NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2015 KA 0176

STATE OF LOUISIANA

VERSUS

BROOKLYN BECC HUBER BROWN

Judgment Rendered: SEP 18 2015

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On Appeal from the
21st Judicial District Court
In and for the Parish of Tangipahoa
State of Louisiana
No. 1301134, Div. D

The Honorable Douglas Hughes, Judge Presiding

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BEFORE: WHIPPLE, C.J., WELCH, AND DRAKE, JJ.

DRAKE, J.

The defendant, Brooklyn Becc Huber Brown, was charged by grand jury indictment on count one with conspiracy to commit second degree murder, a violation of La. R.S. 14:26 and La. R.S. 14:30.1, and on count two with second degree murder, a violation of La. R.S. 14:30.1. The defendant pled not guilty on both counts. After a trial by jury, she was found guilty as charged on all counts. The trial court denied the defendant's motion for new trial. The defendant was sentenced on count one to thirty years imprisonment at hard labor, and on count two to life imprisonment at hard labor without the benefit of probation, parole, or suspension of sentence. The trial court ordered that the sentences be served concurrently. The defendant now appeals, assigning error to the selection of the jury pool and to the admission of trial testimony by the co-conspirator's attorney. For the following reasons, we affirm the convictions and sentences.

STATEMENT OF FACTS

On April 9, 2008, the Tangipahoa Parish Sheriff's Office began investigating the homicide of Christopher "Slater" Brown (the victim), the defendant's spouse. The victim was discovered in his bedroom lying in bed with a small dog cradled in his arms, both deceased. Before the instant trial, Aubrey Sikes, with whom the defendant had sexual relations before and after her marriage to the victim, was convicted of second degree murder for shooting the victim in this case.

Before the affair and subsequent murder, Sikes became familiar with the Brown family after his older sister, Mindy, began dating Hunter Brown, the victim's brother. Bill Brown, the father of Hunter and the victim, ultimately played a guiding role in Sikes's life, as Sikes did not have a close relationship with his own father. Sikes moved in with the Browns during his senior year in high school. Sikes was seventeen years old at the start of the sexual relationship with

the defendant, who was twenty-eight years old and already involved and living with, but not yet married to the victim. The defendant ultimately began having threesomes with Sikes and the victim, and it was initially unbeknownst to the victim that Sikes and the defendant also had sex without the victim. Sikes joined the Marine Corps and left for boot camp after graduating from high school. While at boot camp, Sikes received several intimate letters from the defendant. The defendant and the victim ultimately got married and moved into their own residence, but her sexual relations with Sikes did not cease. The defendant complained about her marriage and the way the victim treated her in some of the letters written to Sikes.

According to Sikes's trial testimony, on the day before the shooting, the defendant told him that she missed him, that she was upset with the victim, that their last argument wherein the victim yelled at her for hours was the final straw, and that she wanted the victim out of her life. Sikes further testified that the defendant subsequently told him, that she wanted to be with him and that when he asked her if she wanted the victim dead, she told him, "if that's what it takes." The defendant and Sikes made arrangements for Sikes to come to the defendant and the victim's home the next night at about 10:30 p.m., after the victim would be asleep. The next night, Sikes went to the residence as planned, armed with a rifle, ammunition, and a knife. As Sikes arrived, he saw the defendant in the kitchen window and drove to the back of the trailer. The defendant opened the back door and Sikes, who was holding the rifle in his hand, entered the trailer. Sikes shot the victim while he was asleep. The victim suffered a fatal gunshot wound to the left back, a non-fatal gunshot wound to the right leg and right arm, and another non-fatal gunshot wound through the axilla to the right neck.

ASSIGNMENT OF ERROR NUMBER ONE

In the first assignment of error, the defendant argues that the trial court erroneously permitted five tales jurors to be empaneled who should have been struck for cause. The defendant contends that after a sufficient number of properly selected potential jurors failed to appear, the prospective jurors at issue were selected by inappropriate means from within the courthouse employment rosters. The defendant notes that after becoming aware of the deficiency in the number of prospective jurors who appeared, the trial court sent the courtroom bailiff to retrieve additional prospective jurors. The defendant also notes that this was the systemic practice at the 21st Judicial District Court. The defendant further notes that the bailiff went downstairs to the Clerk of Court's office and to other parish offices and returned with several additional prospective jurors. The defendant argues that the inclusion of these improperly selected tales jurors poisoned the panel and deprived her of a fair trial. The defendant contends that the inclusion of tales jurors in this case was improper because Sikes was tried in the same courthouse a few years before the instant trial and some of the tales jurors were working there when the State elicited testimony from the defendant to convict Sikes. The defendant also notes that the courthouse employees knew the prosecutor, detectives, witnesses involved in this case, and Vanessa Williams, Sikes's attorney who was allowed to testify on behalf of the State. The defendant argues that she was denied due process and fundamental fairness in the manner in which the jury panel was selected.

