 157–58 (2009). "So long as the jury that sits is impartial, the fact that the defendant had to use a peremptory challenge to achieve that

result does not mean the Sixth Amendment was violated." *Ross*, 487 U.S. at 88; *United States v. Martinez-Salazar*, 528 U.S. 304, 307 (2000) ("[I]f the defendant elects to cure [a cause-challenge error] by exercising a peremptory challenge, and is subsequently convicted by a jury on which no biased juror sat, he has not been deprived of any rule-based or constitutional right.").

Busby concluded, against the weight of authority and over a three-Justice dissent, "that the curative use of a peremptory challenge violates a defendant's right to a trial by impartial jury when that defendant can show that he or she went without the peremptories needed to strike a seated juror." 894 So. 2d at 103. It relied in part on dicta from the United States Supreme Court's decision in *Swain v. Alabama*. *Busby*, 894 So. 2d at 97–98 (citing 380 U.S. 202, 219 (1965)); *see also* Init. Br. 35 (relying on the same dicta). But the Supreme Court has since "disavowed" that dicta, first in *Martinez-Salazar*, 528 U.S. at 317 n.4, and then more formally in *Rivera*. 556 U.S. at 160–61 (holding that "[t]he mistaken denial of a state-provided peremptory challenge does not, at least [under these circumstances], constitute [structural error]"). When this Court decided *Busby*, a "bare majority of state courts require[d] a showing that a

biased juror actually sat on the jury panel." 894 So. 2d at 104; *see also id.* at 110 n.23 (Bell, J., concurring in part and dissenting in part) (collecting cases). Post-*Rivera*, states have "been trending to th[e] federal position." Wayne R. LaFave, et al., 6 Crim. Proc. § 22.3(c) n.160, Westlaw (4th ed. database updated November 2022).

Similarly unavailing is *amici*'s suggestion that requiring a litigant to use a peremptory strike to cure an erroneously denied cause challenge would violate "due process" by effectively giving one side more peremptories than the other. FPDA Br. 12–14; FJA Br. 20. The United States Supreme Court has already rejected that view. *See Ross*, 487 U.S. at 88–89 ("[P]etitioner also argues that the trial court's failure to remove Huling for cause violated his Fourteenth Amendment right to due process by arbitrarily depriving him of the full complement of nine peremptory challenges allowed under Oklahoma law. We disagree.").

In *Ross*, the Court considered an Oklahoma scheme—mirroring what the State urges this Court to adopt—that "qualified" the right to an allotment of peremptory strikes by "requir[ing] that the [party] must use those challenges to cure erroneous refusals by the trial court to excuse jurors for cause." *Id.* at 90. The Court found no due

process violation because there was "nothing arbitrary or irrational about such a requirement." *Id.* Oklahoma instead had every right to "subordinate[] the absolute freedom to use a peremptory challenge as one wishes to the goal of empaneling an impartial jury." *Id.* "Indeed," the Court wrote, "the concept of a peremptory challenge as a totally free-wheeling right unconstrained by any procedural requirement is difficult to imagine." *Id.*[3]

3. Even if it were error to deny the request for an extra peremptory, that error would be harmless here.

Assuming Seadler were correct that he was deprived of a peremptory, that error must itself be reviewed for harm. *See* § 59.041, Fla. Stat.; *id.* § 924.33. To "override the legislative decision" that every trial error should be reviewed for prejudice, an appellate court must "perform a reasoned analysis" and explain why, "*for constitutional reasons*," some categories of errors must be deemed to "*always*

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[3] In any event, due process errors are not beyond harmless-error review. *See, e.g.*, *Jackson v. State*, 983 So. 2d 562 (Fla. 2008) (reviewing an error based on the denial of counsel at sentencing, which the First District had characterized as a due process error, under *DiGuilio*). So even if *amici* were correct that due process required a trial court to award an extra peremptory, that error would warrant reversal only if prejudice resulted. *See infra* 14–17.

violate the right to a fair trial." *DiGuilio*, 491 So. 2d at 1134. Courts will label an error "structural," or per se reversible, only if the harmless-error test "always result[s] in a finding that the error is harmful" or requires the Court "to engage in pure speculation in order to attempt to determine the potential effect of the error on the jury." *Davis v. State*, 347 So. 3d 315, 324 (Fla. 2022); *see also Rivera*, 556 U.S. at 160 ("[W]e typically designate an error as structural, therefore requir[ing] automatic reversal, only when the error necessarily render[s] a criminal trial fundamentally unfair or an unreliable vehicle for determining guilt or innocence" (quotations omitted)). But as the concurring Justices demonstrated in *Deviney*, this circumstance does not fit that bill: the denial of a peremptory is susceptible to harmless-error review. 322 So. 3d at 583–85 (Lawson, J., concurring in part and in result).

