

IN THE CIRCUIT COURT OF THE
NINTH JUDICIAL CIRCUIT, IN AND
FOR ORANGE COUNTY, FLORIDA

CASE NO: 2010-AP-32-A-O
Lower Court Case No: 2010-CT-1093-A-O

YASMANY TADEO ALFONSO,

Appellant,
vs.

STATE OF FLORIDA,

Appellee.
_____ /

Appeal from the County Court,
for Orange County, Florida,
Faye Allen, County Court Judge

Robert Wesley, Public Defender and
Kimberly M. DeVries, Assistant Public Defender,
for Appellant

Lawson Lamar, State Attorney and
David H. Margolis, Assistant State Attorney,
for Appellee

Before POWELL, ARNOLD, and LAUTEN, J.J.

PER CURIAM.

FINAL ORDER REVERSING TRIAL COURT

Appellant Alfonso appeals his conviction for Racing on Highway, claiming that the court erred in denying his cause challenge to a prospective juror and his request for an additional peremptory challenge. Having carefully reviewed the briefs, the record on appeal and the trial transcript, we dispense with oral argument pursuant to Florida Rule of Appellate Procedure 9.320, and reverse.

During voir dire of the panel the following exchange took place between Mr. Bleakly Appellant's trial counsel, and a prospective juror:

MR. BLEAKLEY: Okay. What do you think, Ms. Hernandez? Do you think that innocent people get arrested for stuff they didn't do?

MS. HERNANDEZ: Well, I would say that if they get arrested, they did something bad. So –

The prosecutor and the judge did not attempt to rehabilitate Ms. Hernandez. No further questions of any kind were asked of her. Appellant's counsel challenged Ms. Hernandez for cause. The prosecutor objected to the challenge.

Later in the proceedings when the court announced the six names for the jury, Appellant's counsel renewed his cause challenge, saying:

MR. BLEAKLEY: – the question – I believe she [Ms. Hernandez] said that if You're arrested, it's because you probably committed a crime. I believe that's what she said.

THE COURT: And what's wrong with that?

The court then denied the challenge for cause as to Ms. Hernandez. Appellant's counsel used a back-strike to remove Ms. Hernandez. The court noticed that Appellant had used up all of his peremptory challenges. Appellant's counsel then stated that "we don't accept the jury" and requested an additional peremptory challenge, stating that he would use the additional peremptory challenge to remove Juror 13 or Juror 8, Mr. Winemuller. His request was denied, and Mr. Winemuller remained on the jury which heard the case.

The law is clear that where a prospective juror expressly admits a predisposition to consider an individual guilty merely because he or she has been arrested or has a trial, and is not rehabilitated, it is an abuse of the court's discretion and reversible error to refuse to grant a cause challenge as to that juror and an additional peremptory challenge of an identified juror who sits

on the case. *See Smith v. State*, 907 So. 2d 582 (Fla. 5th DCA 2005); *Rodas v. State*, 821 So. 2d 1150 (Fla. 4th DCA 2002). This is exactly what happened in the case before us, and contrary to the State's argument, the point was preserved for appeal. It is unnecessary to address Appellant's remaining points.

REVERSED and REMANDED.

DONE AND ORDERED at Orlando, Florida this 25th day of May, 2012.

/S/

ROM W. POWELL
Senior Judge

/S/

C. JEFFERY ARNOLD
Circuit Judge

/S/

FREDERICK J. LAUTEN
Circuit Judge

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing order was furnished to **Kimberly M. Devries, Assistant Public Defender**, 435 N. Orange Avenue, Ste. 400, Orlando, Florida 32801; **Dugald McMillan, Assistant State Attorney**, 415 N. Orange Avenue, Ste. 200, Orlando, Florida 32802-1673; and **Honorable Faye Allen**, 425 N. Orange Avenue, Orlando, Florida 32801, by mail, this 30th day of May, 2012.

/S/

Judicial Assistant