

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

CASE NO: 2010-AP-33-A-O
Lower Court Case No: 2009-MM-1562-A-W

JEFFREY E. PRESTON,

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, G. ADAMS, and JOHNSON, J.J.

PER CURIAM.

FINAL ORDER REVERSING TRIAL COURT

Jeffrey Preston appeals his conviction for Criminal Mischief. Having carefully considered the briefs, the record on appeal, the trial transcript and applicable law, we dispense with oral argument pursuant to Florida Rule of Appellate Procedure 9.320, and reverse.

Appellant raises several points, only one of which we need address. He argues that the trial court erred reversibly by denying his challenge for cause as to a prospective juror and denying his request for an additional peremptory challenge.

During voir dire, several jurors expressed a predisposition to give more credence to a law enforcement officer's testimony than a civilian witness. Juror 10 had an ex-husband who had been a deputy for 30 years, and although she thought she could "come up with a fair decision", she would "put more weight" on the testimony of a police officer. Juror 13's sister had been a police officer for 10 years and said that would influence her ability to listen to the testimony of a police officer. Juror 6 had been a deputy "long ago", but said that nothing could hold him up from being fair and impartial today. The prosecutor objected to Appellant's challenges for cause as to Jurors 10 and 13, and the court denied both challenges. Appellant exhausted all of his peremptory challenges, using one on Juror 10. He requested an additional peremptory challenge, stating he would use it as to Juror 6, but the court denied the additional challenge. He refused to accept the jury, and Juror 6 remained on the jury which heard the case.

Numerous similar cases² have arisen over the last decade or so which have been reversed because a juror has adhered to his or her predisposition that an officer is more credible than a lay witness, or there was a reasonable doubt about it; a cause challenge was denied, and the error was preserved for appeal. *See e.g., Carratelli v. State*, 961 So. 2d 312 (Fla. 2007); *Ibarrondo v. State*, 1 So. 3d 226 (Fla. 5th DCA 2008); *Rimes v. State*, 993 So. 2d 1132 (Fla. 5th DCA 2008).

² For additional cases from other Florida District Courts of Appeal not cited in the text, *See Garcia v. State*, 805 So. 2d 827 (Fla. 2d DCA 2001); *Polite v. State*, 754 So. 2d 859 (Fla. 3d DCA 2000); *Jenkins v. State*, 824 So. 2d 977 (Fla. 4th DCA 2002); *Scott v. State*, 825 So. 2d 1067 (Fla. 4th DCA 2002); *Juede v. State*, 837 So. 2d 1114 (Fla. 4th DCA 2003); *Slater v. State*, 910 So. 2d 347 (Fla. 4th DCA 2005).

This is one of those cases. Consequently, Appellant's conviction is reversed and the case is remanded for a new trial.

REVERSED and REMANDED.

DONE AND ORDERED at Orlando, Florida this 15th day of May, 2012.

/S/

ROM W. POWELL
Senior Judge

/S/

GAIL A. ADAMS
Circuit Judge

/S/

ANTHONY H. JOHNSON
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 15th day of May, 2012.

/S/

Judicial Assistant