IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA
CRIMINAL DIVISION “R”

STATE OF FLORIDA, CASE NO.: Plaintiff,

vs.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_
 Defendant.

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**ORDER IMPLEMENTING A VARIATION OF TRADITIONAL JURY BOX
SELECTION METHOD FOR RANDOM JURY SELECTION**

**THIS CAUSE** came before the Court on March 27, 2024, for status check and to inform Defendant -------------- (“----------”), Defense Counsel -------------- and Assistant State Attorney --------------- that the Court shall conduct jury selection in Defendant’s imminent jury trial by a variation of the Traditional Jury Box process. After careful consideration, the procedure to be employed and the Court’s reasoning is explained below:

 This Court will use a variation of the traditional jury box selection method to choose jurors (“Traditional Jury Box”).[[1]](#footnote-1) The Court has blank carks that have each juror’s number written individually on a card for each member of the venire. During the jury selection process, after jurors are excused for cause,[[2]](#footnote-2) the Court or Clerk of Court will shuffle the cards containing each remaining venireperson’s juror number. The deck of cards will be used to pull cards off the top until jury selection is completed. The Court or Clerk will select six (or twelve, depending on the charged offense(s)) potential jurors’ numbers from off the top of the stack of cards. The parties then may choose to exercise peremptory challenges on those jurors in an alternating fashion. When a juror is excused on the basis of the exercise a peremptory challenge, a new potential juror’s number is chosen from the card stack. When six jurors have been accepted by both sides, the Court asks if the parties tender the panel or wish to exercise any backstrikes. Each stricken juror is replaced by the next randomly drawn venireperson from the top of the stack. This process continues until both sides tender the petit jury.[[3]](#footnote-3)

The critical variation of the Sequential Jury Box method is that the order in which jurors will be called into the jury box is known to the parties before they exercise any challenges. Thus, a party exercising a peremptory challenge knows exactly who will replace the stricken juror, and which jurors are next in the queue to join the petit jury. The Sequential Jury Box method allows parties to know who will serve on the jury depending on who the parties strike. By contrast, the Traditional Jury Box system does not allow a party to know who will serve because both the initial jurors and replacements are chosen randomly.

Noting the long history of the use of peremptory challenges in securing a fair and impartial jury, “there is no freestanding state or federal constitutional right to exercise peremptory challenges.” *Hayes v. State*, 94 So. 3d 452, 459 (Fla. 2012). Peremptory challenges are creatures of court rules, statutes, and long-standing tradition. The Florida Rules of Criminal Procedure and the Florida Statutes neither dictate a sequential replacement scheme, nor forbid the non-sequential replacement method used by this Court. Therefore, so long as this Court’s jury selection method does not run afoul of the U.S. or Florida Constitution, it is lawful and will not constitute grounds for a new trial.

There is strong precedent and legal support for the idea that the Traditional Jury Box is most likely to accomplish the goals set forth in *Batson v. Kentucky*, 476 U.S. 79 (1986), and its federal and state progeny.

**THE PURPOSE OF PEREMPTORY CHALLENGES.**

The Florida Supreme Court has recognized that the fundamental purpose of allowing a party to reject individual jurors through peremptory challenges is “the effectuation of the constitutional guaranty of trial by an impartial jury.” *Meade v. State*, 85 So. 2d 613, 615 (Fla. 1956). It is the right to an impartial jury, not the right to peremptory challenges, which is constitutionally protected. *See Batson v. Kentucky*, 476 U.S. 79 (1986); *Neil*, 457 So. 2d at 486. Peremptory challenges merely are a “means of assuring the selection of a qualified and unbiased jury.” *Batson*, at 91; *Jefferson v. State*, 595 So. 2d 38, 41 (Fla. 1992). It follows, then, that the primary purpose of challenges is “to remove unfavorable jurors from the jury panel.” *Hayes*, 94 So. 3d at 460. Cause and peremptory “challenges work in tandem to permit the removal of a potential juror in whom the striking party perceives a certain bias or hostility . . ..” *Id*. Thus, to the extent court rules, statutes, and/or tradition confer upon a party a right to strike jurors, it “is not of itself a right to select, but a right to reject, jurors.” *Pointer v. United States*, 151 U.S. 396, 412 (1894) (citation omitted). Because a defendant has the right to reject (but not select) a particular juror, the Florida Supreme Court has recognized that the individual juror’s right to serve trumps a defendant’s free exercise of peremptory challenges – unless the juror is biased.

