NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2013 KA 0533

STATE OF LOUISIANA

VERSUS

QUENTIN O. LEWIS

Judgment Rendered: NOV 0 1 2013

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On Appeal from the
16th Judicial District Court
In and for the Parish of St. Mary
State of Louisiana
Trial Court No. 2010-183316

The Honorable James R. McClelland, Judge Presiding

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BEFORE: PARRO, GUIDRY, AND DRAKE, JJ.

DRAKE, J.

The defendant, Quentin O. Lewis, was charged by grand jury indictment with second degree murder on count one and with possession of a firearm or carrying a concealed weapon by a convicted felon on count two, in violation of La. R.S. 14:30.1 and La. R.S. 14:95.1. The defendant entered a plea of not guilty on both counts. After a trial by jury, the defendant was found guilty as charged on both counts. The trial court denied the motion for a new trial, and the defendant was sentenced to life imprisonment at hard labor without the benefit of probation, parole, or suspension of sentence on count one, and to fifteen years' imprisonment at hard labor without the benefit of probation, parole, or suspension of sentence and a $5000 fine on count two. The trial court ordered that the sentences be served consecutively. The defendant now appeals, assigning error to the trial court's denial of challenges for cause as to three potential jurors and to the sufficiency of the evidence to support the second degree murder conviction. The defendant filed a pro se brief to bolster the challenge to the sufficiency of the evidence in support of the second degree murder conviction. For the following reasons, we affirm the convictions and sentences.

STATEMENT OF FACTS

On the evening and early morning of May 15-16, 2010, around midnight, a shooting took place outside of Johnny Bo's Night Club located at 1534 Cypremort Road in St. Mary Parish. The perpetrator, a masked male, approached a group of individuals who were in the parking lot and instructed them to come closer to him. The group ignored him and he pulled out a gun as he repeated the instruction. As a wheelchair-bound female in the group tried to escape, the gunman fired one shot, followed by multiple additional gunshots as the rest of the group started running. D'Angelo Williams, the victim, was one of the individuals in the line of fire and was struck in the head by a single gunshot and died as a result. Deputy David

Hines and Detective Scott Tabor of the Iberia Parish Sheriff's Office responded to the scene.

Loria Lewis, the defendant's mother, who lived on Cypremort Road near the club, discovered a black ski mask next to her porch and informed Deputy Hines. Deputy Hines instructed Detective Tabor to recover the mask and place it into evidence. The defendant was arrested on May 17, 2010, and charged with Williams's murder. The arresting officer, Sergeant Todd Anslum, indicated that the defendant tried to escape from the back door of the residence where he was apprehended. The State and the defendant stipulated to the defendant's prior conviction of simple robbery and that the defendant never applied for or received any permit to carry a firearm.

ASSIGNMENT OF ERROR NUMBER ONE

In the first assignment of error, the defendant argues that the voir dire answers given by prospective jurors Randall Robicheaux, Dana Lee, and Alicia Bercegeay, as a whole, indicated that they could not be fair and impartial. Thus, the defendant argues that the trial court erred in denying challenges for cause as to these three prospective jurors. The defendant notes that Robicheaux indicated that he knew several police officers, that he had a friendship with the prosecutor, and that he knew the prosecutor's father. The defendant also notes that Lee was the victim of three armed robberies. Finally, the defendant notes that Bercegeay knew several deputies and had an uncle who was murdered around the time of the trial.

Louisiana Code of Criminal Procedure article 797 provides, in pertinent part, that the State or the defendant may challenge a juror for cause on the ground that the juror is not impartial, whatever the cause of his partiality. La. Code Crim. P. art. 797(2). Also, a juror may be challenged based on the existence of a relationship with the district attorney, such that it is reasonable to conclude that it would influence the juror in arriving at a verdict. La. Code Crim. P. art. 797(3).

Further, a defendant may challenge a juror for cause on the grounds that the juror will not accept the law as given to him by the court. La. Code Crim. P. art. 797(4). 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. *State v. Martin*, 558 So.2d 654, 658 (La. App. 1st Cir.), *writ denied*, 564 So.2d 318 (La. 1990). However, a trial court's ruling on a motion to strike jurors for cause is afforded broad discretion because of the court's ability to get a first-person impression of prospective jurors during voir dire. *State v. Brown*, 05-1676 (La. App. 1st Cir. 5/5/06), 935 So.2d 211, 214, *writ denied*, 06-1586 (La. 1/8/07), 948 So.2d 121.