DiGuilio places the burden on the appellee "to prove beyond a reasonable doubt that the error complained of did not contribute to the verdict or, alternatively stated, that there is no reasonable possibility that the error contributed to the conviction." 491 So. 2d at 1135. As applied here, that test compels a finding of harmlessness when the so-called deprivation of a peremptory does not cause a

biased juror to serve on the jury. *Deviney*, 322 So. 3d at 583–87 (Lawson, J., concurring in part and in result). That is because "[r]eplacement of one unbiased juror with another unbiased juror should not alter the outcome." *Fields v. Brown*, 503 F.3d 755, 776 (9th Cir. 2007) (en banc).[4]

Trading one unbiased juror for another does nothing to change the underlying evidence or a rational jury's perception of that evidence. Unlike in *Davis*, where the complained-of judge made rulings that "might very well have had a profound effect" on "the selected jurors' perception of the insanity defense," 347 So. 3d at 327, the alleged error here would at most result in a different unbiased juror considering the same facts and law. Indeed, this Court's harmless-error analysis turns on whether there is "a reasonable possibility" that the error contributed to the verdict, which assumes an

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[4] *See also Keith v. Mitchell*, 455 F.3d 662, 677–78 (6th Cir. 2006) ("In the absence of any evidence that a different set of unbiased jurors would have had a 'reasonable probability' of a different result, any erroneous exclusion of an impartial juror was harmless because we have every reason to believe the replacement was also an impartial juror."); *Owen v. Fla. Dep't of Corrs.*, 686 F.3d 1181, 1201 (11th Cir. 2012) ("[I]f no juror were biased, then there is no 'reasonable probability that . . . the result of the proceeding would have been different.'")

objectively reasonable jury. *Id.*; *Rose v. Clark*, 478 U.S. 570, 578 (1986) (explaining that the harmless-error doctrine "presupposes . . . an impartial judge and jury"). That test has never accounted for the identity of individual jurors.

The FJA claims that the *Deviney* concurrence contravenes *DiGuilio* and *Davis*. FJA Br. 11–20. But *DiGuilio* merely adopted the harmless-error standard "set forth [by the United States Supreme Court] in *Chapman* and [its] progeny." 491 So. 2d at 1138 (citing *Chapman v. California*, 386 U.S. 18, 24 (1967)). And the Supreme Court has declined to reverse a conviction in the exact circumstance that Seadler claims is harmful error here. *Rivera*, 556 U.S. at 161. So even if Seadler were correct and the trial court erred by refusing to award him an extra peremptory, that error would be harmless under *Chapman* and *DiGuilio*.

B. *Hill* is undeserving of respect under *stare decisis*.

1. When the Court is convinced that a precedent is "clearly erroneous," it next asks "whether there is a valid reason *why not* to recede from that precedent." *State v. Poole*, 297 So. 3d 487, 507 (Fla. 2020). "The critical consideration ordinarily will be reliance." *Id.* "[R]eliance interests are 'at their acme in cases involving property and

contract rights,'" and "lowest in cases . . . 'involving procedural and evidentiary rules.'" *Id.* (quoting *Payne v. Tennessee*, 501 U.S. 808, 828 (1991)).

Hill sets out a procedural rule. A framework for deciding when an erroneous cause denial constitutes reversible error "do[es] not govern primary conduct." *Alleyne v. United States*, 570 U.S. 99, 119 (2013) (Sotomayor, J., concurring). Instead, it determines only the "means and methods to apply and enforce" substantive rights in litigation. *Love v. State*, 286 So. 3d 177, 183 (Fla. 2019). That test does not alter the "duties and rights" of people in the real world. *Id.* And it has little effect on their behavior even in litigation—*Hill* or no *Hill*, rational litigants will always seek an unbiased jury, and rules for determining prejudice on appeal will have no meaningful bearing on that approach.[5] Reliance interests therefore do not justify continued adherence to *Hill*.

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[5] Seadler's brief, however, demonstrates that some litigants may engage in gamesmanship: he admits that counsel may prefer what counsel views as a somewhat *worse* jury if it meant preserving a trump card on appeal in the event of an adverse verdict. Init. Br. 33–34. That is no reason to keep *Hill*; counsel should seek a fair jury, not to keep reversible error in one's back pocket.

Hill's deleterious consequences also weaken the force of *stare decisis*. As the *Busby* dissenters noted, "[t]here are a significant number of cases where Florida district courts of appeal have reversed convictions and ordered new trials where defendants arguably received a trial by a fair and impartial jury." 894 So. 2d at 113 (Bell, J., concurring in part and dissenting in part). The statistics bear that out. Counting all cases in which a defendant alleged the deprivation of a peremptory (either through outright denial or through the refusal to award an extra peremptory after a curative strike), roughly 200 convictions have been reversed without considering whether the error affected the verdict. *See infra* 27–32. "Such reversals are 'costly to the victims and to the judicial system.'" *Busby*, 894 So. 2d at 114 (Bell, J., concurring in part and dissenting in part). Dozens more reversals have occurred in civil cases, imposing still greater costs. *See infra* 33–34.