The elimination of potential jurors by discriminatory criteria is an invalid exercise of peremptories and does not assist in the creation of an impartial jury. Such discrimination in the “selection of jurors offends the dignity of persons and the integrity of the courts.” *Powers [v. Ohio]*, 111 S. Ct. [1364,] 1366 [1990]. The discriminatory exclusion of potential jurors causes harm to the “excluded jurors and the community at large.” *Id*. at 1368. Therefore, a party’s right to use peremptory challenges can be subordinated to a venireperson’s constitutional right not to be improperly removed from jury service. *Jefferson*, 595 So. 2d at 41.

**DEFENDANTS HAVE NO RIGHT TO MAXIMIZE THE STRATEGIC
VALUE OF PEREMPTORY CHALLENGES.**

Jurors have a right to serve. *See State v. Slappy*, 522 So. 2d 18, 20 (Fla. 1988) (“[O]ur citizens cannot be precluded improperly from jury service. Indeed, jury duty constitutes the most direct way citizens participate in the application of our laws.”). They should not be stricken based on the whim of a party who believes it can obtain a “better” juror. *See also Perez v. State*, 890 So. 2d 371, 373 (Fla. 3d DCA 2004) (citing *Joiner v. State,* 618 So. 2d 174, 175 (Fla.1993). Simply stated, “[n]o one is entitled to a particular juror or a jury of any particular composition. The right is not one of selection; it is to reject jurors who are biased, prejudiced, or otherwise incompetent.” 33 Fla. Jur 2d Juries § 90. *See North v. State*, 65 So. 2d 77, 79 (Fla. 1952), aff’d., *North v. Florida*, 74 S. Ct. 376 (U.S. 1954) (“A defendant in a criminal case is not entitled to any particular juror or jury.”); *Newton v. State*, 178 So. 2d 341, 345 (Fla. 2d DCA 1965) (“A defendant is entitled to have only qualified jurors but he is not entitled to have any particular juror serve.”).

 As a result, courts have upheld jury selection methods similar to the selection method employed by the Court here (i.e., where the parties do not know the identity of jurors who will replace successfully challenged jurors). For example, in *Blouin*, the defendant complained that the trial court required him to exercise his tenth and final peremptory challenge before he knew which member of the venire replaced the juror the defendant had stricken with his ninth peremptory challenge. *Blouin*, 666 F.2d at 797. The Second Circuit Court of Appeals held “that the jury selection procedures did not deny Blouin any protected right and affirm[ed] his conviction.” *Id*. at 796. The court expressly rejected the idea that the defendant had a right to a jury selection procedure that afforded him a “more effective use of his peremptories.” *Id*. at 798. In *U.S. v. Delgado*, the trial court required the prosecution and the defense to exercise their peremptory challenges against the entire venire. After each side exercised all available challenges, the remaining jurors were randomly designated jurors or alternates. *U.S. v. Delgado*,350 F.3d 520, 523 (6th Cir. 2003). The defendants argued that trial court’s jury selection system “in which jurors were not seated in a sequence – impaired the ability of defense counsel to exercise professional judgment when using peremptory challenges.” *Id*. at 524. The Sixth Circuit Court of Appeals rejected the claim, concluding that “the inability of defendants to make maximum strategic use of their peremptory challenges does not invalidate a [] court’s method of exercising peremptories.” *Id*.

 The most compelling holding in *Delgado* concerned the random selection of alternates. Ironically, the Federal Rules of Criminal Procedure require that alternate jurors must replace jurors, who are unable to serve or are disqualified, in the order seated. Although the trial court in *Delgado* failed to comply with the rule, the Sixth Circuit nevertheless refused to reverse the defendants’ convictions because “the drawing of alternates by lot was a neutral procedure that in no way advantaged the government.” 350 F.3d at 526. *See United States v. Patterson*, 915 F. Supp. 11, 13 (N.D. Ill. 1996) (“this method impacts the government and the defense equally”), aff’d, 215 F.3d 776 (7th Cir. 2000).

 By contrast, one court has reversed a conviction because the prosecution was allowed to know the identity of potential jurors who would be seated on the jury if the prosecution exercised its remaining peremptory challenges. *See State v. Latham*, 569 P.2d 362 (Idaho 1977). In Idaho, the rules of criminal procedure require that replacements for stricken jurors be drawn randomly. *See* Rule 47(g), Idaho R. Crim. P. The Idaho Supreme Court explains that the purpose of this rule “is to ensure a fair trial by an impartial jury.” *Id*. at 364. In *Latham*, the trial court employed the random method required by the Idaho rules as to the petit jury, but selected the two alternates before the State exercised its final peremptory challenges. *Id*. This allowed the State to know which jurors would join the petit jury if it exercised one or two of its remaining peremptory challenges, therefore the court reversed Latham’s conviction. *Id*.