Prejudice is presumed when a trial court erroneously denies a challenge for cause and the defendant ultimately exhausts his peremptory challenges. *State v. Kang*, 02-2812 (La. 10/21/03), 859 So.2d 649, 651. This is because an erroneous ruling depriving an accused of a peremptory challenge violates his substantial rights and constitutes reversible error. *Kang*, 859 So.2d at 652. Therefore, to prove there has been an error warranting reversal of a conviction, a defendant need only show: (1) the trial court's erroneous denial of a challenge for cause; and (2) the use of all his peremptory challenges. *See Kang*, 859 So.2d at 652. Since the defendant in this case exhausted all twelve of his peremptory challenges, we need only consider the issue of whether the trial judge erroneously denied the defendant's challenges for cause contested herein. *See* La. Code Crim. P. art. 799.

The prospective jurors were asked if they knew or had any connection with the prosecutors in this case. Randall Robicheaux indicated that he knew Assistant District Attorney Vincent Borne very well as a friend and also knew Borne's father, but confirmed that he would be able to render a fair and impartial verdict based on the evidence and denied having any activities with Borne. In challenging

Robicheaux, the defense attorney simply argued that Robicheaux's familiarity with Borne and his family was lengthy and showed "a little bit of impropriety," adding that they even attended the same church. The State noted that granting a challenge on that basis would make it difficult to pick a jury in small towns. In denying the challenge, the trial court noted that Robicheaux was adamant that he could be fair and impartial.

After the State and the defense stated the names of the potential witnesses in this case, the trial court asked the prospective jurors if they knew any of them, and Alicia Bercegeay indicated that she knew a couple of the deputies. Bercegeay confirmed that she knew that a police officer's testimony was to be judged the same as any other witness, and further confirmed her ability to do so. When the prospective jurors were asked if anyone had been a victim or had close family members who were victims of crimes, Bercegeay stated that her uncle was murdered "in October" (presumably about five months before the trial on March 13, 2012), and Dana Lee stated that he was the victim of three unprosecuted armed robberies. Bercegeay and Lee indicated that those incidents would not affect their ability to serve on the jury, listen to the evidence, and determine the guilt or innocence in this case. Both prospective jurors specifically indicated that they could render a fair and impartial verdict.

When the defense attorney further questioned Lee regarding the details of the armed robberies, he stated that they occurred in Morgan City, New Orleans, and San Francisco. He further indicated that they occurred several years apart, within the fifteen to thirty-five year time span before the trial. The following colloquy then took place between the defense attorney and Lee:

> Q. But moreover, have you satisfied yourself, if I could, that these previous experiences would not affect the way that you look at my client during the course and scope of this trial. How do you know? Or do you know?

A. I don't know.

Q. You don't know. No one knows.

A. Right.

Q. And I appreciate your candor. Are you necessarily certain that you can be fair and impartial to my client?

A. I think I can.

Q. Okay.

A. I mean, that was all in the past.

Q. Okay. And what you went through won't carry over—

A. I don't think it would.

Q. --towards my client? In other words, I'll do blank and flat out, you're not going to say man, you know, I've been a victim and I'm going to get –

A. I've never seen this gentleman before in my life.

Bercegeay indicated that her uncle's murderer was apprehended and awaiting trial. She noted that the perpetrator had beaten her uncle in the head with a baseball bat. She confirmed that his murder would not hinder her ability to listen to the evidence and be fair in this case, specifically noting that they are "two different cases."

