

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2010 KA 0865

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STATE OF LOUISIANA

VERSUS

JIMMY ALLEN WRIGHT

**On Appeal from the 16th Judicial District Court
Parish of St. Mary, Louisiana
Docket No. 2007-174614
Honorable John E. Conery, Judge Presiding**

**J. Phil Haney
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**Attorney for
Defendant-Appellant
Jimmy Allen Wright**

BEFORE: PARRO, GUIDRY, AND HUGHES, JJ.

Judgment rendered October 29, 2010

Hughes, J., concurs.

PARRO, J.

The defendant, Jimmy Allen Wright, was charged by grand jury indictment with first degree murder, a violation of LSA-R.S. 14:30. He pled not guilty. Prior to trial, the indictment was amended to charge the defendant with second degree murder, a violation of LSA-R.S. 14:30.1. The defendant pled not guilty to the amended charge. Following a trial by jury, the defendant was convicted as charged. The defendant was sentenced to life imprisonment at hard labor without benefit of probation, parole, or suspension of sentence. The defendant now appeals, urging in a single assignment of error that the trial court erred in denying his cause challenge against a prospective juror who indicated his relationship with one of the state's witnesses would affect his ability to remain fair and impartial. Finding no merit in the assignment of error, we affirm the defendant's conviction and sentence.

FACTS

On September 3, 2007, the lifeless body of Adam Horton was discovered inside his St. Mary Parish residence. He had been stabbed once in the chest. A homicide investigation was launched, and the defendant and Adam's brother, Chris Horton, became suspects. In response to police questioning, the defendant provided several statements in which he eventually admitted his involvement in the events immediately preceding the victim's death. The defendant claimed that he and Chris Horton went to the victim's residence to commit an armed robbery. The defendant stated that he was armed with a handgun, which was not loaded, and unbeknownst to him, Chris Horton was armed with a knife. According to the defendant, they only planned to scare the victim. Later, when a struggle ensued between the victim and the defendant, Chris Horton fatally stabbed the victim in the chest.

ASSIGNMENT OF ERROR

In his sole assignment of error, the defendant argues that the court erred in denying his challenge for cause against prospective juror Louis Spitale. Specifically, the defendant contends that Spitale's voir dire responses indicated that his personal

relationship with Detective Teddy Liner, of the St. Mary Parish Sheriff's Office, would affect his ability to be an impartial juror.

An accused in a criminal case is constitutionally entitled to a full and complete voir dire examination and to the exercise of peremptory challenges. LSA-Const. art. I, § 17(A). The purpose of voir dire examination is to determine prospective jurors' qualifications by testing their competency and impartiality and discovering bases for the intelligent exercise of cause and peremptory challenges. **State v. Burton**, 464 So.2d 421, 425 (La. App. 1st Cir.), writ denied, 468 So.2d 570 (La. 1985). A challenge for cause should be granted, even when a prospective juror declares his ability to remain impartial, if the juror's responses as a whole reveal facts from which bias, prejudice, or inability to render judgment according to law may be reasonably implied. A trial court is accorded great discretion in determining whether to seat or reject a juror for cause, and such rulings will not be disturbed unless a review of the voir dire as a whole indicates an abuse of that discretion. **State v. Martin**, 558 So.2d 654, 658 (La. App. 1st Cir.), writ denied, 564 So.2d 318 (La. 1990).

A defendant must object at the time of the ruling on the refusal to sustain a challenge for cause of a prospective juror. See LSA-C.Cr.P. art. 800(A). Prejudice is presumed when a challenge for cause is erroneously denied by a trial court and the defendant has exhausted his peremptory challenges. To prove there has been reversible error warranting reversal of the conviction, the defendant need only show (1) the erroneous denial of a challenge for cause, and (2) the use of all his peremptory challenges. **State v. Robertson**, 92-2660 (La. 1/14/94), 630 So.2d 1278, 1280-81. It is undisputed that defense counsel exhausted all of his peremptory challenges in this case. Therefore, we need only determine the issue of whether the trial judge erred in denying the defendant's cause challenge regarding prospective juror Spitale.