Finally, the defendant argues that after the denial of the motion for mistrial and overruling of the objection to the jury selection process, the trial court improperly denied her challenge for cause as to juror Lula Owens. The defendant notes that Owens was a tales juror who worked in the Clerk's Office and indicated

that she would be uncomfortable serving as a juror. In this regard, the defendant notes that she used all of her peremptory challenges.

In parishes other than Orleans, the judge may order the summoning of tales jurors from among the bystanders or persons in or about the courthouse, in place of the drawing of tales jurors. La. C.Cr.P. art. 785(D). The Louisiana Supreme Court has determined that the selection of tales jurors from among the bystanders in or about the courthouse is not violative of the right to an impartial jury. *State v. Monk*, 315 So. 2d 727, 737-738 (La. 1975); *State v. Bobb*, 573 So. 2d 570, 573 (La. App. 4th Cir. 1991), *writs denied*, 577 So. 2d 48 and 578 So. 2d 930 (La. 1991), 600 So. 2d 657 (La. 1992) (conviction upheld wherein tales jurors were selected from among employees of Plaquemines Parish who worked in the courthouse). Further, in *State v. Drew*, 360 So. 2d 500 (La. 1978), *cert. denied*, 439 U.S. 1059, 99 S. Ct. 820, 59 L. Ed. 2d 25 (1979), the Supreme Court held that selection of tales jurors from among bystanders was not *per se* violative of a defendant's right to a jury representing a fair cross-section of the community.

Louisiana Code of Criminal Procedure article 797 provides, in pertinent part, 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. C.Cr.P. art. 797(2). 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. C.Cr.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, 2005-1676 (La. App. 1st Cir. 5/5/06), 935 So. 2d 211, 214, *writ denied*, 2006-1586 (La. 1/8/07), 948 So. 2d 121. The law does not require that a jury be composed of individuals who are totally unacquainted with the defendant, the prosecuting witness, the prosecuting attorney, and the witnesses who may testify at trial. Rather, the law requires that jurors be fair and unbiased. *State v. Stewart*, 2008-1265 (La. App. 5th Cir. 5/26/09), 15 So. 3d 276, 288, *writ denied*, 2009-1407 (La. 3/5/10), 28 So. 3d 1003.

Prejudice is presumed when a trial court erroneously denies a challenge for cause and the defendant ultimately exhausts his peremptory challenges.[1] *State v. Kang*, 2002-2812 (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. 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 of his peremptory challenges. *See Kang*, 859 So. 2d at 652.[2]

We note at the outset that the defendant did not object when the trial court announced that tales jurors would be used to complete the jury selection process, as the jury pool was down to six prospective jurors, which was insufficient to complete the selection process. Subsequent to the announcement, after the jurors were removed from the courtroom, the trial judge explained that the bailiff would pick eight people throughout the courthouse and that the parties would be allowed to question them. The trial court then asked the State and defense attorney if there were any objections to which both responded, "No, sir." After the bailiff

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[1] The rule is different at the federal level. *See United States v. Martinez-Salazar*, 528 U.S. 304, 120 S. Ct. 774, 145 L. Ed. 2d 792 (2000) (exhaustion of peremptory challenges does not trigger automatic presumption of prejudice arising from trial court's erroneous denial of a cause challenge).

[2] Since the defendant in this case exhausted all twelve of her peremptory challenges, we need only consider the issue of whether the trial judge erroneously denied the defendant's challenge for cause contested herein. *See* La. C.Cr.P. art. 799.

completed the selection, he was questioned in order to confirm that the process was random. The bailiff further indicated from which offices the tales jurors were selected. None of the tales jurors worked in the criminal division. The defense attorney was also allowed to question the bailiff. The tales jurors were extensively questioned by the trial judge, the State, and the defense attorney. Only two of the tales jurors, Debra Williams and Andrew Faller, were familiar with the defendant's name or the case in general. Williams specifically stated that she heard "a little bit" about the case by reading about it in the newspaper "a while back." Faller similarly stated that he knew of the case from reading about it "a while back." Both Williams and Faller stated that their familiarity would not affect their ability to be fair and impartial, and that they had not formed an opinion about the case. One of the other tales jurors, Lula Owens (for whom the trial court's denial of the challenge for cause is at issue herein), indicated that she did feel pressure to serve as a juror after being selected to participate in the voir dire.

After the tales jurors were questioned and addressed, the trial court called the six jurors, who remained in the pool before the tales jurors were selected so that they could also be questioned and addressed along with the tales jurors. The entire panel was instructed and questioned regarding the duty to render a fair and impartial verdict, the State's burden of proof beyond a reasonable doubt, the defendant's right to remain silent, and the presumption of innocence. The defense attorney asked all of the prospective jurors, including the tales jurors, how they would vote before hearing any evidence and each stated that they would vote, "Not guilty." After the questioning of the entire panel was complete, the jurors were asked to leave the courtroom and the defense attorney moved for the court to either alter its method of selection or grant a mistrial in the alternative, and the trial court denied the alternative motions. The trial court then denied the defense's challenge

for cause as to Owens, agreeing with the State that despite the fact that she stated that she felt pressure or discomfort, she was fully rehabilitated.