In challenging Lee for cause, the defense attorney stated that he did not give the proper answer when asked about the three armed robberies. The defense attorney specifically added, "There was something about his body language and the fact that he has three prior incidences like this. I just think that it could pose a highly prejudicial effect against my client." The State noted that the robberies occurred 15, 22, and 35 years before the trial, that only one occurred in that area, and that Lee was steadfast in stating his ability to fairly weigh the evidence. In denying the challenge, the trial court stated that it had also observed Lee's body language and demeanor and noted that he appeared open and warm and gave

thoughtful responses. As to Bercegeay, the defense attorney stated that she gave the proper responses, but questioned her sincerity in light of her relationship with her uncle and the fact that he was murdered just months before the trial. The trial court agreed with the State's assessment that Bercegeay's demeanor and answers indicated an ability to be fair and impartial.

At the outset, we note that while on appeal the defendant, cites Robicheaux's and Bercegeay's familiarity with police officers in support of his argument, that basis was not raised during his challenges below. In accordance with La. Code Crim. P. arts. 841(A) and 800(A), this argument cannot be raised for the first time on appeal. Further, we find that the totality of the responses by the prospective jurors in question demonstrated their willingness and ability to decide the case impartially according to the law and the evidence. The responses as a whole did not reveal facts from which bias, prejudice, or inability to render judgment according to the law could reasonably be inferred. As indicated above, a trial court's ruling on whether to seat or reject a juror for cause will not be disturbed unless a review of the voir dire as a whole indicates an abuse of the great discretion accorded to the trial court. *State v. Martin*, 558 So.2d at 658. Thus, only where it appears that the judge's exercise of that discretion has been arbitrary or unreasonable, resulting in prejudice to the accused, will the ruling of the trial judge be reversed. *See State v. Lee*, 93-2810 (La. 5/23/94), 637 So.2d 102, 108. If a prospective juror is able, after examination by counsel, to declare to the court's reasonable satisfaction that he is able to render an impartial verdict according to the law and evidence, it is the trial court's duty to deny a challenge for cause. *See State v. Claiborne*, 397 So.2d 486, 489 (La. 1981). Thus, after a review of the record of voir dire as a whole, it is clear that the trial court did not abuse its broad discretion in denying the defendant's challenges for cause as to these prospective jurors. Assignment of error number one is without merit.

ASSIGNMENT OF ERROR NUMBER TWO

In the second assignment of error, the defendant contends that the evidence did not support beyond a reasonable doubt that he committed the murder. The defendant notes that identification is at issue in this case and further notes that his presence at the club that night is not being contested. The defendant contends that none of the eyewitnesses positively identified him as the shooter, and there was no physical evidence to link him to the murder. Further, the defendant notes that the descriptions of the shooter's clothing varied and that he had distinctive tattoos on his hand that none of the witnesses mentioned. The defendant contends that Lindsey Derouen, who disposed of the gun, was not a credible witness because she was motivated to lie to avoid prosecution and to protect her child's father. Finally, the defendant notes that DNA evidence linked additional individuals to the black ski mask and gave no indication as to when the object was handled.

In his pro se brief, the defendant again argues that Derouen was not a credible witness. The defendant contends that she testified out of fear of her boyfriend, Jewayne Sweat, and only implicated the defendant in order to clear Sweat. The defendant is not contesting the conviction on count two on appeal.

The standard of review for sufficiency of the evidence to support a conviction is whether or not, viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could conclude that the State proved the essential elements of the crime and defendant's identity as the perpetrator of that crime beyond a reasonable doubt. *See* La. Code Crim. P. art. 821; *Jackson v. Virginia*, 443 U.S. 307, 319, 99 S.Ct. 2781, 2789, 61 L.Ed.2d 560 (1979); *State v. Johnson*, 461 So.2d 673, 674 (La. App. 1st Cir. 1984). In conducting this review, we also must be expressly mindful of Louisiana's circumstantial evidence test, i.e., "assuming every fact to be proved that the evidence tends to prove, in order to convict, it must exclude every reasonable hypothesis of innocence." La. R.S.