2. The First District apparently believed itself unbound by *Hill* and its progeny because those cases were criminal and this one is civil. *See* Pet'r.'s App. 17–24 (Tanenbaum, J., concurring in denial of rehearing); *see also* Ans. Br. 12–20; FPDA Br. 2, 15–17. As Judge Tanenbaum saw it, courts should treat civil and criminal cases

differently for three reasons: *first*, the stakes in criminal cases are "more severe"; *second*, peremptories have been used in criminal cases longer than in civil cases; and *third*, "unlike in a criminal trial," there is "no . . . statutory right to a [civil] peremptory challenge." Pet'r.'s App. 18–19. The Court should reject that theory.[6]

As to the first consideration, this Court has never suggested that the prejudice of identical trial-court rulings should be evaluated differently depending on whether the stakes are civil or criminal. The Legislature has required the uniform application of harmless-error

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[6] This Court can and should consider the continued vitality of *Hill* despite Marina Bay's attempt to distinguish civil and criminal peremptories. Marina Bay's core claim—that there is no "true [] right to additional peremptory challenges," Ans. Br. 1, 11—contradicts *Busby*'s holding that "the curative use of a peremptory challenge violates a defendant's right to a trial by impartial jury when that defendant can show that he or she went without the peremptories needed to strike a seated juror." 894 So. 2d at 103. Because the Court should treat civil and criminal peremptories alike for purposes of the harmless error rule, *infra* 19–23, Marina Bay's argument necessarily calls for the overruling of *Hill*, *Trotter*, and *Busby*. And although "*amici* are not permitted to raise new issues," *Lee Mem. Health Sys. v. Progressive Select Ins. Co.*, 260 So. 3d 1038, 1041 n.1 (Fla. 2018), appellate courts "should approve the result reached by a [lower] court if any basis for doing so appears in the record." *State v. Sachs*, 526 So. 2d 48, 50 (Fla. 1988). Because the *Hill* issue is solely legal and has been briefed by the parties and *amici*, the Court should consider it.

review, and the Court has applied *DiGuilio* to both contexts. *See* § 59.041, Fla. Stat.; *id.* § 924.33; *Special v. W. Boca Med. Ctr.*, 160 So. 3d 1251, 1256 (Fla. 2014). Put another way, whether trial error infected the jury's verdict does not turn on whether property or liberty is at stake.

Next, the lengthy lineage of the peremptory strike in criminal cases does not warrant differential treatment. What matters is not the length of a right's existence, but its *nature* as either susceptible to harmless-error review or not. The privilege against self-incrimination, for example, is an ancient rule that courts nevertheless review for harmless error. *See DiGuilio*, 491 So. 2d at 1137. Because error based on not awarding an extra peremptory strike will not inevitably result in harm or require baseless speculation, *Davis*, 347 So. 3d at 324–25, and will in fact *never* impact the decisional calculus of a hypothetical rational jury on the same evidentiary record absent the presence of a biased juror, it is susceptible to harmless-error review.

Judge Tanenbaum was likewise incorrect that criminal peremptory strikes should receive special solicitude because they are guaranteed by statute, whereas civil peremptories are mere products of the rules of procedure. As a threshold matter, that a right derives

from a constitutional or statutory provision says little about whether it is reviewed for prejudice. *DiGuilio* itself reviewed the denial of a constitutional right—the Fifth Amendment privilege against self-incrimination—for harmless error. 491 So. 2d at 1137. And the Court has often performed harm review of the denial of statutory rights. *See, e.g.*, *Davis*, 347 So. 3d at 318 (statutory right to disqualify a judge under Section 38.10).

Even if the source of the right mattered, Judge Tanenbaum overlooked that today all peremptories flow from the same well-spring—the judicially created rules of procedure. In the mid-twentieth century, peremptory strikes in civil and criminal cases were creatures of statute. § 53.011, Fla. Stat. (1971) (civil); § 913.08, Fla. Stat. (1965) (criminal). Between 1967 and 1971, however, this Court recognized that peremptory strikes are procedural matters and promulgated rules—both civil and criminal—providing for their use. *See In re Fla. R. Crim. P.*, 196 So. 2d 124, 159 (Fla. 1967); *In re Fla. R. Civ. P.*, 253 So. 2d 404, 408 (Fla. 1971); *cf.* Art. V, § 2(a), Fla. Const. ("The supreme court shall adopt rules for the practice and procedure in all courts[.]"). In doing so, the Court stated that "[a]ll statutes not superseded hereby or in conflict herewith shall remain in effect as rules

promulgated by the Supreme Court." *E.g.*, *In re Fla. R. Crim. P.*, 196 So. 2d at 124. Following these decisions, peremptory strikes in all categories of cases are the product of rules, not statutes.[7]

In sum, to approve the First District's judgment, the Court must, and should, recede from *Hill* and its progeny.

II. Under the correct standard, Seadler cannot show prejudice because no biased juror sat on the jury.

Seadler has not alleged that a biased juror sat on his jury. His sole claim for reversal is that he was forced to expend a peremptory strike to cure the cause error as to Juror 16—and that, had he received an extra peremptory, he would have used it to strike Juror 22. Init. Br. 6–7. But the record does not reflect a reasonable doubt regarding Juror 22's fairness. The First District's judgment should therefore be approved.

