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

CASE NO.: 2009CA040800XXXXMBAG

JEFFREY EPSTEIN,

Plaintiff,

vs.

SCOTT ROTHSTEIN, individually, BRADLEY J. EDWARDS, individually, and L.M., individually,

Defendant.
_____/

MEMORANDUM OF LAW REGARDING CHALLENGES FOR CAUSE

Bradley J. Edwards, by and through his undersigned counsel, respectfully submits this Memorandum of Law Regarding Challenges for Cause:

I. *JUROR'S BIAS, PREJUDICE AND IMPARTIALITY: CLOSE CASES AND REASONABLE DOUBT — STRIKE FOR CAUSE*

1. "If it appears that the juror does not stand indifferent to the action...another shall be called in that juror's place." Florida Rule of Civil Procedure 1.431(c)(1) (under "Challenge For Cause" subsection).

2. A juror should be excused for cause if there is a reasonable doubt as to the juror's ability to render an impartial verdict. Leon v. State, 396 So.2d 203 (Fla. 3rd DCA 1981); Franqui v. State, 804 So.2d 1185 (Fla. 2001); Overton v. State, 801 So.2d 877 (Fla. 2001); Kearse v. State, 770 So.2d 1119 (Fla. 2000).

3. In Auriemme v. State, 501 So.2d 41 (Fla. 5th DCA 1986) the 5th DCA summarized the law as follows:

> "[2] Turning to the merits of the case, *Auriemme* contends that it was error to deny his two challenges for cause, thereby forcing the exhaustion of his peremptory challenges. We agree, based on the applicable test found in Hill v. State, 477 So.2d 553, 555-56 (Fla. 1985);
>
> This Court recently stated: "The test for determining juror competency is whether the juror can lay aside any bias or prejudice and render his verdict solely upon the evidence presented and the instructions on the law given to him by the court." Lusk v. State, 446 So.2d 1038, 1041 (Fla.), *cert. denied,* [469] U.S. (873], 105 S.Ct. 229, 83 L.Ed.2d 158 (1984). In applying this test, the trial courts must utilize the following rule, set forth in Singer v. State, 109 So.2d (Fla. 1959):
>
> [I]f there is a basis for any *reasonable doubt as to any juror's possessing that state of mind which will enable him to render an impartial verdict based solely on the evidence submitted and the law announced at the trial[,] he should be excused on motion of a party,* or by [the] court on its own motion. *Id* at 24. In *Singer,* we reaffirmed the proposition that the "statement of a juror that he can readily render a verdict according to the evidence, notwithstanding an opinion entertained, will not alone render him competent if it otherwise appears that his formed opinion is of such a fixed and settled nature as not readily to yield to the evidence." *Id* at 22 (quoting Olive v. State, 34 Fla. 203, 206, 15 So. 925, 926 (1894)). In other early cases this Court stated that "jurors should if possible be not only impartial, but beyond even the suspicion of partiality," O'Connor v. State, 9 Fla. 215, 222 (1860), and that "[i]f there is a doubt as to the juror's sense of fairness or his mental integrity, he should be excused." Johnson v. Reynolds, 97 Fla. 591, 598,121 So. 793, 796 (1929)."

4. A juror should be excused for cause if there is a doubt as to juror's sense of fairness or mental integrity. Johnson v. Reynolds, 97 Fla. 591, 121 So. 793 (1929); City of Live Oak v. Townsend, 567 So.2d 926 (Fla. 1st DCA 1990).

5. Jurors should be beyond even a suspicion of partiality. O'Connor v. State, 9 Fla. 215

(Fla. 1860).

6. In Ortiz v. State, 543 So.2d 377 (Fla. 3rd DCA 1989), the court stated the test for determining the competence of a juror is not whether a juror can "control" any bias or prejudice, but rather whether he may *"lay aside"* those considerations. Where there is *any reasonable doubt the juror should be excused.*

7. If a juror makes a statement sufficient to cause doubt as to his/her ability to render an impartial verdict, the fact that trial judge or opposing counsel extracts commitment that juror will be fair or try to be fair, doesn't affect the need to excuse that juror for cause. Price v. State, 538 So.2d 486 (Fla. 3rd DCA 1989); Leon v. State, *supra;* Sikes v. Seaboard Coast Line Railroad Co., 487 So.2d 1118 (Fla. 1st DCA 1986), *supra;* Longshore v. Fronrath Chevrolet, 527 So.2d 922 (Fla. 4th DCA 1988). See also Fazzolari v. City of West Palm Beach, 608 So.2d 927, 929 (Fla. 4th DCA 1992), rev. denied, 620 So.2d 760 (Fla. 1993) in which the court stated that "[t]he jurors subsequent change in their answers, arrived at after further questioning by appellee's counsel, must be viewed with some skepticism; the assurance of a prospective juror that the juror can decide the case on the facts and the law is not determinative on the issue of a challenge for cause."