15:438; *State v. Ordodi*, 06-0207 (La. 11/29/06), 946 So.2d 654, 660; *State v. Wright*, 98-0601 (La. App. 1st Cir. 2/19/99), 730 So.2d 485, 486, *writs denied*, 99-0802 (La. 10/29/99), 748 So.2d 1157 and 00-0895 (La. 11/17/00), 773 So.2d 732. When a case involves circumstantial evidence and the trier of fact reasonably rejects a hypothesis of innocence presented by the defense, that hypothesis falls, and the defendant is guilty unless there is another hypothesis that raises a reasonable doubt. *State v. Moten*, 510 So.2d 55, 61 (La. App. 1st Cir.), *writ denied*, 514 So.2d 126 (La. 1987). When the key issue is the defendant's identity as the perpetrator, rather than whether the crime was committed, the State is required to negate any reasonable probability of misidentification. *State v. Holts*, 525 So.2d 1241, 1244 (La. App. 1st Cir. 1988). Positive identification by only one witness may be sufficient to support the defendant's conviction. *State v. Andrews*, 94-0842 (La. App. 1st Cir. 5/5/95), 655 So.2d 448, 453.

The crime of second degree murder, in pertinent part, "is the killing of a human being: [w]hen the offender has a specific intent to kill or to inflict great bodily harm[.]" La. R.S. 14:30.1(A)(1). Specific criminal intent is that "state of mind which exists when the circumstances indicate that the offender actively desired the prescribed criminal consequences to follow his act or failure to act." La. R.S. 14:10(1). The doctrine of transferred intent provides that when a person shoots at an intended victim with the specific intent to kill or inflict great bodily harm and accidentally kills or inflicts great bodily harm upon another person, if the killing or inflicting of great bodily harm would have been unlawful against the intended victim actually intended to be shot, then it would be unlawful against the person actually shot, even though that person was not the intended victim. *State v. Henderson*, 99-1945 (La. App. 1st Cir. 6/23/00), 762 So.2d 747, 750, *writ denied*, 00-2223 (La. 6/15/01), 793 So.2d 1235.

Though intent is a question of fact, it need not be proven as a fact. It may be inferred from the circumstances of the transaction. Thus, specific intent may be proven by direct evidence, such as statements by a defendant, or by inference from circumstantial evidence, such as a defendant's actions or facts depicting the circumstances. Specific intent is an ultimate legal conclusion to be resolved by the fact finder. *State v. Buchanon*, 95-0625 (La. App. 1st Cir. 5/10/96), 673 So.2d 663, 665, *writ denied*, 96-1411 (La. 12/6/96), 684 So.2d 923. Specific intent to kill may be inferred from a defendant's act of pointing a gun and firing at a person. *State v. Delco*, 06-0504 (La. App. 1st Cir. 9/15/06), 943 So.2d 1143, 1146, *writ denied*, 06-2636 (La. 8/15/07), 961 So.2d 1160. Moreover, the discharge of a firearm in the direction of a crowd has repeatedly been recognized in the jurisprudence as sufficient to prove specific intent to kill. *See State v. Mart*, 419 So.2d 1216, 1217 (La. 1982); *State v. Allen*, 94-1941 (La. App. 1st Cir. 11/9/95), 664 So.2d 1264, 1272, *writ denied*, 95-2946 (La. 3/15/96), 669 So.2d 433; *State v. Powell,* 94-1390 (La. App. 1st Cir. 10/6/95), 671 So.2d 493, 500, *writ denied*, 95-2710 (La. 2/9/96), 667 So.2d 529; *State in the Interest of L.H.,* 94-903 (La. App. 3d Cir. 2/15/95), 650 So.2d 433, 435-36; *State v. Thomas*, 609 So.2d 1078, 1083 (La. App. 2d Cir. 1992), *writ denied*, 617 So.2d 905 (La. 1993).

Just before the shooting, Anthony Watson and the victim (his cousin) met Christopher Blanks, Cloris Jones, Joshua Francois, and Angela Sophus (who was wheelchair bound) at the club. They parked in a grassy area on the side of the road by the club, exited their vehicles, and were talking when an individual approached and told them to move closer to the road. The individual pulled out a gun, and Blanks immediately pushed Sophus's wheelchair and told her to quickly roll it to the club. Brandishing the gun, the perpetrator again told the group to come toward the road where he was standing. Sophus in part testified, "I started rolling towards the club … He was like, 'Oh, y'all think I'm playing,' and I kind of looked and I

seen he was looking at me, I know he was talking to me because I was heading towards the club." The gunman opened fire as Sophus rolled her wheelchair to the club entrance, and the others started running. Several witnesses testified that they could not identify the gunman because he was wearing a black ski mask. The witnesses recalled the shooter firing about six shots total. They confirmed that the mask worn by the perpetrator was similar to the one in evidence.