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[7] The Legislature ratified this understanding with respect to civil cases when it repealed Section 53.011. *See* Ch. 73-333, § 24, Laws of Fla. (1973). As a note in the bill explains, Section 53.011 was "superseded by" the rules of civil procedure. *Id.* § 24, at 840. That Section 913.08 nominally remains on the statute books is of no significance.

CONCLUSION

The Court should recede from *Hill*, *Trotter*, and *Busby* and approve the First District's judgment.

Dated: April 3, 2023

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CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing has been furnished by electronic service through the Florida Courts E-Filing Portal on April 3, 2023 to the following:

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CERTIFICATE OF COMPLIANCE

I certify that the size and style of type used in this notice is 14-point Bookman Old Style, in compliance with Fla. R. App. P. 9.045(b), and that this brief contains 5,000 words in compliance with Fla. R. App. P. 9.370(b).

/s/ Zachary Grouev
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APPENDIX A (CRIMINAL REVERSALS)

A non-exhaustive list of 121 criminal cases granting a new trial due to the erroneous denial of a cause challenge:

Wright v. State, 337 So. 3d 112 (Fla. 3d DCA 2021); *Flowers v. State*, 27 Fla. L. Weekly Supp. 922b (Fla. 11th Cir. Ct. App. Dec. 31, 2019); *Mitchell-Reed v. State*, 27 Fla. L. Weekly Supp. 597a (Fla. 11th Cir. Ct. App. Aug. 21, 2019); *Pratt v. State*, 27 Fla. L. Weekly Supp. 133a (Fla. 15th Cir. Ct. App. Apr. 1, 2019); *Rentas v. State*, 237 So. 3d 368 (Fla. 4th DCA 2018); *Burgess v. State*, 248 So. 3d 131 (Fla. 4th DCA 2018); *Campbell v. State*, 241 So. 3d 877 (Fla. 4th DCA 2018); *Hopkins v. State*, 223 So. 3d 285 (Fla. 4th DCA 2017); *Rodriguez v. State*, 226 So. 3d 833 (Fla. 2d DCA 2017); *Welch v. State*, 189 So. 3d 296 (Fla. 2d DCA 2016); *Vega v. State*, 182 So. 3d 848 (Fla. 4th DCA 2016); *Herrera v. State*, 24 Fla. L. Weekly Supp. 484a (Fla. 11th Cir. Ct. App. Sept. 18, 2016); *Bethel v. State*, 122 So. 3d 944 (Fla. 4th DCA 2013); *Matarranz v. State*, 133 So. 3d 473 (Fla. 2013); *Membreno-Rodriguez v. State*, 21 Fla. L. Weekly Supp. 123a (Fla. 11th Cir. Ct. App. Nov. 13, 2013); *Alfonso v. State*, 19 Fla. L. Weekly Supp. 783a (Fla. 9th Cir. Ct. App. May 25, 2012); *Staples v. State*, 19 Fla. L. Weekly Supp. 532a (Fla. 11th Cir. Ct. App. Mar. 22, 2012); *Croce v. State*, 60 So. 3d 582 (Fla. 4th DCA 2011); *Ranglin v. State*, 55 So. 3d 744 (Fla. 4th DCA 2011); *McKay v. State*, 61 So. 3d 1178 (Fla. 3d DCA 2011); *Reyes v. State*, 56 So. 3d 814 (Fla. 2d DCA 2011); *Caldwell v. State*, 50 So. 3d 1234 (Fla. 2d DCA 2011); *Sotolongo v. State*, 19 Fla. L. Weekly Supp. 171b (Fla. 1th Cir. Ct. App. Nov. 16, 2011); *Williams v. State*, 18 Fla. L. Weekly Supp. 790a (Fla. 11th Cir. Ct. App. June 30, 2011); *Carius v. State*, 18 Fla. L. Weekly Supp. 767a (Fla. 11th Cir. Ct. App. July 19, 2011); *Nova v. State*, 19 Fla. L. Weekly Supp. 242a (11th Cir. Ct. App. Dec. 22, 2011); *Diaz v. State*, 45 So. 3d 32 (Fla. 4th DCA 2010); *Freeman v. State*, 50 So. 3d 1163 (Fla. 2d DCA 2010); *Tabares v. State*, 24 So. 3d 1205 (Fla. 3d DCA