**SEQUENTIAL REPLACEMENT ALLOWS LAWYERS TO MANIPULATE THE RACIAL COMPOSITION OF A JURY.**

 Jurors should certainly not be stricken because the victim or the defendant is of a particular race and the State or Defense wish to seat jurors of the same group. A qualified juror is constitutionally entitled to serve notwithstanding the juror’s race or gender. *See Jefferson v. State*, 595 So. 2d 38, 40 (Fla. 1992) (“an individual venireperson has the constitutional right not to be excluded from jury service on the basis of race”).

The Traditional Jury Box method is far superior at reducing the ability of parties to manipulate the racial composition of the jury. For example, under the “jury box” system 12 prospective jurors are seated and subjected to *voir dire*. When a party exercises any challenge – peremptory or for cause – a new juror is brought in [by random selection] to replace the excused juror. The jury box system, then, allows less manipulation of the entire composition of the jury than the struck jury system permits. *See* Bettina B. Plevan, *Jury Trial Issues, in Current Developments in Federal Civil Practice*, 706 PLI/Lit 443, 451-52 (2004).

*United States v. Esparza-Gonzalez*, 422 F.3d 897, 899 n.3 (9th Cir. 2005). The struck jury method is more susceptible to manipulation because – as with the Sequential Jury Box method – the parties know who will serve on the jury after they strike jurors. [T]he struck jury system has long been criticized for allowing the racial engineering of juries. *See, e.g., United States v. Blouin*, 666 F.2d 796, 798 (2d Cir. 1981) (noting that the struck jury system might “increase the opportunity to shape a jury along racial or other class lines”); James Oldham, *The History of the Special (Struck) Jury in the United States and its Relation to Voir Dire Practices*, *the Reasonable Cross-Section Requirement, and Peremptory Challenges*, 6 Wm. & Mary Bill Rts. J. 623, 668 (1998) (“It may be easier, however, to camouflage discrimination with the struck jury model because the demographics of the entire panel will be known from the start, making it easier to pick and choose.”); Jon M. Van Dyke, *Jury Selection Procedures: Our Uncertain Commitment to Representative Panels* 150 (1977) (observing that the “struck jury system[has been] employed to use [the peremptory challenge] power to eliminate entire races or classes of people from jury venires”). As the Second Circuit has noted, “[i]t is far from clear, however, that the right to challenge peremptorily should necessarily imply a right to shape a jury’s profile” to the extent allowed by the struck jury system. *Blouin*, 666 F.2d at 798; *United States v. Esparza-Gonzalez*, 422 F.3d 897, 902-03 (9th Cir. 2005).

The Court adopted the modified strike method described above to make the selection process as fair as possible for all parties. Under the usual procedure in this circuit, after jurors arrive at the courthouse and are checked in at the Jury Office, the Jury Office Staff calls jurors to the courtroom in a computerized random order. Once seated in the courtroom, the Court will begin the jury selection process followed by the parties’ *voir dire* questioning. At the conclusion of questioning, the jurors are excused to the hallway during the jury selection process. After jurors are excused for cause at each stage of jury selection, the Court instructs the Courtroom Clerk to shuffle the cards with the numbers of the remaining venire members not excused due to for-cause challenges or severe hardship. The attorneys are also invited to inspect and/or shuffle the cards. Those shuffled cards, prepared prior to the jury strike conference, creates an initial list with the names in random order. That order is maintained throughout jury selection so that the list of names remaining after for-cause excusals is in the same order as it was in when the initial six (or twelve) potential jurors were discussed during the jury strike conference. The Court believes this method ensures jurors’ right to serve while guaranteeing the right to a fair and impartial jury.

It is hereby

**ORDERED AND ADJUDGED** that the Random Jury Box Method outlined above will be utilized.

**DONE AND ORDERED** at West Palm Beach, Palm Beach County, Florida, on this the

 day of April, 2024.

 CAROLINE CAHILL SHEPHERD

Circuit Judge

Copies furnished to:

1. Jury selection methods vary greatly as to their particular details, but are generally variants of either a “jury box” or a “jury struck” system. [↑](#footnote-ref-1)
2. Cause challenges may, of course, be raised at any time. However, the Court addresses the bulk of cause challenges at the beginning of the jury strike conference. [↑](#footnote-ref-2)
3. The Court uses the same process to select alternates. However, if a party removes a member of the petit jury with a backstrike after an alternate(s) has been selected, the alternate does not move into the petit jury unless the jury has been sworn. Otherwise, the Traditional Jury Box method can be circumvented by using backstrikes after a party knows the identity of the alternate(s). This is not a concern after the jury is sworn because the parties can no longer strike jurors. [↑](#footnote-ref-3)