

19CA1773 Peo v Maggio 03-10-2022

COLORADO COURT OF APPEALS

---

Court of Appeals No. 19CA1773  
Mesa County District Court No. 18CR406  
Honorable Brian J. Flynn, Judge

---

The People of the State of Colorado,

Plaintiff-Appellee,

v.

Brenda May Maggio,

Defendant-Appellant.

---

JUDGMENT REVERSED AND CASE  
REMANDED WITH DIRECTIONS

Division I  
Opinion by JUDGE DAILEY  
Fox and Schutz, JJ., concur

**NOT PUBLISHED PURSUANT TO C.A.R. 35(e)**  
Announced March 10, 2022

---

Philip J. Weiser, Attorney General, Melissa D. Allen, Senior Assistant Attorney General, Denver, Colorado, for Plaintiff-Appellee

Cynthia A. Harvey, Alternate Defense Counsel, Castle Rock, Colorado, for Defendant-Appellant

¶ 1 Defendant, Brenda May Maggio, appeals the judgment of conviction entered after a jury found her guilty of second degree assault. We reverse and remand for a new trial.

### *I. Background*

¶ 2 The prosecution charged Maggio with second degree assault, second degree criminal trespass, and second degree criminal tampering for allegedly entering onto property that she no longer owned and spitting on a law enforcement officer through the divider in his patrol car after she was detained. At trial, the district court dismissed the tampering charge after the prosecution rested its case. The jury convicted Maggio of second degree assault but acquitted her of second degree criminal trespass.

¶ 3 Maggio contends that the district court erred by denying her challenges for cause of Jurors M, C, T, and W. Specifically, she argues that these jurors expressed bias by raising their hands in agreement with Juror J, who stated that he would credit the testimony of a police officer over the opposing testimony of a lay witness. None of these jurors were questioned further and neither the prosecutor nor the district court made any attempt to

rehabilitate them. Because Jurors M, C, T, and W served on the jury, we conclude reversal is required.

## *II. Standard of Review*

¶ 4 We review a district court’s ruling on a challenge for cause for an abuse of discretion. *People v. Oliver*, 2020 COA 97, ¶ 7. A court abuses its discretion when its ruling is “manifestly arbitrary, unreasonable, or unfair, or when it misconstrues or misapplies the law.” *Id.* This “high standard of review” gives deference to a district court’s ability to assess the credibility of juror responses and discourages an appellate court from second-guessing those judgments based on a cold record. *Carrillo v. People*, 974 P.2d 478, 486 (Colo. 1999). However, appellate courts must not “abdicate their responsibility to ensure that the requirements of fairness are fulfilled.” *Morgan v. People*, 624 P.2d 1331, 1332 (Colo. 1981).

¶ 5 To determine if a district court has abused its discretion in denying a challenge for cause, we review the voir dire of the prospective juror(s) in its entirety. *Id.* If the court abused its discretion, we then conduct an “outcome-determinative” analysis to determine whether the error warrants reversal. *People v. Novotny*, 2014 CO 18, ¶ 20. In this context, a defendant must show that a

biased or incompetent juror sat on the jury before reversal is required; the mere loss of a peremptory challenge, standing alone, is insufficient. *People v. Wise*, 2014 COA 83, ¶ 28. If a defendant cannot demonstrate that the biased or incompetent juror participated in deciding their guilt, the error is harmless. *Id.* at ¶ 29.

### *III. Applicable Law*

¶ 6 The United States and Colorado Constitutions guarantee all criminal defendants the right to a trial by a fair and impartial jury. U.S. Const. amends. VI, XIV; Colo. Const. art. II, § 16; *People v. Clemens*, 2017 CO 89, ¶ 15. Further, a “fair and impartial juror must be free from stereotypical biases, whether they be directed toward automatic acceptance or automatic rejection of testimony based solely on the status of a witness.” *People v. Sandoval*, 733 P.2d 319, 321 (Colo. 1987). To protect this right, Colorado law provides that a district court shall sustain a challenge for cause when a juror has indicated “enmity or bias toward the defendant or the state.” § 16-10-103(1)(j), C.R.S. 2021; *see also* Crim. P. 24(b)(1)(X) (“The court shall sustain a challenge for cause . . . [when

a juror manifests] a bias for or against the defendant, or for or against the prosecution . . . .”).