8. "Juror is not impartial when one side must overcome a preconceived opinion of juror in order to prevail." Hill v. State, 477 So.2d 553 (Fla. 1985); James v. State, 736 So.2d 1260 (Fla. 4th DCA 1999).

9. A juror should not serve if he or she is not indifferent to the action and should be excused for cause if there is a reasonable doubt as to the juror's ability to render an impartial verdict, and if it is a close call, the juror should be excused. Somerville v. Ahuja. M.D., 902 So.2d 930 (Fla.

5th DCA 2005).

10. "Because impartiality of the finders of fact is an absolute prerequisite to our system of justice, we have adhered to the proposition that close cases involving challenges to the impartiality of potential jurors should be resolved in favor of excusing the juror rather than leaving doubt as to impartiality." Williams v. State, 638 So.2d 976 (Fla. 4th DCA 1994).

12. In Sydleman v. Benson, 463 So.2d 533 (Fla. 4th DCA 1985), the court cautioned that:

> "...the impartially of the finders of fact is an absolute prerequisite to our system of justice. *Close cases should be resolved in favor of excusing juror* rather than leaving a doubt as to his or her impartiality."

13. Statements that establish grounds for cause:

a. Will you have any difficulty in setting those negative feelings aside?

Pacot v. Wheeler, 758 So.2d 1141, 1142 (Fla. 4th DCA 2000);

James v. State, 736 So.2d 1260 (Fla. 4th DCA 1999).

b. Do you feel that my client is not starting out with a clean slate?

Overton v. State, 801. So.2d 877, 894 (Fla. 2001).

c. Do you feel my client is not starting out on an even playing field?

Nash v. General Motors Corporation, 734 So.2d 437, 439 (Fla. 3rd DCA 1999).

d. Is my client starting out with a strike or half a strike against him?

Club West, Inc. v. Tropigas of Florida, Inc., 514 So.2d 426, 427, 428 (Fla. 3rd DCA 1987);

Jaffe v. Applebaum, 830 So.2d 136 (Fla. 4th DCA 2002).

e. Is there a burden in your mind that my client has to overcome?

Goldenberg v. Regional Import and Export Trucking Co. Inc., 674 So.2d 761, 762, 763 (Fla. 4th DCA 1996).

14. Cumulative effect of comments require striking for cause if they raise a reasonable doubt as to ability to be impartial. James v. State, 731 So.2d 781, 782 (Fla. 3rd DCA 1999).

15. Juror should have been excused for cause where juror expressed distaste for lawyers, suggested that he would hold the plaintiff to a "clear and obvious" standard of proof, and indicated that plaintiffs in general were "looking for easy money" and "trying to cheat the system" to "make an easy buck." The juror also agreed that the plaintiff would have to overcome a "resistance" on his part if he served as a juror. Frazier v. Wesch, 913 So.2d 1216 (Fla. 4th DCA 2005).

16. If there is any basis for a reasonable doubt as to whether a juror possesses that state of mind which will enable him to render an impartial verdict solely on the evidence submitted and the law announced at trial, he should be excused for cause. Ferias v. State, 540 So.2d 201 (Fla.. 3rd DCA 1989).

17. Allowable areas of inquiry in reported cases include matters affecting a prospective juror's personal life including:

a. Whether he feels that verdicts will raise his insurance premiums.

Purdy v. Gulf Breeze Enterprises, Inc., 403 So.2d 1325 (Fla. 1981).

b. Whether or not he has formed or expressed an opinion on issues involved in a case based on newspaper articles and hearsay.

Singer v. State, *supra.*

c. Whether or not they have negative attitude toward the legal system due to previous unfavorable experience with lawsuits filed against them, or members of their family.

Levy v. Hawk's Cav, Inc., 543 So.2.d 1299 (Fla.. 3rd DCA 1989).

d. Whether or not they could consider the evidence and apply instruction of the court free from influence of what they have read or heard.

Smith v. State, 463 So.2d 542 (Fla. 5th DCA 1985).

18. Where the prospective juror *vacillates* between assertions of partiality and impartiality, a *reasonable doubt* has been created which would require that the juror be excused. Plain v. State, 453 So.2d 917 (Fla. 1st DCA 1984).

19. Statement such as *"I am a fair person" and "I think I could be fair" are not sufficient* to set aside impartiality suggested by other responses. Nash v. General Motors Corp., 734 So.2d 437 (Fla. 3rd DCA 1999).