Arguably, the defendant failed to move timely for a mistrial or enter a contemporaneous objection to the tales juror selection process. *See* La. C.Cr.P. art. 841(A). Nonetheless, the counsel for the defendant conducted an extensive voir dire of the tales jurors. There is no indication that they, including Owens, were either not impartial or pro-prosecution merely by virtue of their status as parish employees. Moreover, 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. *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). The defendant has not shown that the trial court failed to comply with the statutory procedures for selecting the tales jurors or that the trial court abused its discretion in denying the challenge for cause of Owens. Thus, we find that assignment of error number one is without merit.

ASSIGNMENT OF ERROR NUMBER TWO

In the second assignment of error, the defendant argues that the trial court erred in allowing Sikes's trial attorney, Vanessa Williams, to testify in the instant case that Sikes's trial testimony herein was consistent with statements Sikes previously made to Williams. The defendant concedes that Mindy Brown, Sikes's sister, also presented testimony in this case regarding previous statements made by

Sikes consistent with his trial testimony, and that both Brown and Sikes were "thoroughly cross-examined on the truthfulness, motives, and circumstances surrounding Sikes [sic] adverse testimony at [the defendant's] trial." On the other hand, the defendant also notes that Williams's testimony was not about a specific statement that Sikes made to her, but rather a vague recitation regarding statements made over several months and how she and Sikes developed a confidential and trustworthy relationship. The defendant argues that Williams's testimony was not admissible pursuant to La. C.E.. arts. 801(D)(1)(b) and 403. The defendant argues that Williams was a "respected member of the bar" who granted her "imprimatur of truthfulness" to statements of Sikes, and was de facto allowed to testify that she believed Sikes. The defendant reiterates that Williams' testimony was cumulative since Mindy Brown had already testified as to what Sikes told her in May of 2008 in the Tangipahoa Parish Jail. The defendant argues that Williams's testimony improperly bolstered Sikes's testimony, confused the jury, and resulted in her denial of a fundamentally fair trial.

Hearsay is defined as "a statement, other than one made by the declarant while testifying at the present trial or hearing, offered in evidence to prove the truth of the matter asserted." La. C.E. art. 801(C). Generally, hearsay is not admissible except as otherwise provided by law. La. C.E. art. 802. A witness's out-of-court statement may constitute a "prior consistent statement" that is potentially admissible as non-hearsay under La. C.E. art. 801(D)(1). Article 801(D)(1) specifically provides that a prior statement of a witness is not hearsay if: [t]he declarant testifies at the trial or hearing and is subject to cross-examination concerning the statement, and the statement is: ... (b) [c]onsistent with his testimony and is offered to rebut an express or implied charge against him of recent fabrication or improper ... motive. Even where a statement meets the technical requirements of Article 801(D)(1)(b), the court must still examine the

circumstances to determine whether this prior consistent statement had sufficient relevance in the light of its only purpose, which was to rehabilitate a witness whose credibility in court had been challenged. *See State v. Milto*, 99-0217 (La. App. 1st Cir. 11/5/99), 751 So. 2d 271, 275, *writ denied*, 2000-0318 (La. 2000), 769 So. 2d 2; *see* La C.E. art. 801(D)(1). With some exceptions, all evidence which is relevant is admissible. La. C.E. art. 402. Louisiana Code of Evidence article 401 defines relevant evidence as "evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Louisiana Code of Evidence article 403 provides: "Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, or waste of time."

Herein, Vanessa Williams testified that she formerly represented Sikes as a public defender, and that months before the trial, she received word that he waived his attorney-client privilege. After the defendant's "improper bolstering" and hearsay objection, the State contended that Williams's testimony was being offered to rebut the charge against Sikes of recent fabrication presented to the jury by the defense. After further argument by the defense, the trial court overruled the objection. Williams's testimony regarding out-of-court statements made by Sikes was consistent with Sikes' testimony. Williams specifically testified that Sikes informed her that he received letters from the defendant complaining of the victim's treatment of her and indicating that she wanted the victim dead. Williams further testified that the defendant made arrangements for Sikes to go the victim's home on the night of the murder at a time when the victim would be the least resistant, and that the defendant opened the door for Sikes when he arrived. Sikes, as the defendant concedes, was subject to a thorough cross-examination. The

cross-examination included lines of questioning that implied that Sikes' trial testimony was inconsistent with statements that he made before the trial, that Sikes' trial testimony was prepped, and that Sikes had prospects regarding a sentence reduction or a new trial after the defendant's conviction. We find that Williams's testimony in question was properly admissible as prior consistent non-hearsay that could offset the allegation of recent fabrication. *See Milto,* 751 So. 2d at 275; *see* La. C.E. art. 801(D)(1). When we balance the probative value of Williams's testimony with the prejudice, if any, arising from the testimony, we find its probative value outweighs any possible prejudicial effect. Therefore, we find no error in the trial court allowing it to be admitted into evidence. Accordingly, we find no merit in the second assignment of error.

CONVICTIONS AND SENTENCES AFFIRMED.