IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA

APPELLATE DIVISION (CRIMINAL): AC
CASE NO.: 502016AP900257AXXXMB
L.T. NO.: 502015MM010363AXXXSB

RODERICK LAMONT SHELTON,
Appellant,

v.

STATE OF FLORIDA,
Appellee.
_____/

Opinion filed: DEC 07 2017

Appeal from the County Court in and for Palm Beach County,
Judge Marni Bryson.

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PER CURIAM.

Appellant, Roderick Lamont Shelton, was charged with three counts of Animal Cruelty and three counts of Unlawful Abandonment of Animals. Appellant argues that the trial court abused its discretion by denying his motion to strike a juror for cause. We agree.

A juror is not competent to serve when there is cause to believe that he or she cannot be impartial. *Montozzi v. State*, 633 So. 2d 563, 565 (Fla. 4th DCA 1994). When deciding whether a juror is impartial, a trial court must determine "whether the juror can lay aside any bias or

prejudice and render a verdict solely on the evidence presented and the instructions on the law given by the court." *Kopsho v. State*, 959 So. 2d 168, 170 (Fla. 2007). A juror is not considered "impartial when one side must overcome a preconceived opinion in order to prevail." *Hill v. State*, 477 So. 2d 553, 556 (Fla. 1985). If any reasonable doubt exists as to whether a juror can be impartial, he or she must be dismissed for cause. *Montozzi,* 633 So. 2d at 565. "Close cases should be resolved in favor of excusing the juror rather than leaving a doubt as to his impartiality." *Bryant v. State*, 765 So. 2d 68, 71 (Fla. 4th DCA 2000).

When assessing whether a juror can set aside bias, prejudice, or preconceived opinions and be impartial, the trial court should carefully examine "all of the questions and answers posed to or received from the juror." *Banks v. State*, 46 So. 3d 989, 995 (Fla. 2010). A merely equivocal response from a juror during voir dire does not necessarily disqualify that juror from service; rather, a juror should only be dismissed for cause if the juror's responses are consistently equivocal enough to cause the court to have reasonable doubt as to his or her impartiality. *See Kopsho*, 959 So. 2d at 170, 172. If a juror does admit to having some form of bias or preconceived opinion, then the appropriate party or judge should attempt to rehabilitate the juror to ensure his or her impartiality. *See Bryant v. State*, 601 So. 2d 529, 532 (Fla. 1992). Such might be the case if the juror states that he can "set aside his personal views and follow the law in light of the evidence presented." *Gore v. State*, 706 So. 2d 1328, 1332 (Fla. 1997). But "a juror's statement that he can and will return a verdict according to the evidence submitted and the law announced at trial is *not* determinative of his [or her] competence." *Matarranz v. State*, 133 So. 3d 473, 484-85 (Fla. 2013) (quoting *Singer*, 109 So. 2d at 24) (emphasis in original).

In the instant case, during one potential juror's first statement to the trial court, he felt

compelled to "admit that [he is] also a very strong dog lover." A lengthy exchange between the juror and the trial court ensued, wherein the juror equivocated between stating that he would act with impartiality, and stating that he doubts his ability to be impartial based on his love of dogs. When asked by the trial court whether he "ha[s] the deductive reasoning to go through the evidence," the juror admitted that he "ha[s] those baseline feelings" and that "there are certain feelings that can sway, even when you try not to take anything into account." The juror's responses cast reasonable doubt on his ability to serve with impartiality.

The State attempted to rehabilitate the juror by asking, "would you be able to follow the law as the judge instructs you and [put] your feelings about . . . dogs . . . to the side to apply [the law] in a fair and impartial way?" The juror first answered that he would "try" to do so, but hedged his statement with a familiar refrain to doubts of his impartiality:

> I would always try, obviously, to weigh everything correctly. I do have a strong objection to animal abuse, not that anybody necessarily commits it without being proven that they've committed it, but it is a particular Achilles tendon to me.

The juror thus failed to assure the trial court that he can "set aside his personal views and follow the law in light of the evidence presented." *Gore*, 706 So. 2d at 1332. Instead, we believe the juror's characterization of animal abuse as an "Achilles tendon" increased doubts of his ability to be impartial.

We recognize that a trial court "has a unique vantage point in the determination of juror bias" that is unavailable to the reviewing court in the record. *Smith v. State*, 699 So. 2d 629, 635-36 (Fla. 1997). Nevertheless, we can only affirm the trial court's ruling when there is support in the record for the trial court's decision to deny a cause challenge. *Guzman v. State*, 934 So. 2d 11, 15 (Fla. 3d DCA 2006). When the record instead reveals a reason to doubt a juror's impartiality,

an abuse of discretion has occurred. *Montozzi v. State*, 633 So. 2d 563, 565 (Fla. 4th DCA 1994). We believe this to be such a case. Although the juror's final words on the subject made to defense counsel were that "the state needs to prove their case beyond a reasonable doubt," and "I believe everyone is presumed innocent until proven guilty," we find, in this case, the juror's earlier statements made to the trial court and State outweigh the subsequent assurances made to defense counsel. *See Matarranz*, 133 So. 3d at 490 ("Initial reactions and comments from a prospective juror offer a unique perspective into whether an individual can be fair and unbiased.").

Because the juror's responses created uncertainty as to his impartiality, and because he was not sufficiently rehabilitated, we find that the trial court abused its discretion by not dismissing the juror for cause. As this error was preserved for appeal, we find that the trial court's abuse of discretion was reversible error. *See Croce v. State*, 60 So. 3d 582, 584 (Fla. 4th DCA 2011); *Carratelli v. State*, 961 So. 2d 312 (Fla. 2007). Accordingly, we REVERSE Appellant's conviction and REMAND this case for a new trial.

COLBATH, CARACUZZO, and KELLEY, JJ., concur.

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Opinion/Decision filed: DEC 07 2017

Appeal from County Court in and for
Palm Beach County, Florida;
Judge Marni Bryson

Appealed: October 19, 2016

DATE OF PANEL: October 23, 2017

PANEL JUDGES: COLBATH, CARACUZZO, KELLEY

AFFIRMED/REVERSED/OTHER: REVERSED

PER CURIAM OPINION/DECISION BY: PER CURIAM

CONCURRING:	DISSENTING: With/Without Opinion	CONCURRING SPECIALLY: With/Without Opinion
COLBATH DATE: 11/30/17		
DATE: 12/4/17		
12/7/17 DATE:		