

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

ERICA MONQUE DUMPSON,

CASE NO.: 2016-AP-000045-A-O
LOWER COURT CASE: 2016-CT-005015-A-O

Appellant,

v.

STATE OF FLORIDA,

Appellee.

_____ /

Appeal from the County Court,
in and for Orange County, Florida,
Honorable Deb S. Blechman, County Court Judge.

Evan Greene, Assistant Public Defender,
for Appellant.

Aramis Ayala, State Attorney, and Carol Levin Reiss, Assistant State Attorney,
for Appellee.

Before SCHREIBER, WHITEHEAD, and WOOTEN, J.J.

FINAL ORDER REVERSING TRIAL COURT

In this case, Erica Monque Dumpson (“Appellant”) was charged with Driving Under the Influence in violation of Fla. Stat. § 316.193. A jury found her guilty as charged on October 4, 2016. She hereby appeals the judgment and sentence in this matter.

Statement of Facts

On June 8, 2016, Officer Forrest Price of the Orlando Police Department initiated a traffic stop of Appellant. A jury trial was held on October 4, 2016. Appellant testified in her own defense, explaining that she was prescribed Klonopin for anxiety and obsessive compulsive disorder. A charge conference was held where both parties agreed to jury instructions, including an instruction

that stated Appellant was “under the influence of alcoholic beverages to the extent that her normal faculties were impaired.” This instruction did not reference controlled or chemical substances.

During its closing argument, defense counsel asked the jury to disregard the testimony it heard about Appellant’s Klonopin use because it was not relevant under the proposed jury instructions. The trial court interrupted, asked both parties to approach the bench, and informed them that it would be including the phrase “chemical substance” in the above jury instruction. Defense counsel moved for a mistrial, arguing that it was improper to alter jury instructions during the defense closing argument. The court denied this motion. The trial court altered the jury instructions and the jury found Appellant guilty as charged.

Arguments on Appeal

Appellant argues that alterations made midway through a defense counsel’s closing argument mandate reversal when they prejudice the defense’s case. There is prejudice when the change concerned one of the essential elements of the charged offense and resulted in damage to defense counsel’s credibility with the jury.

Appellee concedes that the trial court erred in its actions, contending that Appellant was denied a fair trial as a result and is entitled to a new trial.

Analysis

When defense counsel relies on the exclusion of a jury instruction and references it in his closing argument, a defendant is denied a fair trial if the trial court chooses to use the instruction in direct contradiction of counsel’s closing argument and the parties’ agreement. *Kirkland-El v. State*, 883 So. 2d 383, 384 (Fla. 4th DCA 2004) (a defendant is denied a fair trial when the trial judge decides to instruct the jury substantially differently than what was determined at the charge conference and makes this decision in the middle of closing arguments). Such a change constitutes

reversible error, as the appellate court would have to engage in speculation to determine its effect on the jurors and whether they believed that defense counsel was either trying to mislead them or was ignorant of the law. *O'Keefe v. State*, 47 So. 3d 937, 940 (Fla. 4th DCA 2010).

Accordingly, it is hereby **ORDERED AND ADJUDGED** the trial court's order is **REVERSED** and this matter is **REMANDED** for further proceedings.

DONE AND ORDERED in Chambers at Orlando, Orange County, Florida, this ____ day of _____, 2017.

/S/ _____
Margaret H. Schreiber
Presiding Circuit Judge

WHITEHEAD and WOOTEN, J.J., concur.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Order has been furnished to **Judge Deb S. Blehman**, 425 N. Orange Avenue, Orlando, Florida 32801; **Evan Greene, Assistant Public Defender**, at 435 North Orange Avenue, Suite 400, Orlando, Florida 32801, as counsel for Appellant/Petitioner; and **Carol Levin Reiss, Assistant State Attorney**, at P.O. Box 1673, Orlando, Florida 32802, as counsel for Appellee on the ____ day of _____, 2017.

Judicial Assistant