

IN THE SUPREME COURT OF FLORIDA

CASE NO. SC11-1617

DCA:09-3317

RAFAEL MATARRANZ,

Petitioner,

-vs-

STATE OF FLORIDA,

Respondent.

BRIEF OF PETITIONER ON JURISDICTION

ON PETITION FOR DISCRETIONARY REVIEW
FROM THE DISTRICT COURT OF APPEAL OF
FLORIDA, THIRD DISTRICT

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INTRODUCTION

This is a petition for discretionary review of the decision of the Third District Court of Appeal in *Matarranz v. State*, __ Fla. L. Weekly __ (Fla. 3d DCA August 3, 2011), on the grounds of express and direct conflict of decisions. In this brief of petitioner on jurisdiction, all references are to the attached appendix paginated separately and identified as “A” followed by the page number.

STATEMENT OF THE CASE AND FACTS

Petitioner was found guilty of first degree murder and burglary. On appeal petitioner argued that the trial judge erred in denying a challenge for cause against prospective juror Ceballos. The voir dire of Juror Ceballos established that after reviewing Juror Ceballos questionnaire wherein, she indicated that she felt that she would lean toward the state since she had previously been the victim of a burglary, the trial judge had questions about the juror’s ability to be fair and impartial. The trial judge asked the juror to tell the parties “what she was thinking” and the juror admitted that since she had been the victim of a burglary and her cousin had been the victim of fraud, she would hold a grudge. The juror went on to state unsolicited that, “I don’t think that I could be fair against him because I hold that grudge.”

The trial judge tried to rehabilitate the juror by reminding the juror that defendant had not been convicted of any crime yet. The court then asked the juror which way her judgment would go concerning her grudge, and she pointed to the defendant. The

prosecutor then tried to rehabilitate the juror by asking the juror if she could listen to the evidence with an open mind. The juror gave the following response:

I could have an open mind about it, but it is still– **knowing myself I think I would lean more towards the State of Florida** just because I don't think that it is right for someone to come in and take something that someone worked so hard for and take their life away from that person.

Once again not being willing to accept the juror's response that she would favor the state, the prosecutor went on to question the juror and remind the juror that the law required that she set aside her prejudices and listen to the case with an open mind. The prosecutor then asked the juror again whether she could put aside her feelings and sit in court with an open mind and require the state to prove their case against the defendant. After listening to both the judge and the prosecutor's questions concerning the fact that she had to be open minded, the juror gave the prosecutor the following response:

Yes, I think I could. **Just like you say maybe I would lean a little more to one side,** but I would have to hear everything before I can actually make a decision.

Recognizing that the juror still indicated that she would be leaning towards the state, the state insisted on trying to get the juror to say she would be a fair and impartial juror when the prosecutor finished her questioning of the juror with the following:

Ms. Denaro: You can't lean. That is what you are saying when you say I think you are going to make the State nervous and you are going to Mr. Melenik and Mr. Nally nervous. You can't say I think. My question, can you put aside your feelings for the State or the feelings for the defendant, put them aside if you are selected as a juror and listen to the evidence that comes forward on the case and make a determination at the conclusion of all of the evidence as to whether or not the State of Florida has proved

these two charges against the defendant. Can you do that honestly?

Juror: Yes.

After the juror finally indicated that she thought she would be able to put aside her feelings about leaning toward the state, defense counsel asked the juror about the crimes that were committed against her. The juror described the crimes that were committed against her when she was a child and then stated that she did not think her prior experiences would affect her deliberations in this case. The following day as voir dire continued, the juror indicated that she would not require defendant to testify or produce any evidence to establish his innocence. Finally, pursuant to defense questioning, the juror indicated that overnight she had talked and thought about what she had said the previous day and she felt she now had a more open mind and that anything that happened to her in the past had nothing to do with this case.