The grounds upon which a challenge for cause can be made are set forth in LSA-C.Cr.P. art. 797, which provides:

The state or the defendant may challenge a juror for cause on the ground that:

- (1) The juror lacks a qualification required by law;

(2) The juror is not impartial, whatever the cause of his partiality. An opinion or impression as to the guilt or innocence of the defendant shall not of itself be sufficient ground of challenge to a juror, if he declares, and the court is satisfied, that he can render an impartial verdict according to the law and the evidence;

(3) The relationship, whether by blood, marriage, employment, friendship, or enmity between the juror and the defendant, the person injured by the offense, the district attorney, or defense counsel, is such that it is reasonable to conclude that it would influence the juror in arriving at a verdict;

(4) The juror will not accept the law as given to him by the court; or

(5) The juror served on the grand jury that found the indictment, or on a petit jury that once tried the defendant for the same or any other offense.

During the examination of the second panel of prospective jurors, Spitale disclosed that he was acquainted with Detective Liner, a state's witness, "[a]bout four or five years ago when we used to have a drugstore in Morgan City. We used to supply the inmates in Morgan City with their medications and all." Thereafter, the court asked Spitale if his knowledge and friendship with Detective Liner would influence his verdict or judgment in any way. Spitale replied:

as long as it is not a "he said something" as opposed to somebody else. I would tend to go with Teddy [Liner] or Scott or somebody's word over another person's word. But other than that, it would not affect my judgment. It depends on what [role] they play in the case.

Later, the prosecutor revisited the issue of whether Spitale's relationship with Detective Liner would affect his ability to serve as a juror. He asked, "[w]ith regards to Detective Liner, could you judge his credibility like anyone else and all of the evidence surrounding him and render a verdict based upon the entirety of the case?" Spitale reiterated, "[a]s long as it wasn't like a 'he said/she said' scenario, yes, I could."

The trial court then addressed all of the prospective jurors and explained:

If I may: There is more to judging credibility and fact-finding than just a determination of who you think is telling the truth and who you think might be fabricating. There is a lot more to it than that. You have to analyze what you think under the circumstances a reasonable person could and would have seen and [remembered]. Different people have different perceptions about what happened. It doesn't mean when one says one thing and the other says another that one of them has to be lying. So that is one of your jobs as a juror is to see what they could see, hear and remember; and what motive they may have one way or the other; what they have to gain or loose [sic] by their testimony; what their

age is; what their psych abilities are; what the lighting was like. There is a lot of ... different factors that come into play when judging the facts and finding facts

So you are not just asked to say, "Well, he is telling the truth and he is lying." You are asked to analyze all of the evidence. Does any of the evidence given by other witnesses or documents back up what somebody is saying? Or knock down what somebody is saying? Corroboration or contradiction? So just like you would in the affairs of your everyday life when you are listening to people tell you a story of what they saw, or what they claim they saw. You use your good judgment and common sense and find the facts from all of the evidence in the case, not just necessarily the testimony of one person or one witness.

So therefore, in your situations where Mr. Liner or Mr. – whatever that deputy you know's name is, he could be – You could say, "I believe he is a truthful person ...", but still not accept his testimony because it is contradicted by other more reliable evidence. It doesn't mean he is lying. It doesn't mean somebody else is lying. You see what I am talking about?

The court then specifically asked Spitale if he could judge the credibility and believability of all of the witnesses, notwithstanding his relationship with Detective Liner. He responded affirmatively.

The issue regarding Spitale's relationship with Detective Liner was raised again during questioning by defense counsel. The following exchange occurred:

[DEFENSE COUNSEL]: Okay. And you said if it was a kind of "he said/she said", you would kind of go with Mr. Liner?

[SPITALE]: Look, my feelings towards Mr. Liner is I think he is a nice person. I wouldn't, you know – As long as the evidence followed the testimony, no problem. If it came down to one person's word against his, I don't know. I'd have to listen.

[DEFENSE COUNSEL]: I don't want to put words in your mouth; but you would say, because of these feelings that you have for Mr. Liner, that you would, you would place a burden on the Defense to show that what he is saying is not true?

[SPITALE]: I guess kind of. In a certain sense, possibly so. If the evidence ... shows otherwise, like what Judge Conery said earlier, I would have to go with the evidence then, and not my knowledge of Mr. Liner versus some other person.

Finally, the prosecutor asked, "Mr. Spitale, so you indicated you could base your decision on the evidence. The prospective juror responded, "Yes."

At the conclusion of the examination of the panel, counsel for the defendant urged a cause challenge against Spitale and noted:

Judge you are not aware of it, but Mr. Liner is pretty crucial to the case. He took the statements from my client and he is a major witness for the

State. He pretty much at the end of my question said that he would be placing the burden on me to overcome his feelings for Mr. Liner.