2009); *Delacruz v. State*, 17 Fla. L. Weekly Supp. 83b (Fla. 11th Cir. Ct. App. Dec. 22, 2009); *Rimes v. State*, 993 So. 2d 1132 (Fla. 5th DCA 2008); *Ibarrondo v. State*, 1 So. 3d 226 (Fla. 5th DCA 2008); *Joseph v. State*, 983 So. 2d 781 (Fla. 4th DCA 2008); *Reid v. State*, 972 So. 2d 298 (Fla. 4th DCA 2008); *Kopsho v. State*, 959 So. 2d 168 (Fla. 2007); *Manrique v. State*, 15 Fla. L. Weekly Supp. 119b (Fla. 11th Cir. Ct. App. Nov. 29, 2007); *Lewis v. State*, 931 So. 2d 1034 (Fla. 4th DCA 2006); *Dorsett v. State*, 941 So. 2d 587 (Fla. 4th DCA 2006); *Cottrell v. State*, 930 So. 2d 827 (Fla. 4th DCA 2006); *Segura v. State*, 921 So. 2d 765 (Fla. 3d DCA 2006); *Buckley v. State*, 13 Fla. L. Weekly Supp. 692a (Fla. 15th Cir. Ct. App. May 1, 2006); *Smith v. State*, 907 So. 2d 582 (Fla. 5th DCA 2005); *Slater v. State*, 910 So. 2d 347 (Fla. 4th DCA 2005); *Busby v. State*, 894 So. 2d 88 (Fla. 2004); *Bell v. State*, 870 So. 2d 893 (Fla. 4th DCA 2004); *Peters v. State*, 874 So. 2d 677 (Fla. 4th DCA 2004); *Meade v. State*, 867 So. 2d 1215 (Fla. 3d DCA 2004); *Ivey v. State*, 855 So. 2d 1169 (Fla. 5th DCA 2003); *Juede v. State*, 837 So. 2d 1114 (Fla. 4th DCA 2003); *Mitchell v. State*, 862 So. 2d 908 (Fla. 4th DCA 2003); *Hill v. State*, 839 So. 2d 883 (Fla. 3d DCA 2003); *Rodas v. State*, 821 So. 2d 1150 (Fla. 4th DCA 2002); *Scott v. State*, 825 So. 2d 1067 (Fla. 4th DCA 2002); *Salgado v. State*, 829 So. 2d 342 (Fla. 3d DCA 2002); *Rodriguez v. State*, 816 So. 2d 805 (Fla. 3d DCA 2002); *Miles v. State*, 826 So. 2d 492 (Fla. 3d DCA 2002); *Darr v. State*, 817 So. 2d 1093 (Fla. 2d DCA 2002); *Rodriguez v. State*, 9 Fla. L. Weekly Supp. 276a (Fla. 11th Cir. Ct. App. Feb. 5, 2002); *Harriott v. State*, 792 So. 2d 711 (Fla. 3d DCA 2001); *Martinez v. State*, 795 So. 2d 279 (Fla. 3d DCA 2001); *Layton v. State*, 790 So. 2d 612 (Fla. 3d DCA 2001); *Vega v. State*, 781 So. 2d 1165 (Fla. 3d DCA 2001); *Crawford v. State*, 805 So. 2d 997 (Fla. 2d DCA 2001); *Taylor v. State*, 796 So. 2d 570 (Fla. 2d DCA 2001); *Garcia v. State*, 805 So. 2d 827 (Fla. 2d DCA 2001); *Contreras v. State*, 8 Fla. L. Weekly Supp. 754a (Fla. 11th Cir. Ct. App. Sept. 25, 2001); *Khoury v. State*, 8 Fla. L. Weekly Supp. 538a (Fla. 11th Cir. Ct. App. June 19, 2001); *Campbell v. State*, 8 Fla. L. Weekly Supp.

