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IN THE
COURT OF APPEALS OF INDIANA

VALARIE S. DOOLEY,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 20A05-0811-CR-654
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE ELKHART SUPERIOR COURT
The Honorable James W. Rieckhoff, Judge
Cause No. 20D05-0803-CM-00137

JUNE 23, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

HOFFMAN, Senior Judge

Valarie Dooley appeals her conviction by jury of resisting law enforcement as a class A misdemeanor. We reverse.

The dispositive issue is whether the trial court erred in failing to exclude a juror who indicated racial prejudice on her juror questionnaire.

Before the jury was sworn in, Dooley, an African-American, objected to the seating of Juror 1141, a Caucasian, because, in response to a question on the juror questionnaire, Juror 1141 stated that she disliked races other than her own. The trial court permitted the juror to remain seated. The jury convicted Dooley, and she appeals.

Article 1, Section 13 of the Indiana Constitution guarantees the defendant the right to an impartial jury. Thus, a biased juror must be dismissed. *Joyner v. State*, 736 N.E.2d 232, 238 (Ind. 2000). Although not making the specific claim, Dooley's argument implicates a challenge for cause. Indiana Code section 35-37-1-5 governs challenges for cause and provides in pertinent part as follows:

> (a) The following are good causes for challenge to any person called as a juror to serve in a criminal trial . . . .
>
> (11) That the person is biased or prejudiced for or against the defendant.

A companion statute, Indiana Code section 35-37-1-6, provides that "all challenges for cause shall be made before the jury is sworn to try the cause, and shall be summarily tried by the court on the oath of the party challenged or other evidence." A decision whether to excuse a juror for cause rests with the trial court's discretion. *Pinkston v. State*, 821 N.E.2d 830, 836 (Ind. Ct. App. 2004), *trans. denied*. An abuse of discretion occurs where the trial court's decision is clearly against the logic and effect of

the facts and circumstances before the court. *Southern v. State,* 878 N.E.2d 315, 321 (Ind. Ct. App. 2007).

In *Pinkston,* during voir dire, the prosecutor asked the jury pool members if there was any reason they could not be fair and impartial. Juror 126 responded that as the only African-American on the jury, she felt she had a duty to protect the African-American defendant from the other jurors. This juror further acknowledged that she would probably defend Pinkston more than she should. Thereafter, the State was permitted to have Juror 126 excluded for cause.

On appeal, Pinkston argued that the trial court erred in excluding the juror. This court noted that in light of Juror 126's comments to the prosecutor, it was apparent to us that Juror 126 would certainly consider race a factor in her deliberation over Pinkston's guilt or innocence. *Id.* at 837. We agreed with the trial court that Juror 126 was biased in favor of Pinkston on account of his race, and that the juror's comments could reasonably lead to the conclusion that the juror could not be fair to the State. *Id.* We therefore affirmed the trial court's decision to exclude Juror 126.

Here, in light of Juror 1141's response on her juror questionnaire, it is apparent that this juror would consider race as a factor in her deliberation over Dooley's guilt or innocence. Further, the juror's comments could reasonably lead to the conclusion that she could not be fair to Dooley. The trial court abused it s discretion when it failed to exclude this juror.

Reversed.

KIRSCH, J., and BRADFORD, J., concur.