In response, the prosecutor noted that prospective juror Spitale ultimately stated that he would follow the evidence in deciding the case.

The following exchange then took place between the court and defense counsel:

BY THE COURT:

Well, it is a close question on Mr. Spitale. I don't think I'll grant the cause challenge. I think he understands that Mr. Liner's role is going to be limited basically from what you indicated to the playing of tapes. I don't know that Mr. Liner has anything that he needs to say that is going to be contradicted, or is even the subject of contradiction by anyone.

BY [DEFENSE COUNSEL]:

He does the questioning on the tape.

BY THE COURT:

I know; but is there any contradiction about what was said on the tape? Is anybody going to contradict that which was said?

BY [DEFENSE COUNSEL]:

Well, the questioning was done in such a way that it supports the State's theory of the case. Okay? And by the mere fact that we are pleading "not guilty" is a contradiction of the State's theory of the case.

BY THE COURT:

I understand. Okay. So I'll deny the cause challenge.

Defense counsel objected to the trial court's ruling and used a peremptory challenge to exclude Spitale.

Although Spitale initially admitted that he would tend to give more weight to Detective Liner's testimony in the event of a "he-said/she-said" conflict, we find the voir dire transcript, when considered in its entirety, establishes that Spitale was capable of deciding the case in a fair and impartial manner based upon the law and the evidence. A prospective juror's seemingly prejudicial response is not grounds for an automatic challenge for cause, and a trial judge's refusal to excuse him on the grounds of impartiality is not an abuse of discretion, if after further questioning the potential juror demonstrates a willingness and ability to decide the case impartially according to the law and evidence. See State v. Lee, 559 So.2d 1310, 1318 (La. 1990), cert. denied,

499 U.S. 954, 111 S.Ct. 1431, 113 L.Ed.2d 482 (1991); **State v. Copeland**, 530 So.2d 526, 534 (La. 1988), cert. denied, 489 U.S. 1091, 109 S.Ct. 1558, 103 L.Ed.2d 860 (1989).

In **State v. Kang**, 02-2812 (La. 10/21/03), 859 So.2d 649, 654, the defendant argued that the response of "probably" by Mr. Whitcomb, a prospective juror, indicated his unacceptable hesitancy to find the defendant not guilty if the state failed to prove its case beyond a reasonable doubt. The fifth circuit had reversed the trial court's refusal to strike Mr. Whitcomb for cause, finding that Mr. Whitcomb never unequivocally indicated he could disregard his initial bias toward police officers.¹ The supreme court reversed the fifth circuit and stated:

These conclusions are not supported by the record and demonstrate the court of appeal's failure to give proper deference to the trial court's findings. Mr. Whitcomb's responses during voir dire should be viewed as a whole, not on a piecemeal basis. Though some of Mr. Whitcomb's remarks or references could be viewed as questionable standing alone and out of context, when the voir dire is properly reviewed as a whole, there is no evidence of Mr. Whitcomb's partiality. (Citation omitted).

Kang, 859 So.2d at 655.

The line-drawing in many cases is difficult. Accordingly, the trial judge must determine the challenge on the basis of the entire voir dire, and on the judge's personal observations of the potential jurors during the questioning. Moreover, the reviewing court should accord great deference to the trial judge's determination and should not attempt to reconstruct the voir dire by a microscopic dissection of the transcript in search of magic words or phrases that automatically signify the jurors' qualifications or disqualifications. See State v. Miller, 99-0192 (La. 9/6/00), 776 So.2d 396, 405-06, cert. denied, 531 U.S. 1194, 121 S.Ct. 1196, 149 L.Ed.2d 111 (2001).

In the instant case, although Spitale initially indicated that he would likely give more weight to Detective Liner, after the trial court's very thorough explanation of what goes into making credibility determinations, Spitale indicated that he would follow the law and the evidence in deciding the case. Despite the defendant's assertion that Spitale's responses showed that he could not serve as a fair and impartial juror, the trial

¹ See **State v. Kang**, 01-1262 (La. App. 5th Cir. 10/29/02), 831 So.2d 409, 415.

court was in the best position to determine whether Spitale could discharge his duties as a juror. Upon reviewing the voir dire in its entirety, we cannot say the trial court abused its discretion in denying defense counsel's cause challenge as to this prospective juror.

This assignment of error is without merit.

CONVICTION AND SENTENCE AFFIRMED.