20. It was reversible error for the trial court not to have excused for cause a juror who gave *equivocal* answers about her husband's career and whether or not it would affect her ability to be impartial, whether she would favor the State, what weight she would give to police testimony and where there was an indication she misunderstood the burden of proof. Jefferson v. State, 489 So.2d 211 (Fla. 3rd DCA 1986).

21. One of the most important principles governing challenges for cause recognizes that

a juror is not impartial when one side must overcome preconceived opinion in order to prevail. Price v. State, 538 So.2d 486 (Fla. 3rd DCA 1989).

22. Trotter v. State, 576 So.2d 691 (Fla. 1990) sets out the procedural requirements for preserving a for-cause error ("Under Florida law, '[t]o show reversible error, a defendant must show that all peremptories had been exhausted and that an objectionable juror had to be accepted.' By this we mean the following. Where a defendant seeks reversal based on a claim that he was wrongfully forced to exhaust his peremptory challenges, he initially must identify a specific juror whom he otherwise would have struck peremptorily. This juror must be an individual who actually sat on the jury and whom the defendant either challenged for cause or attempted to challenge peremptorily or otherwise objected to after his peremptory challenges had been exhausted.) (Internal citations omitted)

II. *VACILLATION BY JUROR*

1. A juror should be excluded for cause when he or she has expressed reservations about either his/her pre-conceived opinions or his/her ability to be impartial even though the juror later attests that he or she could be "fair." Graham v. State, 470 So.2d 97 (Fla. 1st DCA 1985).

2. A juror should be excused who stated that she would not feel uncomfortable in telling her daughter or employer that she has rendered a big verdict against her daughter's employer after previously indicating some misgivings about her ability to be fair. Longshore v. Fronrath Chevrolet, Inc., 527 So.2d 922 at 923 (Fla. 4th DCA 1988).

3. In short, *once the juror has expressed misgivings, rehabilitation is not possible* as one side must overcome a preconceived opinion of that juror in order to prevail. Hill v. State, 477 So.2d 553 (Fla. 1985).

4. Where a juror initially demonstrates predilection in a case in which in the juror's mind would prevent him or her from impartially reaching a verdict, a subsequent change in that opinion, arrived at after further questioning by the parties' attorneys or judge, is properly viewed with some skepticism. Club West v. Tropigas of Florida, Inc., 514 So.2d 426, 427 (Fla. 3rd DCA 1987).

5. The fact that the trial judge extracts a commitment from a prospective juror that he *"will try to be fair"* or even *"will be fair"* does not eliminate the prejudice or the grounds for the challenge. Leon v. State, *supra;* Sikes v. Seaboard, *supra;* Robinson v. State, 506 So.2d 1070 (Fla. 5th DCA 1987).

6. A trial court's structured questions which caused the juror to respond that he could be fair and impartial, after declaring that he could not, did not qualify to rehabilitate the juror. He should have been struck for cause. Straw v. Associated Doctors Health and Life, 728 So.2d 354 (Fla. 5th DCA 1999).

7. Answers to a trial court's leading questions should not be the sole factor for rehabilitating a potential juror. Hagerman v. State, 613 So.2d 552 (Fla. 4th DCA 1993).

8. A potential juror's response to questions by the court or counsel in an effort to rehabilitate him, after having admitted to harboring some bias or prejudice, that *they can set aside those prior admitted feelings* is not determinative of whether the juror should be excused for cause, insofar *as* she responded that she did not "think" or "believe" that her bias would influence her, which responses indicated she was not absolutely sure her bias would not affect her verdict. A juror in a medical malpractice case against a cardiologist should have been excused after he stated that his bias *"probably would"* have an effect on his ability to render an impartial verdict and that he was

"thinking" (if juror had not clarified answer that he would have held cardiologist to a lesser standard because plaintiff was a. *"smoker",* she would have been struck for cause). Somerville v. Abuja, 902 So.2d 930, 935 (Fla. 5th DCA 2005).

9. While the Supreme Court recently explained that Florida law allows for the rehabilitation of jurors, any such rehabilitation is limited to a prospective juror's "lack of familiarity with or misinformation concerning the law." Matarranz v. State, 2013 WL 5355117 at *10 (Fla. Sept. 26, 2013). Attempts to rehabilitate a juror with personal "immutable opinions and attitudes, … and firmly held beliefs" suggesting bias or prejudice remain prohibited. Id. Only "[c]oncerns that stem from misinformation and confusion concerning the law or process" are available for "redress through rehabilitation." Id.

