

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

APPELLATE DIVISION (CRIMINAL): AC
CASE NO: 2014AP900046AXXXMB
L.T. NO: 2012MM016436AXXXMB

WILLIAM T. HOWLE,
Appellant,

v.

STATE OF FLORIDA,
Appellee.

Opinion filed: FEB 2 2016

Appeal from the County Court in and for Palm Beach County,
Judge Paul Damico.

For Appellant: Jason T. Forman, Esq.
633 S.E. 3rd Ave., Suite 4F
Ft. Lauderdale, FL 33301
attorneyforman@yahoo.com

William T. DiRenzo, Esq.
888 S.E. 3rd Ave., Suite 402
Ft. Lauderdale, FL 33316

For Appellee: Danielle F. Grundt, Esq.
Office of the State Attorney
401 N. Dixie Highway
West Palm Beach, FL 33401
Dgrundt@sa15.org

Appellant, William T. Howle, was charged with one count of Driving Under the Influence Causing or Contributing to Injury to Person or Property pursuant to section 316.193(3)(a), (b) and (c)(1), Florida Statutes (2012). In his appeal, Appellant argues two points: (1) that the trial court abused its discretion in denying his motion to strike a juror for cause, and (2) that the cumulative effect of the State's comments made during rebuttal closing argument prejudiced Appellant to the point where he was denied a fair trial. Because, as

discussed below, we find Appellant's first argument meritorious and reverse and remand this matter back to the trial court, we therefore decline to address Appellant's second argument.

Appellant correctly argues that the trial court abused its discretion in denying his motion to strike a juror for cause. We recognize that a trial court "has a unique vantage point in the determination of juror bias" that is unavailable to the reviewing court in the record. *Smith v. State*, 699 So. 2d 629, 635-36 (Fla. 1997). Nevertheless, we can only affirm the trial court's ruling when there is support in the record for the trial court's decision to deny a cause challenge. *Guzman v. State*, 934 So. 2d 11, 15 (Fla. 3d DCA 2006). When the record reveals a reason to doubt a juror's impartiality, an abuse of discretion has occurred. *Montozzi v. State*, 633 So. 2d 563, 565 (Fla. 4th DCA 1994).

A juror is not competent to serve when there is cause to believe that he or she cannot be impartial. When deciding whether a juror is impartial, a trial court must determine "whether the juror can lay aside any bias or prejudice and render a verdict solely on the evidence presented and the instructions on the law given by the court." *Kopsho v. State*, 959 So. 2d 168, 170 (Fla. 2007). A juror is not considered "impartial when one side must overcome a preconceived opinion in order to prevail." *Hill v. State*, 477 So. 2d 553, 556 (Fla. 1985). If any reasonable doubt exists as to whether a juror can be impartial, he or she must be dismissed for cause. *Montozzi*, 633 So. 2d at 565. "Close cases should be resolved in favor of excusing the juror rather than leaving a doubt as to his impartiality." *Bryant v. State*, 765 So. 2d 68, 71 (Fla. 4th DCA 2000).

When assessing whether a juror can set aside bias, prejudice, or preconceived opinions and be impartial, the trial court should carefully examine "all of the questions and answers posed to or received from the juror." *Banks v. State*, 46 So. 3d 989, 995 (Fla. 2010). A merely

equivocal response from a juror during voir dire does not necessarily disqualify that juror from service; rather, a juror should only be dismissed for cause if the juror's responses are consistently equivocal enough to cause the court to have reasonable doubt as to his or her impartiality. *See Kopsho*, 959 So. 2d at 170, 172. If a juror does admit to having some form of bias or preconceived opinion, then the appropriate party or judge should attempt to rehabilitate the juror to ensure his or her impartiality. *See Bryant v. State*, 601 So. 2d 529, 532 (Fla. 1992); *Tabares v. State*, 24 So. 3d 1205, 1209 (Fla. 3d DCA 2009).

In the instant case, the juror at issue stated in the juror questionnaire that he could be fair. In response to defense counsel's question of whether any of the jurors would "automatically lean one way or the other if [they] heard that the case involved prescription medication," however, the juror at issue raised his hand in the affirmative. When Appellant's trial counsel further questioned the juror about this issue, he stated the following:

JUROR: Well my father and my mother are older and they're on a lot of medication and I know how much it affects them. And that's just things that they need to do on a daily basis to survive, so.

DEFENSE: I see. And can you elaborate on how it affects them?

JUROR: I watch my father daydream in doing anything. So I know how much the medication can affect you.

DEFENSE: Okay. So you think if you hear that there was medication involved in the case and then if you add driving you lean more toward maybe there's something wrong here, there's something going on?

JUROR: Yeah.

The juror's responses cast reasonable doubt on his ability to serve with impartiality, yet neither the State nor the trial court attempted to rehabilitate him by asking whether he could still be fair and impartial despite his preconceived opinion. Rather, after Appellant's motion to strike

the juror for cause was denied, the trial court denied Appellant's request to have the juror return to the courtroom for further questioning, foreclosing any possibility of rehabilitation.

Because the juror's responses created uncertainty as to his impartiality, and because he was never rehabilitated, we find that the trial court abused its discretion by not dismissing the juror for cause. As this error was preserved for appeal and the individual sat on the impaneled jury, we find that the trial court's abuse of discretion was reversible error. *See Croce v. State*, 60 So. 3d 582, 584 (Fla. 4th DCA 2011); *Carratelli v. State*, 961 So. 2d 312 (Fla. 2007). Accordingly, we REVERSE Appellant's conviction and REMAND the case for a new trial.

COX, KELLEY, and BURTON, JJ. concur.