

758 So.2d 1141
District Court of Appeal of Florida,
Fourth District.

Jack PACOT, Appellant,
v.
Sheriff Gary WHEELER and Toby Teague,
Appellees.

No. 4D99-0269.

March 29, 2000.

Rehearing Denied June 6, 2000.

Synopsis

Arrestee brought action against sheriff and deputy sheriff after he was allegedly attacked and bitten by deputy's police dog. The Nineteenth Judicial Circuit Court, Indian River County, Charles E. Smith, J., entered judgment upon jury verdict in favor of defendants, and arrestee appealed. The District Court of Appeal, Stone, J., held that jurors who stated during voir dire that they would have difficulty following the law regarding damage awards for pain and suffering should have been dismissed for cause.

Reversed and remanded.

West Headnotes (4)

[1] **Jury**
🔑 Questions of Law

Trial court was required to dismiss for cause jurors who testified during voir dire that they would have difficulty following the law regarding damage awards for pain and suffering.

[1 Cases that cite this headnote](#)

[2] **Jury**
🔑 Bias and Prejudice

The test to be applied in determining whether a challenge for cause should be granted is whether the juror can lay aside any bias or prejudice and render a verdict solely upon the evidence presented and the instructions on the law given by the court.

[Cases that cite this headnote](#)

[3] **Jury**
🔑 Discretion of Court

The trial court has wide discretion in ruling on challenges for cause and is in a far better position to properly evaluate the responses of jurors.

[Cases that cite this headnote](#)

[4] **Jury**
🔑 Evidence

If there is a reasonable doubt about a juror's impartiality, then the juror should be dismissed for cause, and close cases should be resolved in favor of dismissing a juror.

[Cases that cite this headnote](#)

Attorneys and Law Firms

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Opinion

STONE, J.

Pacot (Plaintiff below) appeals a judgment entered in favor of the defendants following a jury trial. We reverse based on error in denying Plaintiff's challenges for cause directed to jurors who stated *1142 that they would have difficulty following the law regarding damage awards for pain and suffering.

Plaintiff sued Sheriff Gary Wheeler and Deputy Sheriff Toby Teague for damages sustained during Teague's arrest of Pacot in which Teague's police dog attacked and bit him. Plaintiff sought damages for pain and suffering as well as economic damages.

During voir dire, several jurors, Hill, McAlarnen, Darmohray, Tessier, and Glad, using similar although not identical language, first stated that they would have a problem with awarding damages for pain and suffering unless it was incident to a condition that the plaintiff would suffer from for life. Plaintiff's counsel gave each prospective juror an example wherein a hypothetical plaintiff suffered pain from a broken arm that healed following surgery. On follow-up questioning, each juror disagreed with, and stated that he or she would have "trouble" or "difficulty" or a "problem" following an instruction on the law that provided for awarding damages for pain and suffering for a limited period of time of weeks or months.

[1] [2] The test to be applied in determining whether a challenge for cause should be granted is "whether the juror can lay aside any bias or prejudice and render a verdict solely upon the evidence presented and the instructions on the law given by the court." [Bryant v. State](#), 656 So.2d 426, 428 (Fla.1995).

[3] We recognize that the trial court has wide discretion in ruling on challenges for cause and that a trial court is in a far better position to properly evaluate the responses of jurors. See [Cook v. State](#), 542 So.2d 964 (Fla.1989). Moreover, the Florida Supreme Court has gone so far as to recognize that:

There are few aspects of a jury trial where we would be less inclined to

disturb a trial judge's exercise of discretion, absent clear abuse, than in ruling on challenges for cause in the empanelling of a jury.

Id. at 969.

[4] Despite the broad discretion we must accord the trial courts, we are called upon, at the same time, to apply a "reasonable doubt standard." In other words, "if there is a reasonable doubt about a juror's impartiality, then the juror should [be] dismissed for cause." [Goldenberg v. Regional Import and Export Trucking Co.](#), 674 So.2d 761, 763 (Fla. 4th DCA 1996)(quoting [Montozzi v. State](#), 633 So.2d 563, 565 (Fla. 4th DCA 1994)). Furthermore, as we have stated, "close cases should be resolved in favor of dismissing a juror." [Montozzi](#), 633 So.2d at 565. We note that this strict standard, which is equally applicable to civil and criminal cases, does not appear to leave room for "broad" discretion in these circumstances.

This court has previously determined that a *definite bias* against awarding non-economic damages may be grounds for excusing a juror for cause, depending on the questions asked and responses given. See [Sisto v. Aetna Cas. and Sur. Co.](#), 689 So.2d 438 (Fla. 4th DCA 1997).

Here, jurors Hill, Darmohray, McAlarnen, Glad, and Tessier each indicated in similar fashion that they *would* have *difficulty* following the law regarding compensation for pain and suffering, and none of the jurors was "rehabilitated" as to this response. It is clear that "difficulty," or a "problem," or "trouble," in following the law is not the same as an outright *refusal*. Nevertheless, we have also held that inability or *difficulty* in putting a juror's feelings aside so that she might be fair to the defendant is sufficient to require the trial court to grant a challenge for cause. See [James v. State](#), 736 So.2d 1260 (Fla. 4th DCA 1999).

We recognize that the circumstances here might be considered marginal, in that they neither reflect a particular bias against the plaintiff, nor are they based on some unique circumstance. Nevertheless, *1143 this court has determined that this category of "close cases should be resolved in favor of dismissing the juror." [Montozzi](#), at 565. Accordingly, we reverse and remand for a new trial.

Pacot v. Wheeler, 758 So.2d 1141 (2000)

25 Fla. L. Weekly D802

[HAZOURI](#), J. and [STETTIN](#), HERBERT, Senior Judge,
concur.

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