III. *VOIR DIRE INQUIRY REGARDING LAW OR DEFENSES: LAVADO v. STATE*

1. Counsel has the right to make an inquiry about a prospective juror's "feelings" about points of law or defenses specific to the case, Lavado v. State, 492 So.2d 1322 (Fla. 1986), or whether the juror has feelings concerning issues arising in a case. Singer v. State, 109 So.2d 7 (Fla. 1959); Hill v. State, 477 So.2d 553 (Fla. 1985).

Lavado v, State; The law on voir dire inquiry regarding defenses

In Lavado v. State, 469 So.2d 917 (Fla. 3rd DCA 1985), the district court ruled that *the trial court's refusal to permit prospective jurors to be questioned on voir dire as to their ability to entertain a defense of voluntary intoxication was not* an abuse of discretion where the trial court gave appropriate instructions on voluntary intoxication, and there was no showing that the jury, having

been sworn to follow those instructions, failed to do so. In a vigorous dissent, *Judge Pearson asserted that the district court's ruling was "as wrong as it would have been had it approved a ruling which denied counsel the right to question prospective jurors altogether."*

> If he knew nothing else about the prospective jurors, the single thing that defense counsel needed to know was whether the prospective jurors could fairly and impartially consider the defense of voluntary intoxication. Despite this, the majority approves a ruling which precluded counsel from asking the prospective jurors about their bias or prejudice against this defense." Lavado, 469 So.2d at 91

The Supreme Court agreed with Judge Pearson and reversed the district court with the observation that "We can add nothing to Judge Pearson's comprehensive, articulate and logical dissenting opinion, and therefore adopt it in its entirety as our majority opinion." Lavado v. State, 492 So.2d 1322 (Fla. 1986)

- Lavado v. State — 492 So.2d 1322 [Supreme Court of Florida] "The trial judge refused to permit the inquiry, permitting only a general question regarding a prospective juror's ability to follow the court's instructions. We can add nothing to Judge Pearson's comprehensive, articulate, and logical dissenting opinion, and therefore adopt it in its entirety as our majority opinion."

- Lavado v. State — 469 So.2d 917 (Fla. 3rd DCA). "A meaningful voir dire must include questions about the juror's attitudes towards the defense."

- The Florida Supreme Court in Lavado v. State, 492 So.2d 1322 (Fla. 1986), adopted the reasoning of the United States Supreme Court's ruling in Rosales-Lopez v. United States, 451 U.S. 182, 101 S.Ct, 1629, 68 L. ED.2d 22 (1981), which discussed the elements of a "meaningful voir dire":

> "What is meaningful voir dire which will satisfy the constitutional imperative of a fair and impartial jury depends on the issues in the case to be tried. The scope of voir dire, therefore, 'should be so varied and elaborated as the circumstances surrounding the juror under examination in relation to the case on trial would seem to require...' Thus, where a juror's attitude about a particular legal doctrine (in the words of the trial court: "the law") is essential to a determination of whether challenges for cause or peremptory challenges are to be made, it is well settled that the scope of the voir dire properly includes questions about the references to that legal doctrine even if stated in the form of hypothetical questions."

2. Trial court may not preclude a party from inquiry during voir dire into bias bearing on a matter that is at the heart of the defendant's case. Igrassia v. State, 902 So.2d 357 (Fla. 4th DCA 2005).

3. Hypothetical questions are permitted: provided they make a correct reference to the law that aid in determining whether challenges for cause or preemptory challenges are proper. Moore v. State, 939 So.2d 1116 (Fla. 3rd DCA 2006).

IV. ***INQUIRY ABOUT THE LEGAL SYSTEM AND FEELINGS ABOUT DAMAGES IN PERSONAL INJURY CASES***

1. Problems with the Legal System: Levy v. Hawks Cay. Inc., 543 So.2d 1299 (Fla. 3rd DCA 1989), stands for the proposition that when a negative attitude exists in a juror toward the legal system, due to previous experiences with lawsuits, the trial court's failure to challenge jurors for cause was reversible error:

> "When any reasonable doubt exists as to whether a juror possesses state of mind necessary to render an impartial verdict based solely

on evidence submitted and law announced at trial, he should be excused."

