

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA

APPELLATE DIVISION (CRIMINAL): AC
CASE NO: 502013AP900022AX
L.T. NO: 502012MM019026

MIGUEL ANJEL FIGUEROA,
Appellant,

v.

STATE OF FLORIDA,
Appellee.

Opinion filed: SEP 22 2014

Appeal from the County Court in and for Palm Beach County,
Judge Frank Castor

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PER CURIAM.

Upon the Court's own motion, this Court withdraws our prior opinion dated September 11, 2014, to correct the name of the lower court judge, and re-enter the following.

Miguel Anjel Figueroa was charged and convicted of driving under the influence ("DUI") and raises two claims of error on appeal: first, that the trial court erred by denying his motion to suppress; and second, that the trial court erred in denying his cause challenge to a potential juror

("O'Toole"). As to the first issue, we affirm without further comment. As to the second issue, we agree that the trial court erred and reverse.

A trial court's ruling on a cause challenge to a juror's competency will not be disturbed absent manifest error. *Smith v. State*, 699 So. 2d 629, 635 (Fla. 3d DCA 2006). Manifest error occurs when there is no support in the record for the trial court's decision. *Gore v. State*, 706 So. 2d 1328, 1332 (Fla. 1997). A trial court's denial of a challenge for cause constitutes reversible error if "there is basis for any reasonable doubt as to any juror's possessing that state of mind which will enable him to render an impartial verdict based solely on the evidence submitted and the law announced at the trial." *Matarranz v. State*, 133 So. 3d 473, 485 (Fla. 2013).

Figueroa contends that the trial court erred in denying his cause challenge to O'Toole because he indicated that he would give more credibility to a police officer. When asked whether he would find a police officer more credible than a civilian witness, O'Toole responded "It's the officer's opinion that matters more." Immediately following this response, defense counsel stated "Okay. You'd weigh that more heavily," and Mr. O'Toole responded, "You would have to decide."

Figueroa also argues that the trial court erred in denying his cause challenge because O'Toole further indicated that he would presume Figueroa guilty because he did not submit to a breath test. O'Toole informed the trial court that he had been previously arrested for DUI, passed a breath test, and was then released. When the defense asked the panel if they would presume the defendant guilty because he did not take a breath test, Mr. O'Toole responded:

MR. O'TOOLE: Well, I should let you know that I failed my judgment test and it was the breathalyzer that got me off. So I was thankful for it. So one wonders why he refused or allegedly refused.

DEFENSE: Okay. So if you were to hear that someone allegedly refused or

become convinced that some did refuse, would you tend to presume that person was guilty?

MR. O'TOOLE: I would. I guess yeah, why, why if he was innocent, why wouldn't he want to take it?

DEFENSE: So you'd tend to put the burden on the defense to explain that or prove otherwise?

MR. O'TOOLE: I'd like to think I'm fair and impartial, but, as I said, it got me off.

Although the prospective juror's comments may comport with admissibility of the refusal under Florida Statute section 316.132 in the criminal proceeding, we find that the trial court erred in denying Defendant's cause challenge based upon the totality of O'Toole's responses. There was a reasonable doubt as to his ability to render an impartial verdict in this case. Accordingly, we reverse and remand for a new trial.

KELLEY, MARTZ, MCSORLEY, JJ. concur.