¶ 7        However, a prospective juror who expresses such bias will not be excused for cause if, after further examination, the court finds that the juror will follow the law and render a fair and impartial verdict. *Clemens*, ¶ 15. In other words, jurors who enter the courtroom with a bias should not be removed for cause so long as subsequent explanation and rehabilitative efforts are provided and convince the court that the juror can render a fair and impartial verdict. *People v. Blassingame*, 2021 COA 11, ¶ 12. Absent such rehabilitation, the juror must be excused for cause. *See Clemens*, ¶ 21 (“A juror’s inability to follow the court’s instructions . . . is grounds for their disqualification from jury service.”); *People v. Merrow*, 181 P.3d 319, 321 (Colo. App. 2007) (Where “a potential juror’s statements compel the inference that he or she cannot decide crucial issues fairly, a challenge for cause must be granted in the absence of rehabilitative questioning or other counter-balancing information.”).

#### *IV. Facts*

¶ 8 During defense counsel's voir dire, jurors were asked how they would weigh the credibility of testimony of law enforcement officers and lay witnesses. Juror J agreed that "[i]f all things are equal, and a law enforcement officer says one thing and a non-law enforcement officer says the complete opposite," he would "believe the officer solely by virtue of . . . being a law enforcement officer." When asked why, Juror J responded that law enforcement officers are "held to a certain code of conduct and rules and regulations" and from his experience, "they follow those [rules and regulations]."

¶ 9 Juror J then introduced different scenarios where an officer might have a "radar gun" or a "body cam," which would further support the credibility of their testimony. However, when asked if there were "no speed gun, no body camera" and all Juror J had was "[the officer's] word: 'they were speeding,' and another person's word: 'I wasn't speeding,'" he indicated unequivocally, "[y]es," he would believe law enforcement solely because they were law enforcement.

¶ 10 Next, defense counsel asked if there were any other jurors who agreed with Juror J, and Jurors M, C, T, W, B, and F each raised

their hands. The district court gave defense counsel a ten second warning and subsequently, voir dire was concluded.

¶ 11 The defense challenged Juror J for cause because “[e]verything else being the same [Juror J] would believe a law enforcement officer over a lay witness, just because the person was a law enforcement officer.” Defense counsel similarly challenged jurors M, C, T, W, B, and F on the same grounds as the challenge for Juror J, noting that each of these jurors raised their hands in agreement with Juror J.

¶ 12 The prosecution objected and the district court denied the challenges. In denying the challenges, the district court reasoned that the defense “limited [their] question to law enforcement versus non-law enforcement”; did not explore the issue further; and did not ask the jurors if they were considering things like “motive” as a basis for why they would credit the testimony of law enforcement over anyone else.

¶ 13 Maggio exhausted her peremptory challenges, striking jurors J, B, and F. Jurors M, C, T, and W served on the jury and returned a guilty verdict against Maggio for second degree assault.

## V. Analysis

¶ 14 We conclude that the district court abused its discretion by empaneling Jurors M, C, T, and W after they expressed an unrehabilitated unequivocal bias in favor of law enforcement testimony.

¶ 15 First, in denying Maggio's challenges for cause as to Jurors M, C, T, and W, the district court ruled that the defense improperly limited their question to "law enforcement versus non-law enforcement" but did not "follow-up" or explore the issue further. A potential juror can be rehabilitated by the district court or the prosecutor. *People v. Marciano*, 2014 COA 92M-2, ¶ 8; *People v. Fleischacker*, 2013 COA 2, ¶ 27. Yet, the responsibility to ensure that the jurors selected are fair and impartial, is in the first instance, vested in the trial judge. *People v. Abbott*, 690 P.2d 1263, 1267 (Colo. 1984). A district court is in a "preferred position" in "evaluating a prospective juror's credibility, demeanor, and sincerity in explaining [their] state of mind." *Vigil v. People*, 2019 CO 105, ¶ 14. Indeed, while the bias held by the jurors in this case was not explored further by the defense, it was also not explored further by the district court or the prosecution.