2. Personal Injury and Lawsuit and Damages: In Sisto v. Aetna Casualty & Surety, Co., 689 So.2d 438 (Fla. 4th DCA 1997) the court stated:

"Without the opportunity to ask even a threshold question on the subject, counsel for plaintiffs was unable to explore whether any given juror possessed a strong preconceived feeling or bias concerning personal injury lawsuits and the award of non-economic damages such as pain and suffering. If inquiry had been permitted and a prospective juror had expressed a definite *bias against awarding intangible damages, plaintiffs would have had a basis for requesting that the prospective juror be excused for cause,* depending on the exact questions asked and answers given. *See* Goldenberg v. Regional Import & Export Trucking Co., 674 So.2d 761 (Fla. 4th DCA 1996); cf. Fazzolari v. City of West Palm Beach, 608 So.2d 927 (Fla. 4th DCA 1992), review denied, 620 So.2d 760 (Fla 1993). At the very least, plaintiffs would have had the opportunity to explore the depth of the bias or the basis for the attitude in order to make a determination whether to exercise a peremptory or for cause challenge. See Skiles v. Ryder Truck Lines, Inc., 267 So.2d 379 (Fla. 2nd DCA 1972), *cert. denied*, 275 So.2d 253 (Fla. 1973)...

In recent years, the subject of non-economic damages has received widespread media attention. It is a subject on which an individual may possess a strong bias or prejudice. In a personal injury case where the issues of permanent injury and past and future noneconomic damages are hotly contested, allowing counsel to inquire about an individual's views on the sensitive area of non-economic damages is essential to a party's right to conduct a reasonable examination. Our court has implicitly recognized that a prospective juror's attitude about personal injury lawsuits is an appropriate subject for inquiry. See Fazzolari, 608 So.2d at 927-28.

Both liability and damages were hotly contested in this personal injury case. It is ironic that while the trial court admonished the parties to limit their questions to those that would touch on the prospective jurors' ability to be fair and impartial, it then prevented questions that

would have assisted both the trial court and the parties in making this determination."

V. ***TIME ALLOWED TO CONDUCT VOIR DIRE***

The Court should not impose arbitrary time constraints on the Plaintiff's voir dire examination of the venire, as set forth below:

1. Florida Rule of Civil Procedure 1.431(b) provides, in part, that the rights of the parties to conduct a *reasonable* examination of each juror orally shall be preserved.

2. Although a trial judge has considerable discretion in determining the extent of counsel's examination of prospective jurors *See* Mendez v. State, 898 So.2d 1141 (Fla. 4th DCA 2005), the court may not impose arbitrary time limits on voir dire. *See* Miller v. State, 785 So.2d 662 (Fla. 3rd DCA 2001).

3. In fact, a court abuses its discretion when it unreasonably limits counsel's ability to conduct a meaningful voir dire. *See* Mendez at 1142; O'Hara v. State, 642 So.2d 592 (Fla. 4th DCA 1994).

4. Florida courts have held that it is an abuse of discretion for a trial court to impose on a party one-to-three minute time limits on questioning each prospective juror. Gosha v. State, 534 So.2d 912 (Fla. 3rd DCA 1988).

5. The fact that a trial judge conducts an examination of jurors before turning the questioning over to counsel does not in and of itself justify arbitrary time limitation on counsel's voir dire. Carver v. Niedermayer, 920 So.2d 123 (Fla. 4th DCA 2006).

6. The purpose of voir dire is to obtain a "fair and impartial jury to try the issues in

the cause." The time restrictions or limits on numbers of questions can result in the loss of this fundamental right. Williams v. State, 424 So.2d 148 (Fla. 5th DCA 1982).

7. Attorney should be afforded ample time to elicit pertinent information from prospective jurors. Ritter v. Jiminez, 343 So.2d 659 (Fla. 3rd DCA 1977); Campbell v. State, 812 So.2d 540 (Fla. 4th DCA 2002).

8. While the trial judge has discretion, it must be exercised so as not to violate the litigant's right to a fair opportunity to make an intelligible and informed judgment as to the exercise of challenges. Eastern Airlines v. Gellert, 438 So.2d 923 (Fla. 3rd DCA 1983).

VI. *FOR-CAUSE CHALLENGES MUST BE DECIDED BEFORE PEREMPTORY CHALLENGES ARE EXERCISED*

1. The Supreme Court reaffirms the importance of peremptory strikes and the procedure for preserving error. Also, there must be no reasonable doubt as to juror's fitness. Equivocal answers can create reasonable doubt. Kousho v. State, 959 So.2d 168 (Fla. 2007).