346a (Fla. 11th Cir. Ct. App. Mar. 13, 2001); *Marrero v. State*, 9 Fla. L. Weekly Supp. 17a (Fla. 11th Cir. Ct. App. Nov. 20, 2001); *Kramer v. State*, 747 So. 2d 1046 (Fla. 4th DCA 2000); *Bryant v. State*, 765 So. 2d 68 (Fla. 4th DCA 2000); *Henry v. State*, 756 So. 2d 170 (Fla. 4th DCA 2000); *Shannon v. State*, 770 So. 2d 714 (Fla. 4th DCA 2000); *Overton v. State*, 757 So. 2d 537 (Fla. 3d DCA 2000); *Polite v. State*, 754 So. 2d 859 (Fla. 3d DCA 2000); *Mobley v. State*, 774 So. 2d 782 (Fla. 2d DCA 2000); *Wells v. State*, 766 So. 2d 1129 (Fla. 2d DCA 2000); *Kerestesy v. State*, 760 So. 2d 989 (Fla. 2d DCA 2000); *Clemons v. State*, 770 So. 2d 296 (Fla. 1st DCA 2000); *Selwyn v. State*, 7 Fla. L. Weekly Supp. 720b (Fla. 15th Cir. Ct. App. Aug. 16, 2000); *Polo v. State*, 8 Fla. L. Weekly Supp. 72a (Fla. 11th Cir. Ct. App. Oct. 31, 2000); *James v. State*, 736 So. 2d 1260 (Fla. 4th DCA 1999); *Brown v. State*, 728 So. 2d 758 (Fla. 3d DCA 1999); *Plasir v. State*, 785 So. 2d 502 (Fla. 3d DCA 1999); *James v. State*, 731 So. 2d 781 (Fla. 3d DCA 1999); *Adkins v. State*, 736 So. 2d 719 (Fla. 2d DCA 1999); *Kessler v. State*, 752 So. 2d 545 (Fla. 1999); *Valdes v. State*, 6 Fla. L. Weekly Supp. 248c (Fla. 11th Cir. Ct. App. Jan. 29, 1999); *Lowe v. State*, 718 So. 2d 920 (Fla. 4th DCA 1998); *Johnson v. State*, 703 So. 2d 1233 (Fla. 3d DCA 1998); *Marquez v. State*, 721 So. 2d 1206 (Fla. 3d DCA 1998); *Reyes v. State*, 5 Fla. L. Weekly Supp. 202a (Fla. 11th Cir. Ct. App. Jan. 2, 1998); *Ferrell v. State*, 697 So. 2d 198 (Fla. 2d DCA 1997); *Ferguson v. State*, 693 So. 2d 596 (Fla. 2d DCA 1997); *Regueiro v. State*, 4 Fla. L. Weekly Supp. 583b (Fla. 11th Cir. Ct. App. Feb. 14, 1997); *Hall v. State*, 682 So. 2d 208 (Fla. 3d DCA 1996); *Huber v. State*, 669 So. 2d 1079 (Fla. 4th DCA 1996); *Coggins v. State*, 677 So. 2d 926 (Fla. 3d DCA 1996); *Gill v. State*, 683 So. 2d 158 (Fla. 3d DCA 1996); *Bullock v. State*, 670 So. 2d 1171 (Fla. 3d DCA 1996); *Lazana v. State*, 666 So. 2d 588 (Fla. 2d DCA 1996); *Boggs v. State*, 667 So. 2d 765 (Fla. 1996); *Davis v. State*, 656 So. 2d 560 (Fla. 4th DCA 1995); *Jones v. State*, 652 So. 2d 967 (Fla. 3d DCA 1995); *Jones v. State*, 660 So. 2d 291 (Fla. 2d DCA 1995); *Montozzi v. State*, 633 So. 2d 563 (Fla. 4th DCA 1994); *Williams v. State*, 638 So. 2d 976 (Fla.

4th DCA 1994); *Echavarria v. State*, 2 Fla. L. Weekly Supp. 281a (Fla. 11th Cir. Ct. App. May 20, 1994); *Ciccarelli v. State*, 1 Fla. L. Weekly Supp. 330a (Fla. 11th Cir. Ct. App. Feb. 12, 1993); *Prieto v. State*, 1 Fla. L. Weekly Supp. 510b (Fla. 11th Cir. Ct. App. Aug. 27, 1993); *Bryant v. State*, 601 So. 2d 529 (Fla. 1992); *Street v. State*, 592 So. 2d 369 (Fla. 4th DCA 1992); *Chapman v. State*, 593 So. 2d 605 (Fla. 4th DCA 1992); *Imbimbo v. State*, 555 So. 2d 954 (Fla. 4th DCA 1990); *Hamilton v. State*, 547 So. 2d 630 (Fla. 1989); *Gibson v. State*, 534 So. 2d 1231 (Fla. 3d DCA 1988); *Moore v. State*, 525 So. 2d 870 (Fla. 1988); *Robinson v. State*, 506 So. 2d 1070 (Fla. 5th DCA 1987); *Smith v. State*, 516 So. 2d 43 (Fla. 3d DCA 1987); *Hill v. State*, 477 So. 2d 553 (Fla. 1985); *Smith v. State*, 463 So. 2d 542 (Fla. 5th DCA 1985).

A non-exhaustive list of 77 criminal cases granting a new trial due to the erroneous denial of a peremptory strike:

Brannon v. State, 320 So. 3d 898 (Fla. 3d DCA 2021); *Lenz v. State*, 245 So. 3d 795 (Fla. 4th DCA 2018); *State v. Page-Martin*, 135 So. 3d 491 (Fla. 2d DCA 2014); *Perez v. State*, 22 Fla. L. Weekly Supp. 188a (Fla. 11th Cir. Ct. App. Sept. 9, 2014); *Williams v. State*, 118 So. 3d 312 (Fla. 3d DCA 2013); *Collier v. State*, 134 So. 3d 1042 (Fla. 1st DCA 2013); *Hayes v. State*, 94 So. 3d 452 (Fla. 2012); *Wynn v. State*, 99 So. 3d 986 (Fla. 3d DCA 2012); *Hayes v. State*, 93 So. 3d 427 (Fla. 1st DCA 2012); *Jones v. State*, 93 So. 3d 1189 (Fla. 1st DCA 2012); *Smith v. State*, 59 So. 3d 1107 (Fla. 2011); Siegel v. State, 68 So. 3d 281 (Fla. 4th DCA 2011); *Garcia v. State*, 75 So. 3d 871 (Fla. 3d DCA 2011); *Senatus v. State*, 40 So. 3d 878 (Fla. 3d DCA 2010); *Julmice v. State*, 14 So. 3d 1199 (Fla. 3d DCA 2009); *Smith v. State*, 1 So. 3d 352 (Fla. 3d DCA 2009); *Riveron v. State*, 14 Fla. L. Weekly Supp. 1023b (Fla. 11th Cir. Ct. App. Aug. 24, 2007); *Buchanan v. State*, 927 So. 2d 209 (Fla. 5th DCA 2006); *Scott v. State*, 920 So. 2d 698 (Fla. 3d DCA 2006); *Roberts v. State*, 937 So. 2d 781 (Fla. 2d DCA 2006);

