

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

APPELLATE CASE NO: 2015-AP-000021-A-O
LOWER CASE NO.: 2015-CT-000882-A-O

MARION BLAIR,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

Appeal from the County Court for Orange County,
Florida, Martha C. Adams, County Court Judge

Robert Wesley, Public Defender
Tammy Hammack, Assistant Public Defender, for Appellant

Jeffrey L. Ashton, State Attorney, Carol Levin Reiss,
Assistant State Attorney, for Appellee

Before Doherty, Turner, Wooten, JJ.

PER CURIAM.

FINAL ORDER AFFIRMING IN PART AND REVERSING IN PART TRIAL COURT

Marion Blair (“Appellant”) appeals the denial of his motion for mistrial, and the exclusion of certain testimony. This court has jurisdiction pursuant to Florida Rule of Appellate Procedure 9.030(c)(1).

Appellant argues that the court erred in failing to grant a mistrial after removing a juror and replacing him with the alternate, without first questioning the juror and determining whether there was any misconduct on his part. Appellee argues that removing the juror was within the court’s discretion and that if there were any error, such was harmless as the juror was replaced by a competent alternate juror.

The Court finds that the removal of the juror without any evidence of misconduct on his part was an abuse of discretion. *See Washington v. State*, 955 So. 2d 1165 (Fla. 1st DCA 2007) (holding that the removal of a juror must be predicated on a finding of misconduct, which requires evidence that the juror violated an order or instruction of the court. “Reconfiguring the jury panel based on nothing more than the perceived impressions a juror holds about the case” was error which warranted reversal.)

Regarding Appellant’s second claim, the Court finds that the exclusion of testimony by Appellant that he was hospitalized with breathing problems subsequent to his arrest was not an abuse of discretion.

Based on the foregoing, it is hereby **ORDERED AND ADJUDGED** that the Final Judgment and Sentence is Reversed and the matter Remanded for a new trial.

DONE AND ORDERED in Chambers, at Orlando, Orange County, Florida, on this 18th day of December, 2015.

/S/

PATRICIA A. DOHERTY
Presiding Circuit Judge

TURNER and WOOTEN, JJ., concur.

Certificate of Service

I HEREBY CERTIFY that a copy of the foregoing Final Order Affirming in Part and Reversing in Part Trial Court has been provided to **Tammy Hammack**, Assistant Public Defender, to **Carol Levin Reiss**, Assistant State Attorney, 415 North Orange Avenue, Orlando, Florida 32801, and to **The Honorable Martha C. Adams**, 425 North Orange Avenue, Orlando, FL 32801 this 18th day of December, 2015.

/S/

Judicial Assistant