2. **The Supreme Court established that the proper procedure for jury selection Challenges** is deciding for-cause challenges before peremptories are exercised. There must be enough qualified jurors available, after challenges for cause are ruled upon, so that all peremptories can be used and still have enough people left to seat a full jury. Peremptories are to be used in an alternating fashion between plaintiff and defense. Counsel objected to a system of selection that forced him to exercise peremptories before all valid causes had been granted and which required challenges be exorcised in the dark. The court held, "the only fair scheme is to allow the parties to exercise their

challenges singularly, alternately, and orally so that, before a party exercises a peremptory challenge, he has before him the full panel from which the challenge is to be made." This leads to a second infirmity in the instant procedure. After excusing one person for cause, fifteen prospective jurors remained. Allowing for six peremptories left nine jurors. Only six, however, could serve. There is no way that 14, 15, or 16 could have served, and, as plaintiffs' counsel pointed out, they should have been excused. After challenges for cause are made, those excess persons over the number of needed jurors plus the number of allowable peremptories should be excused so that counsel may know who will serve if not excused."). Ter Keurst v. Miami Elevator Co., 486 So.2d 547 (Fla. 1986). See also Tedder v. Video Electronics, Inc., 491 So.2d 533 (Fla. 2nd DCA 2002); Van Sickle v. James F. Zimmer, M.D., 807 So.2d 182 (Fla. 2nd DCA 2002).

In dicta, Justice Atkins of the Supreme Court made the following observations, "Many trial judges are developing ingenious plans to limit the time of jury selection in order to expedite cases and increase the case count for an individual circuit. These judges are conscientious and well meaning, but are allowing the disposition of cases to become more important than the administration of justice. Unfortunately we contribute to this problem by demanding speedy trials and quick determinations so that the trial docket will flow as steadily as the crowds through Disney World. But the courts are not businesses opened for the sale of merchandise or services. In the trial of a case, the jury selection and voir dire examination are just as critical to the outcome as the presentation of evidence." Ter Keurst v. Miami Elevator Co., 486 So.2d 547 (Fla. 1986).

3. Negative feelings which are not party specific may create cause (where there is a bias against general class of cases or issues). Also, there is a difference between "I don't think it should" and

"It won't" or "I'd try not to" or "I would give it my best shot." Answers such as "I don't think it should," "I'd try not to" or "I'd give it my best shot" are not good enough to say "It won't influence me". Four Wood Consulting, LLC v. Fyne, 981 So.2d 2 (Fla. 4th DCA 2007); Somerville v. Ahuja, M.D., 902 So.2d 930 (Fla. 5th DCA 2005). Additionally, reasonable doubt is not overcome by a juror's silence as to a question asked of the entire panel. Finally, the fact that a juror may be trying to get off the jury does not change the need to excuse. Four Wood Consulting, LLC v. Fyne, 981 So.2d 2 (Fla. 4th DCA 2007).

4. [A juror's] admitting to feelings against personal injury cases, to wit: Believed in caps and thought suits increased insurance and cost of living. He acknowledged it could influence him, because it is part of his makeup, then qualified the answer by saying, "It all depends on the evidence presented – I don't have enough information about the case to understand whether or not my decision would be influenced —". The trial court denied a challenge for cause and the appellate court reversed. Rodriguez v. Lagomasino, 972 So.2d 1050 (Fla. 3rd DCA 2008).

5. The juror asserted that, in EVERY slip and fall case the person who falls is at least partially responsible and that this would factor into his decision. The trial court denied the challenge for cause and the appellate court reversed. (Defense counsel erroneously convinced the trial judge to deny the challenge by arguing plaintiff's counsel had employed leading questions to get the answers and that the juror had later said he could be fair.) Algie v. Lennar Corporation, 969 So.2d 1135 (Fla. 4th DCA 2007).

6. Even though the judge asks questions, the lawyer can ask follow up questions. The court noted, "Prospective jurors do not respond in the same manner to inquiry by the judge as they do to questions by counsel". Miller v. State, 785 So.2d 662 (Fla. 3rd DCA 2001).

7. A juror must be excused for cause if they state they would tend to believe a witness (police officer) over a lay witness. Suede v. State, 837 So.2d 1114 (Fla. 4th DCA 2003).

8. Plaintiff can backstrike up to time the jury is sworn. Lottimer v. North Broward Hospital District, 889 So.2d 165 (Fla. 4th DCA 2004).

9. Florida Statute 913.12 says "the qualifications of a juror in a criminal case shall be the same as their qualifications in a civil case".

10. The Florida Supreme Court defines preponderance of the evidence and uses the greater weight of the evidence OR evidence which more likely than not tends to prove an issue. Gross v. Lyons, 763 So.2d 276 (Fla. 2000).