Blanks and Sophus indicated that the shooter came from the area where gas pumps were located outside of the club. Sophus further noted that before he approached them, the gunman passed two other men who were standing outside. Blanks, Jones, and Sophus noticed that the perpetrator's mask was not pulled all the way down when he first started walking toward the group and saw him pulling it down as he approached. As to the perpetrator's attire, Blanks said he was wearing khaki shorts and indicated that he could not really see the shirt because it was dark, but that it was either brown or black. Jones said he was wearing light clothes, and Sophus was only asked about her previous description of the shirt as purple and indicated that she could not recall and that it was dark outside, but added that the shirt appeared to be striped and purple.

Before the shooting, Shannon Clavelle, the head security officer at the club that night, had an encounter at the front door with someone whom he later positively identified in a photographic lineup as the defendant. He noted that security searched every individual who entered the club. The defendant approached the building and asked how much they were charging for entrance. The defendant then walked towards the front of the club, down a walkway that led to the set of gas pumps. He stated that the defendant was wearing a light shirt with cargo pants/shorts. The shooting took place about a minute after he walked away. Immediately after the shots were fired, Clavelle had a distant view of someone wearing cargo shorts running away from the building as a group of guys and a lady

in a wheelchair hurried inside indicating that someone was shooting. Clavelle did not actually see the defendant with a gun.

Ebony Marks and Ladaisha Welch were at the club, sitting in a vehicle parked in a parking lot across from the building, facing the gas pumps, before the shooting. They knew the defendant and saw him outside before the shooting. The defendant was wearing a dark/brown shirt with light/khaki shorts, heading towards the club when they saw him. Though they only heard the gunshots and did not see the shooting, Welch saw someone wearing the same attire that the defendant had on running away from the club on Cypremort Road. Marks and Welch were subsequently shown a photo array by the police and positively identified the defendant as the person they saw.

Sonia McDaniel had known the defendant for about two years at the time of the shooting. She arrived around midnight and entered the club just before the shooting took place. She was getting ready to exit the club after receiving a phone call from a friend who asked her to meet her outside. Just when she was about to walk outside, she observed someone drop a gun, pick it back up, and walk away towards the gas pumps. As she stood in the doorway, she had a side view of the individual's face. She heard the gunshots as she was walking across the parking lot about three minutes later. She then saw someone, whom she believed to be the same person she had seen near the door of the club, running down the street with a mask over his face. She later told the police that she thought the defendant, or his brother who looked like him, was the shooter. McDaniel subsequently identified the defendant in a photographic lineup as the person with the gun whose face she was able to see with the gun before the shooting. On a scale of one to ten, she selected eight as to her level of certainty regarding her identification.

Dana Derouen also testified as a State witness. On May 17, 2010, after she got home from work, she discovered that the defendant was at her daughter

Lindsey's apartment next door. She was concerned because she believed that the defendant was wanted by the police for questioning. She called her daughter, who was at work, and told her that it would be best if the defendant left her apartment. She noticed that the defendant was still at the apartment when she checked twenty minutes later. Lindsey Derouen also testified and stated that she knew the defendant because he was friends with her ex-boyfriend, Jewayne Sweat. After her mother told her to get the defendant out of her apartment, she called Sweat and told him the defendant had to leave. Later that afternoon, the defendant called her while she was still at work and told her that he had left a gun at her apartment and that she needed to get rid of it. When she got off work, she went home, located the gun, wrapped it in a shirt, and threw it in the bayou nearest to her residence (by Bouligny Plaza on Main Street). When she was later questioned by the police, she told them about the defendant's request and showed them where she had disposed of the gun. She was with the police when they recovered the gun and she identified it. Prior to the grand jury hearing, the defendant told her not to go to the hearing and stated that she would not get in any trouble if she did not show up. During cross-examination, Lindsey stated that she followed the defendant's instructions because she was scared, though she confirmed that he never threatened her.