Russell v. State, 879 So. 2d 1261 (Fla. 3d DCA 2004); *Douglas v. State*, 841 So. 2d 697 (Fla. 3d DCA 2003); *Austing v. State*, 804 So. 2d 603 (Fla. 5th DCA 2002); *Robinson v. State*, 832 So. 2d 944 (Fla. 3d DCA 2002); *Daniels v. State*, 837 So. 2d 1008 (Fla. 3d DCA 2002); *Jones v. State*, 787 So. 2d 154 (Fla. 4th DCA 2001); *Rojas v. State*, 790 So. 2d 1219 (Fla. 3d DCA 2001); *Lewis v. State*, 778 So. 2d 445 (Fla. 3d DCA 2001); *Capanna v. State*, 8 Fla. L. Weekly Supp. 223a (Fla. 11th Cir. Ct. App. Jan. 30, 2001); *Hamdeh v. State*, 762 So. 2d 1030 (Fla. 3d DCA 2000); *Anderson v. State*, 750 So. 2d 741 (Fla. 3d DCA 2000); *English v. State*, 740 So. 2d 589 (Fla. 3d DCA 1999); *Porter v. State*, 708 So. 2d 338 (Fla. 3d DCA 1998); *Greene v. State*, 718 So. 2d 334 (Fla. 3d DCA 1998); *Archie v. State*, 710 So. 2d 234 (Fla. 3d DCA 1998); *Dean v. State*, 703 So. 2d 1180 (Fla. 3d DCA 1997); *Kelly v. State*, 689 So. 2d 1262 (Fla. 3d DCA 1997); *Hernandez v. State*, 686 So. 2d 735 (Fla. 2d DCA 1997); *Ivey v. State*, 699 So. 2d 820 (Fla. 1st DCA 1997); *Rivera v. State*, 670 So. 2d 1163 (Fla. 4th DCA 1996); *Chambers v. State*, 682 So. 2d 615 (Fla. 4th DCA 1996); *Czaja v. State*, 674 So. 2d 176 (Fla. 2d DCA 1996); *Speights v. State*, 668 So. 2d 316 (Fla. 4th DCA 1996); *Morris v. State*, 680 So. 2d 1096 (Fla. 3d DCA 1996); *Slaton v. State*, 666 So. 2d 598 (Fla. 3d DCA 1996); *Squire v. State*, 681 So. 2d 925 (Fla. 3d DCA 1996); *Green v. State*, 673 So. 2d 937 (Fla. 1st DCA 1996); *Barquin v. State*, 654 So. 2d 1069 (Fla. 3d DCA 1995); *Garcia v. State*, 655 So. 2d 194 (Fla. 3d DCA 1995); *Miller v. State*, 664 So. 2d 1082 (Fla. 3d DCA 1995); *Portu v. State*, 651 So. 2d 791 (Fla. 3d DCA 1995); *Santiago v. State*, 652 So. 2d 485 (Fla. 5th DCA 1995) (in dicta); *Pride v. State*, 664 So. 2d 1114 (Fla. 3d DCA 1995); *Betancourt v. State*, 650 So. 2d 1021 (Fla. 3d DCA 1995); *Smith v. State*, 662 So. 2d 1336 (Fla. 2d DCA 1995); *Alexander v. State*, 643 So. 2d 1151 (Fla. 3d DCA 1994); *Hamilton v. State*, 642 So. 2d 817 (Fla. 3d DCA 1994); *Mack v. State*, 620 So. 2d 804 (Fla. 5th DCA 1993); *Barnes v. State*, 620 So. 2d 243 (Fla. 3d DCA 1993); *Williams v. State*, 619 So. 2d 487 (Fla. 1st DCA 1993); *Rome v. State*, 627 So. 2d 45 (Fla. 1st DCA 1993); *Lewis v. State*,

593 So. 2d 1195 (Fla. 4th DCA 1992); *Wimberly v. State*, 599 So. 2d 715 (Fla. 3d DCA 1992); *Morgan v. State*, 603 So. 2d 142 (Fla. 2d DCA 1992); *McClain v. State*, 596 So. 2d 800 (Fla. 1st DCA 1992); *Telemaque v. State*, 591 So. 2d 675 (Fla. 3d DCA 1991); *Elliott v. State*, 591 So. 2d 981 (Fla. 1st DCA 1991); *Cure v. State*, 564 So. 2d 1251 (Fla. 4th DCA 1990); *Johnson v. State*, 565 So. 2d 911 (Fla. 1st DCA 1990); *Shelby v. State*, 541 So. 2d 1219 (Fla. 2d DCA 1989); *Kidd v. State*, 486 So. 2d 41 (Fla. 2d DCA 1986); *Gilliam v. State*, 514 So. 2d 1098 (Fla. 1987); *Jackson v. State*, 464 So. 2d 1181 (Fla. 1985); *King v. State*, 461 So. 2d 1370 (Fla. 4th DCA 1985); *Matthews v. State*, 451 So. 2d 973 (Fla. 4th DCA 1984); *Blanco v. State*, 438 So. 2d 404 (Fla. 4th DCA 1983); *Walden v. State*, 319 So. 2d 51 (Fla. 1st DCA 1975).

