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Case No. SC22-984
L.T. No. 1D19-850

IN THE SUPREME COURT OF FLORIDA

JAMES SEADLER
Appellant/Petitioner,

v.

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

ON REVIEW FROM THE DISTRICT COURT OF APPEAL
FIRST DISTRICT OF FLORIDA

BRIEF OF PETITIONER ON JURISDICTION

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STATEMENT OF THE ISSUES

1. The primary issue presented is whether a trial court's error in failing to strike a potential juror for cause, when properly preserved, is per se reversible error in a civil case. The First District below held that it was not but acknowledged its holding is directly contrary to the law in the other four districts and certified conflict with opinions from each.

2. If jurisdiction is accepted, the petitioner may also brief whether—if the First District was correct in applying a harmless error analysis to this issue—it nonetheless erred by placing the burden on the petitioner to prove the error was harmful as opposed to placing the burden on the respondent, as the beneficiary of the error, to prove there is no reasonable probability that the verdict would have been different absent the error. *See Special v. W. Boca Med. Ctr.*, 160 So. 3d 1251 (Fla. 2014).

STATEMENT OF THE CASE AND FACTS

This case arises from a jury trial on Petitioner Seadler's injuries sustained at Respondent Marina Bay's Resort. App. 1.[1] During jury selection, Seadler moved to strike Juror 16 for cause, but the trial court refused. App. 6. Seadler then used the first of his three peremptory strikes to dismiss Juror 16. App. 6. He later used his other two peremptory strikes. App. 6. Seadler requested a fourth peremptory challenge to strike Juror 22, but the trial court denied the request. App. 6. Juror 22 ultimately served on the panel. App. 7.

The jury reached a verdict in Seadler's favor but awarded him just $50,000 in past medical expenses and $10,000 in noneconomic damages. After setoffs, the trial court entered final judgment in his favor for $14,504.50. App. 1.

Dissatisfied with the jury's award of damages, Seadler appealed to the First District Court of Appeal. The sole issue he raised on appeal was the trial court's refusal to strike Juror 16 for cause, which

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[1] Consistent with Rule 9.120(d), the appendix contains only a conformed copy of the district court's decision, but in this case there are two opinions, the original panel opinion (App. 1) and the order denying rehearing but certifying conflict (App. 14).

forced him to use a peremptory on Juror 16, thus depriving him of the ability to use a peremptory challenge on Juror 22. App. 1.

The First District affirmed. While the district court did not expressly decide whether the trial court erred in refusing to strike Juror 16 for cause—the opinion noted Seadler's argument was "perhaps" correct—the court held that any error by the trial court in refusing to grant the for-cause challenge would be harmless.

The district court noted Seadler used one of his "alternate" peremptory challenges on Juror 12. The court then reasoned that—assuming like treatment for cause and peremptory strikes in this hypothetical scenario—Juror 12 would have moved to the main panel if Seadler had used a peremptory on Juror 22 because Seadler would not have had another peremptory available to use on Juror 12. The First District concluded:

> Any error in the trial court's refusal to strike Juror 8 [sic] for cause did not prejudice Seadler, because he would have had a subjectively objectionable principal juror sitting at his trial one way or another. In our view, there was not a miscarriage of justice under the circumstances of this case.

A:_7.

The panel opinion assumed that Jurors 22 and 12 were equally objectionable to Seadler, though the panel acknowledged in a footnote that a party might use a different "tactical calculus" in using its peremptory challenges on the main panel as opposed to with alternates. App. 12.

Seadler moved for rehearing, or in the alternative, for certification. The First District court denied Seadler's motion for rehearing, but certified conflict with decisions from the other four districts, all of which held that trial court errors in denying cause challenges are not subject to a harmful error analysis and, instead, require reversal. App. 14. *See Kochalka v. Bourgeois*, 162 So. 3d 1122, 1126 (Fla. 2d DCA 2015); *Tizon v. Royal Caribbean Cruise Line*, 645 So. 2d 504, 506 (Fla. 3d DCA 1994); *Weinstein Design Grp., Inc. v. Fielder*, 884 So. 2d 990, 996 (Fla. 4th DCA 2004); *Gootee v. Clevinger*, 778 So. 2d 1005, 1009–10 (Fla. 5th DCA 2000).

