

STATE OF LOUISIANA * **NO. 2018-KA-0662**
VERSUS * **COURT OF APPEAL**
OLIVER LEWIS * **FOURTH CIRCUIT**
* **STATE OF LOUISIANA**
* * * * *

APPEAL FROM
CRIMINAL DISTRICT COURT ORLEANS PARISH
NO. 522-142, SECTION "A"
Honorable Laurie A. White, Judge
* * * * *

Judge Joy Cossich Lobrano
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(Court composed of Judge Terri F. Love, Judge Joy Cossich Lobrano, Judge Dale N. Atkins)

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AFFIRMED.

DECEMBER 19, 2018

Defendant, Oliver Lewis (“Defendant”), appeals his convictions for aggravated rape and unauthorized entry of an inhabited dwelling. After reviewing the record and applicable law, we affirm the convictions.

Following his indictment on charges of aggravated rape and aggravated burglary, Defendant pled not guilty to both charges. A jury found Defendant guilty of aggravated rape and returned the responsive verdict of unauthorized entry of an inhabited dwelling on the burglary count. The district court denied Defendant’s motion for new trial and imposed consecutive terms of life imprisonment at hard labor without benefit of parole, probation or suspension of sentence. After Defendant was granted an out-of-time appeal, we remanded the case to the district court based on an incomplete record of the *voir dire*:

Similar to [State v.] *Handy*, [17-1823, (La. 12/15/17), 231 So. 3d 609], the parties here do not dispute that Mr. Lewis exhausted his peremptory challenges and the present record does not include a basis for the trial court’s rulings excusing eleven potential jurors. Although the State argues that the defense was required to lodge an on-the-record objection to any adverse rulings excusing a juror to preserve the issue for review, the off-the-record nature of the *voir dire*

examination renders it impossible to ascertain whether the defense objected. The trial court questioned the jurors before excusing them. Thus, presumably they were not removed pursuant to a joint motion.

Given these facts, the Supreme Court's recent holding in *Handy*, and to afford Mr. Lewis meaningful appellate review, we remand the matter to the trial court to determine whether any documentation created contemporaneous to the trial court's rulings excusing the jurors exists.

State v. Lewis, 17-0255, p. 4 (La.App. 4 Cir. 2/7/18), 238 So.3d 509, 512.

On March 16, 2018, the district court conducted a hearing and determined that two of the jurors had been excused without objection. As to the nine remaining jurors, the court located documentation concerning the discussions related to their removals, after which defense counsel filed a motion to supplement the record with the material. This timely appeal followed.

The evidence presented at trial in support of the convictions is at most tangentially relevant to Defendant's claim on appeal—that the court erred when it denied two of his defense challenges for cause because the prospective jurors themselves were sex-crime survivors.

The female victim ("Victim") was eleven years old at the time of the crime. Defendant, a former boyfriend of Victim's mother, entered the residence without authorization, possibly by climbing onto a balcony located on the second floor. Defendant was caught by Victim's stepfather in bed with her. Officers responded to the scene where they encountered the naked Defendant restrained by Victim's stepfather. Bodycam footage depicted Victim accusing Defendant of forcing her to perform oral sex and vaginally and anally raping her. Genetic testing conducted on bodily fluids collected from Victim were consistent with Defendant's profile.

A review for errors patent on the face of the record reveals none.¹

In his sole assignment of error, Defendant contends that the district court erroneously denied his cause challenges to two prospective jurors who could not adjudicate his guilt impartially and/or accept the law as given because they had been victims of similar crimes.

“[P]rejudice is presumed when a challenge for cause has been erroneously denied by a trial court, and the defendant exhausts all peremptory challenges statutorily afforded to the defendant.” *State v. Harrison*, 17-0054, p. 17 (La.App. 4 Cir. 3/21/18) 239 So.3d 406, 417, citing *State v. Juniors*, 03-2425, p. 8 (La. 6/29/05), 915 So.2d 291, 305. Because the State does not contest that the defense exhausted its peremptory challenges, the only issue before us is whether the district court erred when it denied the challenges for cause complained of in this appeal.

La. C.Cr.P. art. 797, which authorizes when the state and defense may challenge a juror for cause, states in pertinent part:

(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;

(4) The juror will not accept the law as given to him by the court[.]