Captain Jonathan Booth of St. Mary Parish Sheriff's Office responded to the scene of the shooting and later attended the autopsy. Captain Booth recovered one spent round from inside the door of the building, but did not recover any spent casings near the body where the shooting took place. He concluded that a revolver was used because a semi-automatic weapon would have ejected a casing. When the captain attended the autopsy, he collected the bullet that was recovered from the victim's head. The bullet was sent to Acadiana Crime Lab for testing, along with the spent round recovered from the door of the building, a sample of the

defendant's DNA, and the recovered ski mask and gun. Captain Booth also sent for enhancement still photographs of the individual believed to be the perpetrator that were captured from the surveillance footage of the night in question. On cross-examination, Captain Booth confirmed that none of the witnesses identified the defendant as the shooter from the enhanced surveillance photographs. On redirect examination, Captain Booth clarified that the enhancement did not increase the quality of the photographs.

Acadiana Crime Lab Forensic Chemist Mark Kurowski, an expert in forensics analysis, tested the revolver and bullets recovered in this case and determined that the bullets were fired from the revolver. Bethany Harris, an expert DNA analyst also of the Acadiana Crime Lab, tested the ski mask and the defendant's reference sample. On the ski mask she obtained a DNA profile that had a mixture of DNA with the defendant as the major contributor and at least two minor contributors.

The defendant was observed at the club moments before the shooting wearing attire that substantially matched the attire that the shooter was described as wearing. Further, McDaniel knew the defendant and was almost certain when she identified him as the person she saw with a gun minutes before she heard the gunfire. Based on eyewitness observations of the defendant and his attire just before the shooting, the descriptions provided by the victim's acquaintances and other witnesses, and the fact that the defendant left the murder weapon at Lindsey Derouen's apartment and instructed her to discard it, the evidence overwhelmingly indicated that the defendant was the shooter. Moreover, a black ski mask matching the description provided by the victim's acquaintances was recovered from the defendant's mother's house just after the shooting, and it was later determined that the defendant was the major contributor to a DNA sample collected from the ski mask. In the absence of internal contradiction or

irreconcilable conflict with the physical evidence, one witness's testimony, if believed by the trier of fact, is sufficient to support a factual conclusion. *State v. Higgins,* 03-1980 (La. 4/1/05), 898 So.2d 1219, 1226, *cert. denied*, 546 U.S. 883, 126 S.Ct. 182, 163 L.Ed.2d 187 (2005). As noted, the defendant challenges the credibility of the testimony provided by Lindsey Derouen. However, the trier of fact is free to accept or reject, in whole or in part, the testimony of any witness. Moreover, when there is conflicting testimony about factual matters, the resolution of which depends upon a determination of the credibility of the witnesses, the matter is one of the weight of the evidence, not its sufficiency. The trier of fact's determination of the weight to be given is not subject to appellate review. We are constitutionally precluded from acting as a "thirteenth juror" in assessing what weight to give evidence in criminal cases. *See State v. Mitchell*, 99-3342 (La. 10/17/00), 772 So.2d 78, 83. The fact that the record contains evidence that conflicts with the testimony accepted by a trier of fact does not render the evidence accepted by the trier of fact insufficient. *State v. Quinn*, 479 So.2d 592, 596 (La. App. 1st Cir. 1985).

In this case we cannot say that the jury's determination was irrational under the facts and circumstances presented to them. *See State v. Ordodi*, 946 So.2d at 662. Furthermore, an appellate court errs by substituting its appreciation of the evidence and credibility of witnesses for that of the fact finder and thereby overturning a verdict on the basis of an exculpatory hypothesis of innocence presented to, and rationally rejected by, the jury. *State v. Calloway*, 07-2306 (La. 1/21/09), 1 So.3d 417, 418 (per curiam). We are convinced that any rational trier of fact, viewing the evidence presented at trial in the light most favorable to the State, could have found the evidence proved beyond a reasonable doubt and to the exclusion of every reasonable hypothesis of innocence, all of the elements of

second degree murder and the defendant's identity as the perpetrator. Due to the foregoing conclusions, assignment of error number two lacks merit.

CONVICTIONS AND SENTENCES AFFIRMED