INDEX OF CASES

SUMMARY OF LAW REGARDING CHALLENGES FOR CAUSE

1. Fla. R. Civ. P 1.431(c)(1)
2. Algie v. Lennar Corp., 969 So.2d 1135 (Fla. 4th DCA 2007)
3. Auriemme v. State, 501 So.2d 41 (Fla. 5th DCA 1986)
4. Campbell v. State, 812 So.2d 540 (Fla. 4th DCA 2002)
5. Carver v. Niedermayer, 920 So.2d 123 (Fla. 4th DCA 2006)
6. City of Live Oak v.Townsend, 567 So.2d 926 (Fla. 1st DCA 1990)

7. Club West, Inc. v. Tropigas of Florida, Inc., 514 So.2d 426, 427, 428 (Fla. 3rd DCA 1987)

8. Disla v. Blanco, 2013 WL 6182395 (Fla. 4th DCA Nov. 27, 2013)

9. Eastern Airlines v. Gellert, 438 So.2d 923 (Fla. 3rd DCA 1983)

10. Farias v. State, 540 So.2d 201 (Fla. 3rd DCA 1989)

11. Fazzolari v. City of West Palm Beach, 608 So.2d 927, 929 (Fla 4th DCA 1992)

12. Four Wood Consulting, LLC. v. Fyne,. 981 So.2d 2, (Fla. 4th DCA 2007)

13. Franqui v. State, 804 So.2d 1185 (Fla. 2001)

14. Frazier v. Wesch, 913 So.2d 1216 (Fla. 4th DCA 2005)

15. Goldenberg v. Regional Import and Export Trucking Co. Inc., 674 So.2d 761, 762, 763 (Fla. 4th DCA 1996)

16. Gosha v. State, 534 So.2d 912 (Fla. 3rd DCA 1988)

17. Graham v. State, 470 So.2d 97 (Fla. 1st DCA 1985)

18. Gross v. Lyons, 763 So. 2d 276 (Fla. 2000)

19. Hagerman v. State, 613 So.2d 552 (Fla. 4th DCA 1993)

20. Hill v. State, 477 So.2d 553, 555-56 (Fla. 1985)

21. Igrassia v. State, 902 So.2d 357 (Fla. 4th DCA 2005)

22. Jaffee v. Applebaum, 830 So.2d 136 (Fla. 4th DCA 2002)

23. James v. State, 731 So.2d 781, 782 (Fla. 3rd DCA 1999)

24. James v. State, 736 So.2d 1260 (Fla. 4thDCA 1999)

25. Jefferson v. State, 489 So.2d 211 (Fla. 3rd DCA 1986)

26. Johnson v. Reynolds, 97 Fla. 591, 121 So. 793 (1929)

27. Juede v. State, 837 So.2d 1114 (Fla, 4th DCA 2003)

28. Kearse v. State, 770 So.2d 1119 (Fla, 2000)

29. Kopsho v. State, 959 So.2d 168 (Fla. 2007)

30. Lavado v. State, 469 So.2d 917 (Fla. 3rd DCA 1985)

31. Lavado v. State, 492 So.2d 1322 (Fla. 1986)

32. Leon v. State, 396 So.2d 203 (Fla. 3rd DCA 1981)

33. Lewis v. State, 931 So.2d 1034, 1039 (Fla. 4th DCA 2006)

34. Levy v. Hawk's Owl Inc., 543 So.2d 1299 (Fla. 3rd DCA 1989)

35. Longshore v. Fronrath Chevrolet, 527 So.2d 922 (Fla. 4th DCA 1988)

36. Lottimer v. North Broward Hospital District, 889 So.2d 165 (Fla. 4th DCA 2004)

37. Lusk v. State, 446 So.2d 1038, 1041 (Fla. 1984)

38. Matarranz v. State, 2013 WL 5355117 (Fla. Sept. 26, 2013)

39. Mendez v. State, 898 So.2d 1141 (Fla. 5th DCA 2005)

40. Miller v. State, 785 So.2d 662 (Fla. 3rd DCA 2001)

41. Moore v. State, 939 So.2d 1116 (Fla. 3rd DCA 2006)

42. Nash v. General Motors Corporation, 734 So.2d 437, 439 (Fla. 3rd DCA 1999)

43. O'Connor v. State, 9 Fla. 215, 222 (1860)

44. O'Hara v. State, 642 So.2d 592 (Fla. 4th DCA 1994)

45. Olive v. State, 34 Fla. 203, 206, 15 So. 925, 926 (1984)

46. Ortiz v. State, 543 So.2d 377 (Fla. 3rd DCA 1989)

47. Overton v. State, 801 So.2d 877 (Fla.. 2001)

48. Pacot v. Wheeler, 758 So.2d 1141, 1142 (Fla.. 4th DCA 2000)

49. Plair v. State, 453 So.2d 917 (Fla. 1st DCA 1984)

50. Price v. State, 538 So.2d 486 (Fla. 3rd DCA 1989)

51. Purdy v. Gulf Breeze Enterprises. Inc., 403 So.2d 1325 (Fla. 1981)