Defense counsel moved to strike Juror Ceballos for cause since her answers that she would hold a grudge against the defendant and would favor the state established a reasonable doubt as to the juror's ability to be fair and impartial. The trial judge indicated that she was initially leaning towards striking the juror for cause but, since it appeared the juror was embarrassed by her initial responses and on the following day after thinking about it overnight, the juror appeared to have an open mind. Therefore, the court denied the motion to strike this juror for cause. This is evidenced by the following ruling by the trial court:

[having] only heard testimony from yesterday, I would have been inclined to grant it, but her testimony from yesterday includes the fact that there had been this burglary when she was eight years old, that was emotional for her...and today based on her demeanor, I believe from her reflection, **I think she was embarrassed and she said that she thought about it last night and she said she felt that she had more of an opened mind today and that she could be fair and she realized that that burglary that happened to her had nothing to do with this case.**

The Third District Court of Appeal held that the trial judge's decision not to strike Juror Ceballos for cause was not manifest error since the juror, despite her initial responses wherein she indicated she would favor the state and hold a grudge against the defendant, eventually stated she would have an open mind. The court recognized the fact that the trial judge concluded that the jury had altered her view about her ability to be fair since she was embarrassed by her initial responses. A notice to invoke jurisdiction was filed.

SUMMARY OF ARGUMENT

Despite the fact that the juror in question continually took the position that since she had been the victim of a burglary when she was young, she would hold a grudge against the defendant and lean toward the state, the Third District Court of Appeal concluded that the trial judge's decision not to strike the juror for cause since the juror eventually indicated she would have an open mind and be fair was not manifest error. This decision directly conflicts with numerous opinions from this Court and the Fourth District Court of Appeal which have consistently recognized that manifest error does occur if after reviewing all of the juror's responses a reasonable doubt exists as to the

juror's ability to be fair even though the juror eventually stated she could be fair. Therefore, this Court should grant jurisdiction to resolve the conflict.

ARGUMENT

THE OPINION OF THE DISTRICT COURT OF APPEAL WHICH HOLDS THAT MANIFEST ERROR DOES NOT OCCUR WHEN A JUROR EVENTUALLY INDICATES SHE CAN BE A FAIR JUROR EVEN IF HER PRIOR RESPONSES THAT SHE WOULD LEAN TOWARD THE STATE AND HOLD A GRUDGE AGAINST THE DEFENDANT ESTABLISHED A REASONABLE DOUBT AS TO THE JUROR'S ABILITY TO BE FAIR DIRECTLY CONFLICTS WITH CASES FROM THIS COURT AND OTHER DISTRICT COURTS OF APPEAL.

On appeal to the Third District Court of Appeal petitioner argued that the trial judge committed manifest error in denying his challenge for cause of juror Ceballos since a reasonable doubt existed as to the juror's ability to be fair and impartial. Petitioner further argued that the fact that the juror eventually indicated that she could be fair and impartial after being embarrassed by her responses that she may lean toward the state and hold a grudge against the petitioner, did not change the fact that a reasonable doubt existed as to the juror's ability to be a fair and impartial juror.

In affirming the trial judge's ruling the Third District recognized that the juror, on her questionnaire before being questioned by the judge, indicated that she would lean toward the state. The Third District further recognized in its opinion that during leading questions from both the state and the trial judge the juror continued to honestly tell the parties that she thought she would favor the state. Despite the fact that Juror Ceballos

was begging the court to excuse her for cause since she did not think she could be a fair juror in this case, the Third District Court of Appeal concluded that since the juror, who the trial judge concluded had been embarrassed by her candid responses, eventually indicated that she would have an open mind and follow the law, it was impossible for Petitioner to establish that the trial judge committed manifest error in this case. This opinion directly conflicts with numerous cases from this court and the Fourth District Court of Appeal which have held that when determining whether a juror should have been dismissed for a cause, an appellate court must look at all of the responses given by the juror and if a reasonable doubt exists as to that juror's ability to be fair and impartial exists, the trial judge commits manifest error in not striking the juror for cause even if the juror eventually states she could be a fair juror.

As far back as in *Singer v. State*, 109 So.2d 7 (Fla. 1959), this Court has recognized that in resolving a challenge to a juror's competence, the juror's assurance that he or she will be fair and impartial is not controlling when the court recognized that "[A] juror's statement that he can and will return a verdict according to the evidence submitted and the law announced at the trial is not determinative of his competence, **if it appears from other statements made by him or from other evidence that he is not possessed of a state of mind which will enable him to do so.**" This Court further recognized, "It is difficult for any person to admit that he is incapable of being able to judge fairly and impartially." *Singer v. State*, 109 So. 2d at 24.