¶ 16 Second, the district court suggested that it was possible that if the challenged jurors had been questioned further, they would have been able to “articulate . . . the facts and circumstances” surrounding why “someone’s motive” or “credibility” might cause them to believe law enforcement over anyone else. However, Jurors M, C, T, and W were not asked additional questions concerning their expressed bias and were not asked if they would consider motive, for example, when they weighed the credibility of witness testimony. Thus, while further questioning may have provided these jurors the opportunity to demonstrate that they were not biased or the ability to set aside their bias, this is not the record we have before us.

¶ 17 Third, the People argue that because the challenged jurors expressed their ability to be fair and impartial and follow the court’s instructions generally, the district court was correct in denying the challenges for cause. But, an ability to be fair and impartial regarding certain issues that are discussed in voir dire does not support an inference that jurors can resolve all issues raised fairly and impartially. *See Merrow*, 181 P.3d at 321 (a juror who could observe the law as to the presumption of innocence, the burden of

proof, and reasonable doubt; decide the case based on the evidence; and participate fully did not mean that the same juror could resolve credibility fairly).

¶ 18 Here, the jurors expressed an ability to follow the law and be fair and impartial at various points throughout voir dire, but none of them indicated that they could be fair and impartial in assessing law enforcement testimony against lay witness testimony. Instead, the record reflects an unequivocal bias that, everything else being equal, they would believe law enforcement testimony over lay witness testimony.

¶ 19 Finally, the People argue that the mere fact that jurors M, C, T, and W raised their hand in agreement with Juror J's statement is not enough to establish that they were inherently biased in favor of the police. We disagree. Considering the context in which the question was asked by defense counsel, the narrowness of the question, the response by Juror J, and the immediate agreement to Juror J's answer by Jurors M, C, T, and W, there can be no other conclusion except that Jurors M, C, T, and W raised their hands to express agreement with Juror J's statement, thereby evidencing their inherent bias in favor of law enforcement.

¶ 20 Jurors M, C, T, and W, via Juror J, expressed bias in their ability to weigh the credibility of witnesses and were not rehabilitated. When, as here, “a potential juror's statements compel the inference that he or she cannot decide crucial issues fairly, a challenge for cause must be granted in the absence of rehabilitative questioning or other counter-balancing information.” *Id.* Because that is the situation here, we conclude that the district court erred by denying Maggio’s challenge for cause to Jurors M, C, T, and W. *See Blassingame*, ¶ 28.<sup>1</sup>

¶ 21 We now assess whether this error warrants reversal under the “outcome-determinative” standard outlined in *Novotny*. *Novotny*, ¶ 27. Because jurors M, C, T, and W sat on the jury that convicted Maggio, we must reverse. *People v. Abu-Nantambu-El*, 2019 CO

---

<sup>1</sup> In so concluding, we reject, as misplaced, the People’s reliance on *People v. Blessett*, 155 P.3d 388 (Colo. App. 2006). In *Blessett*, the prospective juror had indicated that he would give more weight to the testimony of police officers. But unlike the situation here, the juror in *Blessett* also “agreed that police officers are human and could be wrong, and . . . indicated that he would listen to the witnesses individually and assess their credibility based on what they said.” *Id.*, 155 P.3d at 393.

106, ¶ 30. Accordingly, we reverse Maggio's conviction and remand for a new trial.

*VI. Disposition*

¶ 22 The judgment is reversed, and the case is remanded for a new trial.

JUDGE FOX and JUDGE SCHUTZ concur.