¹ As set out in this Court’s earlier opinion remanding the case:

Mr. Lewis filed a *pro se*, handwritten, motion for new trial, upon which the trial court failed to rule before imposing his sentence. However, before the trial court sentenced Mr. Lewis, it inquired whether there existed “any other motions outstanding” and Mr. Lewis’ counsel responded in the negative. Mr. Lewis then interrupted and verbally protested his innocence, while making no reference to the pending motion. Under these circumstances, the technical failure to comply with La. C.Cr.P. art. 853 does not warrant intervention. There are no other errors patent. *Lewis*, 17-0255, pp. 1-2, 238 So.3d at 510.

A district court is vested with broad discretion in ruling on challenges for cause, and such a ruling is subject to reversal only when a review of the entire *voir dire* reveals the court abused its discretion. *State v. Dotson*, 16-0473, p. 5 (La. 10/18/17), 234 So.3d 34, 39 (citation omitted). This standard of review is utilized “because the trial judge has the benefit of seeing the facial expressions and hearing the vocal intonations of the members of the jury venire as they respond to questions by the parties’ attorneys.” *Id.*, 16-0473, p. 17, 234 So.3d at 45 (citations omitted). “Such expressions and intonations are not readily apparent at the appellate level where review is based on a cold record.” *Id.*

Defendant first complains that the court should have granted his challenge to the prospective juror, claiming that as a victim of a similar attack herself at the hands of an authority figure, lacked the ability to adjudicate his guilt according to the law and evidence. The incident had occurred approximately fifty years earlier when she was a juvenile. Notwithstanding her history as a sexual assault victim, the juror responded to the district attorney that she could return a not guilty verdict if the state failed to prove its case beyond a reasonable doubt. In fact, when cross-examined by defense counsel concerning that response, she stated she could “definitely” separate her emotional response from her objective evaluation of the evidence. The juror concluded by assuring defense counsel that she could be “balanced and fair.” The court denied the ensuing defense challenge for cause, noting it was a “close” call.

Defendant likewise complains that another juror should have been excused for cause as incapable of fairly judging his case based on her experiences as a victim of sex crimes as a child and young adult. Despite her history, the juror responded affirmatively when asked by the district attorney if she could return a not guilty verdict if the state did not prove its case beyond a reasonable doubt. She explained to defense counsel that she thought she would do the “right thing” but wanted to disclose her history as a sexual abuse victim so as not to be “unfair to anybody.” When questioned by the court, the juror indicated she believed she could adjudicate the case based on the evidence as opposed to being influenced by her own experiences. While she acknowledged that she might “lean” upon personal experience, she reiterated her belief that she could be fair and find Defendant not guilty if the state did not prove its case. Again acknowledging that it was a “close” case, the court denied Defendant’s cause challenge.

Given the deference afforded the district court when ruling on such challenges, Defendant does not show that the court erred when it found the prospective jurors could adjudicate his guilt according to the law and evidence notwithstanding that they had been the victims of somewhat similar crimes themselves. *See generally State v. Dorsey*, 10-0216, p. 38 (La. 9/7/11), 74 So.3d 603, 631 (fact that a juror had previously been victim of crime will not disqualify that juror from serving so long as the juror remains impartial); *see also State v. Mazique*, 09-845, p. 23 (La.App. 5 Cir 4/27/10) 40 So.3d 224, 239-40 (no abuse of discretion when court denied cause challenge to a prospective juror in case where

the accused had been charged with incest and pornography involving juveniles notwithstanding that the juror had daughter who had been molested and became visibly upset during voir dire when questioned about the case; juror subsequently indicated she could adjudicate case based on the evidence presented); *State v. Robinson*, 36,147, pp. 9-10 (La.App. 2 Cir. 12/11/02), 833 So.2d 1207, 1213-14 (no abuse of discretion when denying cause challenge to prospective juror who was a childhood rape victim and had a relative who was a victim of rape and murder in case of a defendant charged with forcible rape; juror stated past experiences would not affect her ability to act impartially).

While both jurors had been victims of sex crimes, they each expressed their opinions that they could decide the case based on the law and evidence. *Cf. Dorsey*, 10-0216, pp. 23-24; 74 So.3d at 622 (“A prospective juror's seemingly prejudicial response is not grounds for an automatic challenge for cause, and a district 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.” (Citations omitted.))

Defendant has failed to demonstrate that the court abused its discretion when it denied his challenges for cause. Accordingly, we find no merit in Defendant's assignment of error and affirm the convictions.

AFFIRMED.