APPENDIX B (CIVIL REVERSALS)

A non-exhaustive list of 18 civil cases granting a new trial due to the erroneous denial of a cause challenge:

> *R.J. Reynolds Tobacco Co. v. Gloger*, 338 So. 3d 977 (Fla. 3d DCA 2022); *Rivas v. Sandoval*, 319 So. 3d 744 (Fla. 3d DCA 2021); *Pearson v. Phillip Morris USA Inc.*, 270 So. 3d 441 (Fla. 2d DCA 2019); *Sanchez v. GEICO Indem. Co.*, 278 So. 3d 157 (Fla. 1st DCA 2019); *Lopez v. Yo Roofing & Assocs., Inc.*, 250 So. 3d 111 (Fla. 4th DCA 2018); *Kochalka v. Bourgeois*, 162 So. 3d 1122 (Fla. 2d DCA 2015); *Pelham v. Walker*, 135 So. 3d 1114 (Fla. 2d DCA 2013); *Rodriguez v. Lagomasino*, 972 So. 2d 1050 (Fla. 3d DCA 2008); *United Auto Ins. v. Advance Health Ctr.*, 16 Fla. L. Weekly Supp. 138b (Fla. 11th Cir. Ct. App. Dec. 10, 2008); *Bell v. Greissman*, 902 So. 2d 846 (Fla. 4th DCA 2005); *Somerville v. Ahuja*, 902 So. 2d 930 (Fla. 5th DCA 2005); *Weinstein Design Grp. v. Fielder*, 884 So. 2d 990 (Fla. 4th DCA 2004); *Jaffe v. Applebaum*, 830 So. 2d 136 (Fla. 4th DCA 2002); *Gootee v. Clevinger*, 778 So. 2d 1005 (Fla. 5th DCA 2000); *Nash v. Gen. Motors Corp.*, 734 So. 2d 437 (Fla. 3d DCA 1999); *Straw v. Associated Drs. Health & Life*, 728 So. 2d 354 (Fla. 5th DCA 1999); *Tizon v. Royal Caribbean Cruise Line*, 645 So. 2d 504 (Fla. 3d DCA 1994); *Longshore v. Fronrath Chevrolet, Inc.*, 527 So. 2d 922 (Fla. 4th DCA 1988).

A non-exhaustive list of 16 civil cases granting a new trial due to the erroneous denial of a peremptory strike:

> *Lafayette v. Moody*, 316 So. 3d 708 (Fla. 4th DCA 2021); *Travelers Home & Marine Ins. Co. v. Gallo*, 246 So. 3d 560 (Fla. 5th DCA 2018); *United Auto Ins. v. Palm Rehab*, 21 Fla. L. Weekly Supp. 554a (Fla. 11th Cir. Ct. App. Apr. 7, 2014); *Syzmanski v. Cardiovascular Assocs. of Lake Cnty., P.A.*, 62 So. 3d 649 (Fla. 5th DCA 2011); *Lottimer v. N.*

Broward Hosp. Dist., 889 So. 2d 165 (Fla. 4th DCA 2004); *Agro Distrib., LLC v. Rowe*, 876 So. 2d 709 (Fla. 4th DCA 2004); *Van Sickle v. Zimmer*, 807 So. 2d 182 (Fla. 2d DCA 2002); *Peacher v. Cohn*, 786 So. 2d 1282 (Fla. 5th DCA 2001); *Allstate Ins. Co. v. Thornton*, 781 So. 2d 416 (Fla. 4th DCA 2001); *Michelin N. Am., Inc. v. Lovett*, 731 So. 2d 736 (Fla. 4th DCA 1999); *Mitchell v. CAC-Ramsay Health Plans, Inc.*, 719 So. 2d 930 (Fla. 3d DCA 1998); *St. Paul Fire and Marine Ins. Co. v. Welsh*, 501 So. 2d 54 (Fla. 4th DCA 1987); *Dobek v. Ans*, 475 So. 2d 1266 (Fla. 4th DCA 1985); *Fla. Rock Indus., Inc. v. United Bldg. Sys., Inc.*, 408 So. 2d 630 (Fla. 5th DCA 1981); *Saborit v. Deliford*, 312 So. 2d 795 (Fla. 3d DCA 1975); *Funland Park, Inc. v. Dozier*, 151 So. 2d 460 (Fla. 3d DCA 1963).