In *Overton v. State*, 801 So.2d 877 (Fla. 2001), this Court recognized that the totality of a juror's responses concerning the defendant's right not to testify, created a reasonable doubt about that jurors' ability to be fair and impartial even though the juror assured the trial judge that he would follow the judge's instructions concerning a defendant's right to remain silent. When questioned as to his thoughts on the presumption of innocence and a defendant's right to remain silent during the trial, Juror Russell gave responses which indicated that he would expect the defendant to testify at trial. This Court cited a lengthy colloquy between the court, defense counsel, and the juror wherein, the juror continually assured all the parties that despite his belief that if he was innocent he would testify, he would follow the court's instructions that he could not hold it against the defendant if he chose not to testify. In ruling that Juror Russell should have been

stricken for cause despite these assurances, the Court held:

Based on the totality of his responses, we conclude that Russell's assurance that he would be able to follow the law did not sufficiently negate his prior abiding adherence to the notion that he had "always believed" that defendants should testify if they have nothing to hide.

The court went on to hold: In the present case, after thorough consideration and analysis of the totality of Mr. Russell's voir dire statements with respect to the presumption of innocence and a defendant's right to not testify at trial, we conclude that his responses sufficiently placed in doubt his ability to be an impartial juror, notwithstanding the tortured attempt at rehabilitation. Accordingly, we must conclude that Mr. Russell should have been excused for cause.

In reaching its conclusion, this Court relied heavily on its decision in *Hamilton v. State*, 547 So.2d 630 (Fla.1989), which involved a juror who indicated that she had extreme difficulty with the presumption of innocence and a defendant's right to remain silent. *See* 547 So.2d at 632. In reversing and ordering a new trial, the Court noted that "[a]lthough the juror in this case stated in response to questions from the bench that she could hear the case with an open mind, her other responses raised doubt as to whether she could be unbiased." *Id.* at 633.

The Third District's decision not only conflicts with the above cited cases from this Court, it also conflicts with several cases from the Fourth District Court of Appeal wherein the court, consistent with this Court, has concluded that a juror's single statement that he could be fair after leading questions did not change the fact that the juror's initial responses established a reasonable doubt as to the juror's ability to be fair and impartial juror.

In Huber v. State, 669 So.2d 1079, 1082 (Fla. 4th DCA 1996), defendant moved to challenge a juror for cause since the juror indicated that he believed the police do not arrest innocent people. The trial judge concluded that since the juror eventually stated he would follow the law and presume defendant innocent, it was not necessary to strike the juror for cause. In reversing the trial judge's order the Fourth District held:

"Even though [the] prospective juror . . . eventually said he would be able to follow the law and require the state to prove its case beyond a reasonable doubt, his original expression of doubt about his ability to presume the defendant innocent because he believes that police don't arrest innocent people is a basis for reasonable doubt that he might not be able to render an impartial verdict. This was not overcome by his subsequent capitulation and agreement that he would follow the law as given to him by the trial court, and it was error to not dismiss [him] for cause.").

See also Lowe v. State, 718 So.2d 920 (Fla. 4th DCA 1998)(a juror's single statement that he could be fair after leading questions did not change the fact that the juror's initial responses established a reasonable doubt as to the juror's ability to be fair and impartial juror.)

In this case, Juror Ceballos in her questionnaire candidly admitted that she would lean toward the state. After questioning from both the judge and prosecutor, the juror continually took the position that she would hold a grudge against defendant and lean toward the state. After the first day of voir dire the juror went home and when she came back to court she eventually indicated that she could be fair in this case. The trial judge concluded that the juror changed her mind about being fair in this case because she was

embarrassed by her initial responses. Clearly, a reasonable doubt existed as to the juror's ability to be fair even though she ultimately conceded that she could be a fair juror in this case even though she would be thinking about her prior experiences. Since the Third District's opinion which concludes that manifest error can not be shown in this case since the juror eventually indicated she could be fair directly conflicts with cases from this Court and the Fourth District, this Court should accept jurisdiction of this case to resolve the conflict.

CONCLUSION

Based on the foregoing facts, authorities and arguments, petitioner respectfully requests this Court to exercise its discretionary jurisdiction to review the decision of the Third District Court of Appeal.

Respectfully submitted,
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was delivered by hand to the Office of the Attorney General, Criminal Division, 444 Brickell Avenue, Suite 650, Miami, Florida 33131, on this ____ day of August, 2011.

ROBERT KALTER
Assistant Public Defender

CERTIFICATE OF FONT

Undersigned counsel certifies that the type used in this brief is 14 point proportionately spaced Times New Roman.

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