52. Ritter v. Jimenez, 343 So.2d 659 (Fla. 3rd DCA 1977)

53. Robinson v. State, 506 So.2d 1070 (Fla. 5th DCA 1987)

54. Rodriguez v. Lagomasino, 972 So.2d 1050 (Fla. 3rd DCA 2008)

55. Rosales-Lopez v. United States, 451 U.S. 182, 101 S.Ct 3629, 68 L ED.2d 22 (1981)

56. Sikes v. Seaboard Coast Line Railroad Co., 487 So.2d 1118 (Fla. 151 DCA 1986)

57. Singer v. State, 109 So.2d 7 (Fla. 1959)

58. Sisto v. Aetna Casualty & Surety Co., 689 So.2d 438 (Fla. 4th DCA 1997)

59. Skiles v. Ryder Truck Lines. Inc, 267 So.2d 379 (Fla. 2nd DCA 1972)

60. Smith v. State, 463 So.2d 542 (Fla. 5th DCA 1985)

61. Somerville v. Abuja, 902 So.2d 930 (Fla. 5th DCA 2005)

62. Straw v. Associated Doctors Health and Life, 728 So.2d 354 (Fla. 5th DCA 1999)

63. Sydleman v. Benson, 463 So.2d 533 (Fla. 4th DCA 1985)

64. Tedder v. Video Electronics, Inc., 491 So. 2d 533 (Fla. 2nd DCA 2002)

65. Ter Keurst v. Miami Elevator Co., 486 So.2d 547 (Fla. 1986)

66. Trotter v. State, 576 So.2d 691 (Fla. 1990)

67. Van Sickle v. James F. Zimmer, MD., 807 So.2d 182 (Fla. 2nd DCA 2002)

68. Williams v. State, 424 So.2d 148 (Fla. 5th DCA 1982)

69. Williams v. State, 638 So.2d 976 (Fla.. 4th DCA 1994)

I HEREBY CERTIFY that a true and correct copy of the foregoing was sent via E-Serve to all Counsel on the attached list, this 9th day of March, 2018.

JACK SCAROLA
Florida Bar No.: 169440
Attorney E-Mail(s): jsx@searcylaw.com; and
mmccann@searcylaw.com
Primary E-Mail: _scarolateam@searcylaw.com
Searcy Denney Scarola Barnhart & Shipley, P.A.
2139 Palm Beach Lakes Boulevard
West Palm Beach, Florida 33409
Phone: (561) 686-6300
Fax: 561-383-9451
Attorneys for Bradley J. Edwards

COUNSEL LIST

Bradley J. Edwards, Esquire
staff.efile@pathtojustice.com
425 N Andrews Avenue, Suite 2
Fort Lauderdale, FL 33301
Phone: (954)-524-2820
Fax: (954)-524-2822

Jack A. Goldberger, Esquire
jgoldberger@agwpa.com; smahoney@agwpa.com
Atterbury Goldberger & Weiss, P.A.
250 Australian Avenue S, Suite 1400
West Palm Beach, FL 33401
Phone: (561)-659-8300
Fax: (561)-835-8691
Attorneys for Jeffrey Epstein

Nichole J. Segal, Esquire
njs@FLAppellateLaw.com; kbt@FLAppellateLaw.com
Burlington & Rockenbach, P.A.
444 W Railroad Avenue, Suite 350
West Palm Beach, FL 33401
Phone: (561)-721-0400
Attorneys for Bradley J. Edwards

Kara Berard Rockenbach, Esquire
kara@linkrocklaw.com; tbermudez@flacivillaw.com
Link & Rockenbach, P.A.
1555 Palm Beach Lakes Blvd., Suite 301
West Palm Beach, FL 33409
Phone: (561)-727-3600
Fax: (561)-727-3601
Attorneys for Jeffrey Epstein

Scott J. Link, Esquire
Scott@linkrocklaw.com; Tina@linkrocklaw.com
Scott J. Link, Esquire
Eservice@linkrocklaw.com; Scott@linkrocklaw.com; Kara@linkrocklaw.com;
Angela@linkrocklaw.com; Tanya@linkrocklaw.com; tina@linkrocklaw.com
Link & Rockenbach, P.A.

1555 Palm Beach Lakes Boulevard
Suite 301
West Palm Beach, FL 33401
Phone: (561)-727-3600
Fax: (561)-727-3601
Attorneys for Jeffrey Epstein

Marc S. Nurik, Esquire
marc@nuriklaw.com
One E Broward Blvd., Suite 700
Fort Lauderdale, FL 33301
Phone: (954)-745-5849
Fax: (954)-745-3556
Attorneys for Scott Rothstein