ARGUMENT

The First District's decision below marks a radical departure from decades of established Florida law. Nearly 40 years ago, this Court held that a trial court's error in denying a cause challenge "cannot be harmless because it abridged appellant's right to

peremptory challenges by reducing the number of those challenges available him." *Hill v. State*, 477 So. 2d 553, 556 (Fla. 1985). This Court has repeatedly reaffirmed the rule, and all five district courts of appeal—including, ironically, the First District—have consistently applied this same rule to civil cases. Until now.

I. The certified decisions conflict on their face with this case

The First District's decision to certify conflict was correct and all-but-unavoidable: the conflict between the opinion in this case and the opinions in the four conflict cases is self-evident. All four conflict cases reaffirm the established rule in Florida (and elsewhere) that preserved errors over cause challenges are per se reversible errors not subject to a harmless error analysis. *See Hill*, 477 So. 2d at 556 ("Florida and most other jurisdictions adhere to the general rule that it is reversible error for a court to force a party to use peremptory challenges on persons who should have been excused for cause"). Even a cursory review of the four cases makes the conflict apparent.

In *Kochalka v. Bourgeois*, 162 So. 3d 1122, 1126 (Fla. 2d DCA 2015), the Second District addressed an error in a denied cause challenge in an automobile negligence case. There, the district court held that errors in removing a potential juror for cause are "per se

errors" that "are not subject to any harmful error analysis and instead require a new trial whenever there is a showing that an error occurred." *Id.*

The Third District reached the same conclusion in *Tizon v. Royal Caribbean Cruise Line,* 645 So. 2d 504 (Fla. 3d DCA 1994), a civil case arising out of injuries incurred on a cruise ship. After concluding that the trial court abused its discretion in failing to strike a questionable juror for case, the court held:

> It is reversible error to deny a challenge for cause, thereby forcing a party to 'waste' a peremptory challenge to remove an objectionable juror and forcing him to keep another objectionable juror on the panel because all of the challenges were used.

Id. at 506.

The Fourth District also declined to engage in a harmless error analysis in *Weinstein Design Group, Inc. v. Fielder*, 884 So. 2d 990 (Fla. 4th DCA 2004), a misappropriation claim brought by a professional baseball player. The district court agreed with the plaintiff that the trial court had erred in failing to strike a prospective juror for cause, thus forcing the plaintiff to use a peremptory challenge on the objectionable juror. The Fourth District held that,

"'[i]f, because of an erroneous denial of a challenge for cause, a party is forced to exhaust his or her peremptory challenges and, subsequently makes a request for additional peremptory challenges which is denied ... an appellate court will reverse and grant a new trial.'" *Id.* at 996 (quoting *Imbimbo v. State,* 555 So. 2d 954, 955 (Fla. 4th DCA 1990)). The district court concluded that "it is error for a court to force a party to exhaust his peremptory challenges on persons who should be excused for cause since it has the effect of abridging the right to exercise peremptory challenges." *Id.* at 996.

Similarly, the Fifth District held that reversal is mandatory when the trial court commits error by denying a cause challenge in a case alleging wrongful death. *See Gootee v. Clevinger*, 778 So. 2d 1005, 1009–10 (Fla. 5th DCA 2000). There, the Fifth District held,

> It is reversible error to force a party to use peremptory challenges on persons who should have been excused for cause, provided the party subsequently exhausts all of his or her peremptory challenges and an additional challenge is sought and denied.

Id.

All four of the conflict cases unequivocally held that a trial court's error in denying a challenge for cause—when properly

preserved—requires reversal in civil cases without the need to further establish the error as harmful. And while the First District below certified conflict with these four cases, there are numerous other cases from the same four district courts following the exact same rule in civil cases. *See, e.g.*, *Pearson v. Phillip Morris USA Inc.*, 270 So. 3d 441 (Fla 2d DCA 2019); *Rivas v. Sandoval*, 319 So. 3d 744, 747 (Fla. 3d DCA 2021); *Bell v. Grossman*, 902 So. 2d 846, 848 (Fla. 4th DCA 2005); *Somerville v. Ahuja*, 902 So. 2d 930 (Fla. 5th DCA 2005).

Prior to this case, even the First District appeared to follow the same rule. In *Live Oak v. Townsend*, 567 So. 2d 926, 928 (Fla. 1st DCA 1990), the First District held that the trial court erred in denying several cause challenges during jury selection, which raised "more than a reasonable doubt about the impartiality of the challenged prospective jurors." The court added that "[s]uch doubt was manifest and harmful to appellant" because it forced the appellant to use its remaining peremptory challenges on the jurors who should have been removed for cause." *Id.* Thus, while the court found the error "harmful" it was the doubt *alone* that made it so. *See also Sanchez v. GEICO Indem. Co.*, 278 So. 3d 157, 164 (Fla. 1st DCA 2019)

(following *Live Oak* and holding that error in denying a cause challenge raised doubt that was harmful to the appellant).

Thus, the First District's decision below marked a sea change in Florida law. By engaging in a lengthy and detailed harmful error analysis—and, ultimately, finding any error to be harmless—the First District, for the first time in Florida law stretching back decades, held that an improperly denied cause challenge does *not* require reversal, even when the appellant is forced to use a peremptory challenge on a juror who should have been removed for cause.

Though the panel opinion did not explain the rationale for abandoning the longstanding rule that such errors require reversal, Judge Tanenbaum's concurring opinion in the order denying rehearing explained that the panel found a distinction between criminal and civil cases. App. 23. Because "[i]n a civil trial . . . the peremptory challenge at best is a procedural grace," Judge Tanenbaum explained, "there was no legal authority for us to conclude that Seadler's use of a peremptory to strike the juror he found objectionable on appeal, by itself, was a miscarriage of justice." App. 24.

Regardless of the rationale for the ruling below, one thing is abundantly clear: the court's decision is contrary to every single Florida case to address this issue previously, which the First District recognized when it certified the conflict.

II. <u>**This Court should accept jurisdiction to resolve the conflict**</u>

This Court invokes conflict jurisdiction "to stabilize the law by a review of decisions which form patently irreconcilable precedents." *Fla. Power & Light Co. v. Bell*, 113 So. 2d 697, 699 (Fla. 1959). It is difficult to imagine more "patently irreconcilable precedents" than *Seadler* and the legion of other decisions reaching the opposite conclusion on such a fundamental issue.

The decision will affect how trial attorneys and judges address jury selection issues in civil cases, and it will impact attorneys on both sides of the aisle equally. And, given the explanation in Judge Tanenbaum's concurring opinion, it threatens the continuing viability of peremptory challenges in civil cases inside the First District since the court apparently no longer views peremptory challenges as a "right" in civil cases at all, but just "a procedural grace." App. 23.

For now, appellants in the First District alone are required to prove harmful error when a trial court denies a cause challenge. Setting aside that the burden of proving harmful error in a party's subjective view of jurors is, at best, difficult and, at worst, impossible—the very reason this Court and the other districts have found that the presence of doubt alone requires reversal—the First District's ruling also flips the burden of proving harmful error onto the appellant, contrary to this Court's holding in *Special v. W. Boca Med. Ctr.*, 160 So. 3d 1251 (Fla. 2014). It also means appellants in these cases will face drastically different burdens in the First District from the other four districts—and the split could become more pronounced when the Sixth District is constituted in the coming months. *See Aravena v. Miami-Dade Cnty.*, 928 So. 2d 1163, 1166 (Fla. 2006) (irreconcilable holdings establish conflict jurisdiction). Put simply, this split of authority on such a critical and common issue can only be resolved if this Court accepts review.

CONCLUSION

For these reasons, and the widespread conflict acknowledged by the First District, this Court should grant review.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I certify that this brief complies with the font requirements established by Florida Rule of Appellate Procedure 9.210(a)(2). The brief is in Bookman Old Style 14-point font and contains 2147 words.

Dated: August 15, 2022

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